

**Corporate Governance Compliance
within South African Regulatory
Agencies: Towards an Implementation
Framework**

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Preface and Acknowledgements

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Nna ke boa seokodibeng; Ke mokgomotshweu; Morwa ka sebele; Tladi'a masethebele-sa-nkwe; Tau ya tswako – ba re tau e bina le mosadi wa yona; Ke Makgoleng-a malata a boetsa a bonokaneng; Molo'a Phaahla'a Mmazwi – Molo'a Mologadi'a Molo.

Dr. Mpompho Jan Tladi

ABSTRACT AND KEY TERMS

Worldwide, there is a growing trend towards agencification as a favoured public service delivery model by governments. Regulatory agencies, in particular, are established with autonomous authority to regulate a specialised public function. The main objective of the study was to assess the extent of compliance with good corporate governance standards by regulatory agencies in the discharge of their regulatory function. An inductive approach was employed to explore the corporate governance phenomenon, using the interpretivism philosophical underpinnings to understand levels of non-compliance. Using the in-depth interview method, the study found that unprecedented levels of non-compliance to corporate governance by regulatory agencies are caused by structurally based impediments as well as those influenced by human behavioural aspects. Applying the underlying African ontological and philosophical underpinnings, the study conceptualised a new theoretical framework known as Ubuntu as an expansion of the stakeholder theory. Moreover, the study introduced a corporate governance compliance framework to be used as a guiding instrument in the implementation of good corporate governance practices and principles within regulatory agencies in particular and public entities in general.

Key Words

Corporate governance, regulatory agencies, Ubuntu theory, corruption, compliance, agency theory, stakeholder theory, stewardship theory, resource-dependency theory, political theory, code, ethics, values.

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CHAPTER 1

OVERVIEW AND CONTEXT

1.1 Introduction

South Africa is widely recognised as the continental leader and global player in the field of corporate governance due to its high standards set for compliance and governance. Many countries worldwide hold South Africa with high regard and use it as a benchmark for the development of their corporate governance systems, processes and procedures. However, observers raise serious concerns about high levels of corruption and non-adherence to the rule of law within government, cascading-down into governmental regulatory agencies which are at the coalface of delivering social and developmental agenda. As key players in the government's developmental role, regulatory agencies find themselves at the crossroads. Whilst the expectation is for them to deliver higher economic and financial efficiencies, this should be balanced with the broader societal interests. Prevalence of corruption, bribery, and nepotism often lead to the weakening of organisational systems, processes and procedures which ultimately undermine the delivery of much needed public services by these entities. Corruption is defined as "the misuse of public power for private benefit" (Transparency International, 2015). According to the World Bank (2013a), "in the developing world, corruption is the public enemy number one". It is like cancer that ravages governments and organisations alike. Globally, the scale of corruption has reached unprecedented levels.

In terms of Transparency International (2015), it is estimated that almost sixty eight percent of countries worldwide are faced with corruption challenges. Since 1995, the organisation released the Corruption Perception Index (CPI) on an annual basis whereby countries are ranked according to their perceived levels of corruption emanating from expert assessments and opinion surveys. The objective of the CPI is to measure the perceived levels of public sector corruption worldwide. The 2018 CPI indicates that corruption remains a serious challenge around the world. South Africa is ranked number 73 with a corruption perception score of 43 (Transparency International, 2018).

The corruption perception score of 43 and a consistent decline strongly suggest that corruption is endemic. It is generally agreed that pervasive corruption was part of the pre and post-apartheid South Africa, however, there is an overwhelming consensus that it is on the rise. Corrupt activities

are fuelled by bureaucratic practices, such as irregular procurement practices, political patronage, and extension of citizen entitlements (Lodge, 1998). Furthermore, as quoted in Govender (2013), the Public Service Commission Report of 2002 states that “bribery, fraud, nepotism and systematic corruption are current forms of corruption in contemporary South Africa”. Systematic corrupt practices can have far-reaching devastating effects to the state and its public institutions which include economic chaos, social upheavals and inequalities, economic growth stagnation, and lowering the flows of foreign direct investment. Moreover, a government riddled with corruption, bribery, fraud, and nepotism, diminishes the trust that the public has in its institutions and promotes the contempt of the rule of law.

Generally, it is assumed that only politicians in government are corrupt. Most often, bureaucracy provides a platform for perfecting corruption (Afodelabi, 2015). In the last decade, South African key public entities, such as the Passenger Rail of South Africa (PRASA), Transnet, South African Broadcasting Corporation (SABC), Eskom, South African Airways (SAA), Denel, and the South African Post Office (SAPO), have been embroiled in serious corporate governance scandals causing the government billions of rand. Particularly, regulatory agencies which constitute part and parcel of the government’s delivery arm, have also been engulfed in a series of governance malpractices undermining their capacity to exercise their regulatory authority prudently and efficiently. For example, the report of the Ministerial Task Team (2015) appointed to investigate reported allegations of technical irregularities, maladministration and poor governance at the Health Professions Council of South Africa (HPCSA) found that procurement irregularities were resulting in unauthorised, irregular, fruitless, and wasteful expenditure; the inability of the HPCSA to execute its legislative authority prudently and the inability of executive management to meet the required performance standards in the discharge of their executive functions in line with Batho Pele (people first) principles. The Business Life (11 June 2018) reported that the Public Protector will be carrying-out investigation into maladministration and misgovernance within the Estate Agency Affairs Board (EAAB). On the other hand, the private sector also experienced some fair share of corporate governance scandals in companies like the African Bank, Steinhoff, and VBS Mutual Bank. For example, a forensic report found that the board of directors at African Bank Investments failed in their duties to manage and protect the credit lender before its downfall (Fin.24, 5 May 2016). Steinhoff, a retail company operating across the world has been alleged to have engaged in accounting fraud (Mail & Guardian, 29 January 2018). VBS Mutual Bank was severely mismanaged and riddled with endemic fraudulent reporting and manipulation of financial information (Mail & Guardian, 11 April 2018). It can be said that wherever there is corruption, there is a corruptor and a corruptee, as auditing firms such as KPMG (Pty) Ltd and Nkonki have

been found to be colluding in unlawful and irregular auditing practices when offering auditing and accounting consultancy services to some of these companies.

All public entities without exception or form, are crucial for socio-economic development and offering of public services. Most of the problems afflicting them could have been prevented had there been good corporate governance. Those responsible for governing public entities could have provided effective leadership, implemented necessary checks and balances, and taken corrective measures (McGregor, 2015a). The principal aim of corporate governance is to ensure sustainable growth, economic efficiency and prudence in an organisation. Good corporate governance assists with availing of the regulatory and governance framework for acceptable practice, strategic direction and sound business judgment. It plays a crucial role in the maintenance of accountability, fairness and transparency in the implementation of organisational systems, processes and procedures. Its application cuts across all the levels of the organisation, i.e. from the Board of Directors to senior management, and the lower levels. The study **assessed the extent or** lack of compliance with good governance standards by **South African Regulatory Agencies (SARAs)** in the discharge of their mandates. Essentially, the study sought to evaluate the causes of corporate governance failures within the SARAs and conceptualise an appropriate **and effective corporate** governance framework for compliance. The research is located within **the interpretive** paradigm. Whereas research has been conducted about the causes of corporate governance failures within the SARAs, no such research went further to develop an appropriate framework for compliance. This study is therefore timely and breaks new ground by illuminating the complexity of the historical, social and political context of the corporate governance systems, processes and procedures going further to proffer an implementation framework for compliance. This study shows the extent to which corporate governance is taken **for** granted as well as the extent to which SARAs have become unaccountable and almost law unto themselves hence unable to serve the interests of public.

This study is premised on the paradigm that the corporate governance phenomenon provides a cushion for SARAs' sustainable growth and development underpinned by efficient and effective regulation, effective oversight, accountability and transparency. The study selected two public entities that are otherwise called regulatory agencies since they have been established to regulate a specialised designated public function. They include the Estate Agency Affairs Board (EAAB), established for regulating the estate agents practice in the public interest and the Health Professions Council of South Africa (HPCSA), which regulates health professions and promotes good health standards.

1.2 Background to Study

According to Solomon (2007:13), “the governance responsibility is not concerned with the controlling of business of an organisation, per se, but the granting of overall direction”. Corporate governance is thus an enabler for economic efficiency, sustainable growth, and financial stability. The ever-changing corporate governance milieu requires optimally functioning SARAs that are abreast of the changes occurring at the legal, policy, economic, social and technical levels. It is in the best interest of the government as a shareholder within SARAs to place a significant premium on good corporate governance to support the efficient and effective delivery of developmental priorities and programmes in a cost-effective and cost-efficient manner. Accordingly, each regulatory agency should be headed and managed by an effective and efficient board which should act with diligence, skill and objectivity in the best interest of the entity, the shareholder and the public in general (Protocol on Corporate Governance for State-owned Enterprises (Protocol), 2006).

Year in and year out, it has been observed that certain SARAs beset into the near or virtual collapse of corporate governance due to a variety of reasons. One of the tests of character for a capable regulatory agency board is its ability to exercise its powers and functions independent of management and the shareholder. Failure to comply with good corporate governance principles exposes them to operational, political, reputational and financial risks. This compromises service delivery, leads to corruption, reputational damage and financial losses. It is incumbent on the Executive Authority (EA) to whom a particular regulatory agency is accountable to, to implement urgent and remedial actions to subvert the potential threat to corporate governance collapse.

The rationale for this study was the need to analyse the theoretical frameworks and applicable models as well as corporate governance shortcomings to form the bedrock of the creation of a suitable SARAs’ corporate governance compliance framework integrating roles of political office-bearers, boards, corporate managers, and stakeholders generally. The foundation of such an implementation and compliance framework should be based on the principles of accountability, transparency, integrity, fairness, corporate ethics, sound business knowledge, wisdom and practice. This will be complemented by the drawing of parallels and contrasts between the private sector and the public sector to isolate and identify best corporate governance practices. The ultimate goal is to improve corporate governance within SARAs to enable them to avoid financial, reputational, political, and operational risks. In the final analysis, the study conceptualised and theorised a new theoretical construct to be known as “Ubuntu theoretical perspective” to

contribute to the enrichment of the body of knowledge on corporate governance (see chapters 5 and 6).

1.3 Problem Statement

As a shareholder, the South African government owns over 700 public entities which take a wide range of corporate forms. One of the types of these public entities is government regulators commonly known as regulatory agencies. Regulatory agencies are normally statutory entities established with autonomous powers to execute specialised functions requiring specialised focus and, on the understanding, that they are a suitable mechanism for rendering services that are not delivered through the private sector. It is argued that they are better placed to prevent the exploitation of consumers by the private sector (Mwaura, 2007). The government uses them as delivery machinery to render services such as social development, protection of consumers, and sector regulation. McGregor (2014:6) argues that they play a meaningful role in the implementation of government programmes and priorities. Therefore, it is imperative that they are managed and governed properly in line with governance ethos contained in the National Development Plan (NDP) (2012), King Codes on Corporate Governance (1994, 1998, 2002, 2009, 2016), and other government's policy and legislative considerations to improve the country's social and economic conditions. It is the responsibility of government not only to ensure that regulatory agencies deliver on their cardinal mandates of providing the country's socio-economic capital, but also that they are effectively and efficiently controlled to ensure that government's investment yields the required outcomes.

Regulatory agencies are often deeply implicated in corporate governance problems due to their operational inefficiencies, financial losses, budgetary burdens, and poor service delivery. In many instances, they opt for ineffective organisational strategies used to justifying their sub-standard performance (Mwaura, 2007). Consequently, they continuously perform badly on issues relating to accountability and transparency, financial and performance auditing, appointment and functioning of boards and board committees, credible disclosure and reporting, maximisation of stakeholders' satisfaction, and ethical behaviour (McGregor, 2014). Many of them continue to be plagued by enormous corporate governance challenges affecting their ability to deliver services more efficiently and effectively. They are consequently perceived as bad performers insofar as good governance is concerned. This is precipitated by a myriad of factors which include among others, the following:

- Unclear mandates and overlapping functions

A plethora of regulatory and legal instruments are created to enable SARAs to exercise public power to execute their mandates. These instruments are often criticised of lack of clarity of roles and contributory to the creation of overlapping functions stifling sustainable development.

- Over-regulation

SARAs are often overburdened by a series of regulatory frameworks they ought to comply with. McGregor (2014) states that “one of the reasons why implementation seldom happens is that there are so many rules and bureaucratic procedures that people do not know where to start. Once started, it takes so long to get through bureaucratic hurdles that people ultimately give up”. Bureaucratic processes and procedures ultimately lead to their operational inefficiency and ineffectiveness.

- Leadership paralysis and mismanagement

A major criticism levelled against SARAs is that they do not add or create value, instead, they diminish it. “They can be perceived ‘rightly or wrongly’ as consumers of taxpayers money without delivering appropriate returns or desired societal outcomes due to less competitive pressures to operate efficiently and effectively as compared to their private-sector counterparts” (PWC Report, 2015). As a result, many of them are engulfed in battles of mismanagement resulting from incompetency, lack of integrity, managerial and leadership bankruptcy, bureaucratic hurdles, etc. As quoted in McGregor (2014), the Auditor-General’s report of 2013 on the expenditure patterns of public entities, indicates that approximately R30 billion was wasted on unauthorised, irregular, wasteful and fruitless expenditure. Furthermore, the report highlights that irregular expenditure rose by 33% for public entities. However, due to lack of citizenry activism, there is an absence of decisive action against guilty parties by those responsible for running these entities.

- Perennial under-performance

In contrast with their private sector counterparts, there is a growing public perception that SARAs consistently underperform and often fail to sustain growth and development. To maximise returns, the private sector applies rewards and punitive measures to push Directors to make good of their corporate governance deliverables. Shareholders may dismiss Directors for reasons of poor economic performance and lowering of the share price which may lead to take-over. The threat of insolvency may incentivise Directors to manage the company prudently and efficiently. Boards of SARAs are never in the danger of insolvency or replacement. This may lead to poor performance by Directors as a result of the absence of rewards to incentivise them to perform optimally.

- Lack of political will and interference

Inaction to initiate necessary and prompt remedial action for non-performance increases non-confidence to safeguard corporate governance by the shareholder. The economic efficiency of SARAs “is also undermined by the fact that politicians do not have a personal equity stake in entities they oversee, as a result, they have no financial incentive to ensure that they are managed effectively” (Mwaura, 2007). Undue delay by the shareholder to implement remedial measures to subvert harmful results beforehand normally leads to the virtual collapse of corporate governance within these entities. Non-sanctioning of perpetrators of bad corporate governance compounds the problem even further. Excessive political pressures are often cited as one of the factors contributing to the lowering of corporate governance standards.

The driving force behind this study was the need for identifying and quantifying causes and effects of corporate governance failures within SARAs to formulate appropriate systems, processes and procedures in the form of a corporate governance compliance framework (see Chapter 6). It is envisaged that the compliance implementation framework will serve as a guiding instrument to improve levels of compliance with good corporate governance practices. Complementary to the compliance and implementation framework will be the development of a theoretical construct to be employed within the corporate governance field to enhance good corporate governance practices and principles (see Chapter 5).

1.4 Paradigmatic Perspective

In the research process, to determine research questions is a very important step because they narrow research objectives and purpose to specific questions that should be answered (Creswell, 2005). Furthermore, questions are probing statements that also serve to extend the purpose of the study “in that it specifies exactly the question to be answered” (Johnson & Christensen, 2004). Onwuegbuzie and Leech (2006:475) argue that research questions offer “a framework for conducting the study, helping to organise the research and giving more relevance, direction, and coherence, thereby helping to keep the researcher focused during the investigation”. Scholars such as Bryman (2001), Holloway and Wheeler (1996), Marshall and Rossman (1999), Morse (1994), Pole and Lampard (2002) and Ritchie *et al.*, (2003) state that research questions should meet certain criteria which include: stating clear, focused, and unambiguous interrogatories; having the capacity to be researchable through data gathering; relevance and usefulness in policy-making and implementation or theory generation; having a connection with prevailing research or theory to add a new contribution or to close a gap; being practical and feasible. The

following underlying questions have been crafted and framed to be answered by the study and to draw a corresponding co-relationship to the stated research study aim and objectives:

- Is there any noncompliance to corporate governance standards by SARAs? If yes, what is its nature and form and how is it manifested?
- What are the root-causes of corporate governance failures within SARAs?
- What are the factors and variables contributing to corporate governance collapse within SARAs?
- What are the impact and likely consequences of non-compliance to corporate governance?
- How effective are preventative, retributive and deterrent measures used to minimise the effect of non-compliance?
- Which appropriate good governance compliance framework can be recommended to the SARAs to enhance their corporate governance duties and responsibilities?

1.5 Research Aim and Objectives

Laying-down an appropriate aim and objectives linked to the research study are determinant to the scope, depth and overall direction of the research process. Scholars such as Johnson and Christensen (2004) and Ritchie *et al.*, (2003) illustrate five measuring standards in setting research objectives: explorative: applying inductive methods to investigate a concept; descriptive: defining the antecedents, nature and etymology of a phenomenon; explanatory: generating theory to illustrate relationships among concepts and phenomena and determine reasons for occurrences of events; predictive: using pre-existing knowledge or theory to forecast future occurrences; and, influence: illustrative of the manipulation of the setting or variable to produce the desired outcome. The below research aim and objectives set are incongruent to these standards of measure.

1.5.1 Research Aim

At a glance, the relationship between government and SARAs is like that of a holding company and its subsidiaries, for example, the government being the holding company and the SARAs its subsidiaries. Government as the holding company has a strong interest in how SARAs as subsidiaries are led and managed, their financial performance, their reporting and accounting as well as the need to take remedial action in cases of non-compliance. The underlying objective of corporate governance is to ensure that actions are taken and implemented, processes and procedures pursued, systems developed and implemented within organisations are above board, meaning that they comply with acceptable standards of good corporate conduct and practice. The

goal of this study is to critically evaluate the causes of corporate governance failures within the SARAs and to develop an effective corporate governance compliance framework suitable for them (see Chapter 6). It is envisaged that the framework to be developed will be influenced by the identification and quantification of shortcomings to help SARAs to manage their corporate governance affairs more prudently.

1.5.2 Research Objectives

The study seeks to achieve the following objectives:

- To assess the nature, forms and manifestations of SARAs non-compliance to corporate governance to determine the extent to which they adhere to acceptable standards of good corporate governance;
- To conduct a root-cause analysis to identify and quantify corporate governance failures to provide appropriate measures to reduce them;
- To identify and isolate factors and variables contributing to corporate governance collapse within SARAs;
- To analyse the impact and consequences of failure to adhere to corporate governance principles by SARAs to provide appropriate measures to curb them; and
- To develop an effective and efficient corporate governance compliance framework for SARAs.

1.6 Research Perspective and Context

Denzin and Lincoln (2000:3) allude to a practically-oriented approach to defining research when stating that: “research is a situated activity that locates the researcher in the social world. It consists of a set of interpretive and material practices that makes the social world visible. These practices turn the social world into a series of representations consisted of field notes, interviews narratives, conversations, photographs, recordings, and memos to the self. At this level, research involves an interpretive and naturalistic approach to the social world. This means that researchers study things in their natural settings, attempting to make sense of or to interpret phenomena in terms of the meanings people bring to them”. Several scholars, such as, Bryman (1988), Denzin and Lincoln (2000), Hammersley and Atkinson (1995), Holloway and Wheeler (1996), Mason (2002), Miles and Huberman (1994), Patton (2002), and Ritchie *et al.*, (2003) emphasise the need to align the defining elements of research to the key methodological aspects which include designing elements, philosophical underpinnings, and approaches (see Chapter 3). Research methodological perspectives assist in creating the roadmap for the setting and context within which research studies undertake ontological and epistemological exercises.

Ritchie *et al.*, (2003) suggest the four main pillars as the basis for qualitative research: firstly, qualitative research design and execution should be rigorous and underpinned by the specific methodological foundation; secondly, encompassing the social orientation, beliefs, and behaviours operating in a diverse and multifaceted context; thirdly, underpinning the formulation of contemporary social theory; and, fourthly, qualitative studies assist in the quest for drawing inferences to the social world. From a design perspective, recently, Rowley, Gibbs, and Flyvbjerg (2006) developed a new methodological perspective called “phonetic methodology” influenced by the ideas of Aristotle’s philosophical concept of “phronesis” to assist researchers to research behavioural cognitive elements such as value-judgment, practical wisdom, or prudence. Chreswell (2005) and Garbers (1996) suggest that explorative methodological perspective is intended to investigate a lesser-known area to obtain a better understanding of a phenomenon, to conduct a preliminary investigation, and to determine priorities for further research. They argue that explorative research methodological perspectives assist in obtaining cumulative and predictive knowledge in social sciences. The phonetic methodological perspective brings the vantage of analysing and “changing social phenomenon that relies on values and power of social actors” (Flyvbjerg, 2006a). Flyvbjerg further argues that “social science should analyse social phenomenon taking into consideration value and power to change reality”.

Corporate governance philosophical underpinnings and theoretical dispositions align to the reality that values and power relationships are issues of interest world-wide, within the corporate world, public organisations, the political world, and international organisations, having significant power to shape societal values. There is an acknowledgement that the phenomenon of corporate governance is an area where self-interests of owners, stakeholders, environment, and government, are continuously interfering at the organisational level (Kuljak, 2014). Focusing on values, placing power at the core of the analysis, getting close to reality, emphasizing little things, looking at practice before discourse, studying cases and contexts, asking “how” and “why” questions, moving beyond agency and structure and dialoguing with a polyphony of voices constitutes the hallmark of the phonetic methodological perspective (Flyvbjerg, 2006a; Kuljak, 2014).

As part of the qualitative review process, it was crucial to trace SARAs’ performance record over time regarding their levels of compliance with good corporate governance practices and principles. This involved a detailed contextual analysis of specific events, practices and their

relationships. Primary data gathered through in-depth interviews and review of secondary data collected using a wide range of data sources, such as journals, textbooks, newspapers, and SARAs' specific documentation review was used to understand the depth of SARAs' compliance to corporate governance. Primary data was gathered through scheduled in-depth interviews using a topic guide to conduct a comprehensive contextual analysis of the phenomenon. Theory building involved "using empirical evidence from cases to create theoretical constructs and propositions" (Eisenhardt, 1989; Eisenhardt & Graebner, 2007).

This study used the interpretivism philosophical underpinning for deeper contextualisation and making sense of the phenomenon of corporate governance in relation to its application on the SARAs. To understand research participants' interpretations, their feelings, and their beliefs about the corporate governance phenomenon, an intense collaboration of the researcher and the research participants occurred through in-depth interviews. The abstraction of the phenomenon as a principle led to the drawing of generalisations on how it was manifested and contextualised. The qualitative analysis of the phenomenon allowed comprehensive dialogical reasoning and engagement among all parties to the study. Applying the interpretivism philosophical underpinning in the critical evaluation of the phenomenon, multiple interpretations on its origin, development and contextualisation from research participants' perspective arose (Myers, 2008). Moreover, the underlying corporate governance values, power relations, cases and contexts were extensively scrutinised to understand concepts and theoretical positions surrounding the phenomenon.

To discover the reality regarding how the phenomenon is perceived by research participants, the study integrated human interest socially constructed by interviewing them using open-ended questions. This approach sought to achieve a twofold purpose: to ensure that the research findings fully represent the contributions of the research participants directly affected by the phenomenon and to ensure that comprehensive interpretation and analysis of the phenomenon is plausible to theory development or refinement. While a great deal of objectivity was maintained throughout the research process, the subjective epistemology approach could not be avoidable given the eminent relationship of the researcher and the participants in the study.

The inductive approach uses evidence to base the conclusions. On the other hand, deduction involves the development of hypotheses through a logical process. Deductive processes use evidence in support of a conclusion (Ritchie *et al.*, 2003). The study involved gathering, analysis,

and interpretation of data using qualitative research paradigms and related methods that are not fully dependent on numbers. Such qualitative data were drawn from the social world, social theory, practices, social concepts, and behaviours of research participants in the context of their personal experiences and feelings (Claire, 2010). From a practical perspective, the underlying corporate governance principles and practices involve complex inter-dependent and inter-relationships requiring complex understanding, contextualisation, and analysis. Qualitative research methods allow for the discovery of emergent variables and how they relate, understanding of processes that are complex and influence the social world. According to Ritchie *et al.*, (2003:36), “qualitative research is a skilled craft that brings a unique understanding of people's lives and the social phenomena that form them”. Applying the qualitative review approach, more especially on the comprehension of the context of corporate governance in relation to SARAs may be further examined to add more insights into the causes and effects of its failure.

Critics of the qualitative research approach hold that it is biased, limited in scope, and anecdotal (Chreswell, 1994; Denzin & Lincoln, 1994; Garbers, 1996; Myers, 2008). Qualitative research is useful for a variety of reasons: it often describes the social world in which policies and programmes can be actualised; it provides direct and personal experiences and feelings of research participants and it is amenable to social theory formulation (Glaser & Strauss, 1967; Lincoln & Guba, 1985; Ritchie *et al.*, 2003). In this regard, as a known phenomenon, corporate governance was used to generate untested conclusions concerning its application within SARAs. In undertaking this study, no formulation of hypotheses has been generated, but rather, research questions and aims and objectives that needed to be achieved during the research process.

Social theory enquiry provides researchers with the opportunity to make predictions of study outcomes, although strictly limited to being probable (Cook & Campbell, 1979; Kerlinger & Lee, 2000). The social theory also facilitates the description and explanation of processes or sequence of events (DiMaggio, 1995). Social theory acts as an educational tool for raising awareness about particular concepts (Brief & Dukerich, 1991). Social theory development and refinement are important in the undertaking of a social enquiry process. This process will result in a detailed understanding of the phenomenon through which key constructs, inter-relationships and contexts are identified and described (Glaser & Strauss, 1967). Data collected from in-depth interviews are generative in the sense that new knowledge or thoughts are likely to be created. In this regard, to aid in its development, research participants will be self-directed at some point or get directions from the researcher through thought processes they have not explored before (Ritchie *et al.*,

2003:142). The interview questions contained a combination of content mapping (ground mapping and dimensions mapping questions) and content mining questions (exploratory, explanatory, and clarificatory questions) (Ritchie *et al.*, 2003:142). Content mapping questions were crafted to introduce the research scope and to identify relevant issues. Content mining questions were crafted to comprehensively understand the research participants' feelings, emotions, and experiences surrounding the corporate governance phenomenon. It was conceivable that through this study, new theories and generalisations on the phenomenon of corporate governance within the context of SARAs' environment would emerge.

1.7 Sampling Techniques

The study required more detailed and intensive research work to fully explore corporate governance compliance in agencies of the state. Therefore, for the study to be manageable, it was necessary to restrict the target population to a small number of SARAs. The selected population of this study is constituted by the EAAB and the HPCSA. The selection of the target population took into consideration factors which include:

- The nature and importance of their offering relative to the regulatory roles each play in their respective functional area;
- Their level of autonomy vis-à-vis other regulatory agencies; and
- Their historical performance of compliance with corporate governance.

The sample of the study consisted of a combination of key officials operating at the management echelon, as well as board members within the selected SARAs to gather diverse perspectives on their feelings and emotions regarding the application of corporate governance within the study population on a multi-level basis. Essentially, the study was set out to investigate their feelings and emotions surrounding the complexities of values and power relations at play. To make the research study more manageable and more efficient, four key officials from management and four board members in each of the sampled SARAs have been selected to participate in the research process. The non-probability sampling method has been adopted to conduct this research study since it is the most ideal for phonetic and explorative studies. A purposive sampling technique has been applied to undertake the research process. Not each group member had an equal chance to participate in the study. The researcher used personal judgement to select participants.

The sample size has been drawn based on the extent to which research participants interact on corporate governance matters, the level of engagement into power-relationships, as well as

value-creation. The nature of the research to be undertaken demanded interaction with participants who are directly involved in the application of the phenomenon to understand their feelings, emotions and experiences. It was therefore inconceivable to include those operating outside the realm of corporate governance since their inclusion might not lead to obtaining reliable and conclusive findings. Potential research participants have been invited using electronic means of communication to participate in the study. Research participants were duly informed of their constitutional rights governing confidentiality and privacy when participating in the study.

1.8 Qualitative Data Gathering Techniques

Janesick (2000: 384) states that “qualitative researchers have open but not empty minds”. Over many decades, qualitative researchers developed a strong variety of methods and pointers from which studies can be conducted, and it is a huge intellectual challenge for researchers to employ them when the need arises (Ritchie *et al.*, 2003). Qualitative research methods for data gathering are not elusive but have strength, especially in the production of new theories or refining those that are known (Sonali & Kevin, 2006). In grounded theory building methods, collecting data directly from study subjects are preferred since they provide the actual experience of the matter being studied. While there are numerous methods for collecting qualitative data, in management sciences grounded theory research mostly depend on three data collection techniques namely, in-depth interviews, direct and participatory observation and analysis of archived data (Marshall & Rossman, 1989). Unique features of grounded theory are its focus on discovery through directly contacting the social world, and denouncing early or preconceived theorising (Locke, 2001). Qualitative data on existing theoretical positions and models are collected to be more familiar with their content, complexities and shortcomings. The popular theoretical frameworks and models provide a sound-footing for ex-post theorising in contextualising the findings and theoretical inputs against their frameworks.

Scholars apply a variety of approaches to interpret or analyse when conducting qualitative research. The most commonly used approaches in social research are “content analysis”, “narrative analysis”, and “constant comparative method” applied in grounded theory. Graneheim & Landman (2003) explain that “qualitative content analytical approaches focus on analysing both the explicit or manifest content of a text as well as interpretations of the latent content of texts that which can be interpreted or interpolated from the text, but is not explicitly stated in it”. Content analyses use standardised measurements to code, characterise, and compare contexts (Berelson, 1952; Guba & Lincoln, 1994; Krippendorff, 1980). Penetration and usefulness of

qualitative analysis are characterised by maintaining a balance of “abstract and general concepts” with “description and quotations” offered by research participants (Lofland, 1971).

The collection of primary data was achieved by means of in-depth interviews using a questionnaire that has open-ended questions. Scheduled interviews were arranged on a semi-structured approach with identified key officials and Board members to understand their feelings and experiences on the context and application of the phenomenon to obtain various perspectives. A topic guide with open-ended questions was developed and used during the interviews. Even though strong similarities were maintained in questions asked to all research participants, to keep the comparison process credible, some flexibility in questioning was allowed to provide research participants with some control to decide on which areas of the phenomenon are of crucial importance given their own experiences. Additionally, secondary data were gathered in the form of journals, textbooks, SARAs’ specific documentation, and newspaper articles, to enhance the epistemological exercise into the phenomenon and to obtain reliable and conclusive findings. The 16 corporate governance compliance principles as contained in King Code (2016) constituted the bedrock of measuring corporate governance compliance levels within SARAs. Content analysis of secondary data was executed to assist in the theorisation and conceptualisation processes.

In-depth interviews with research participants were audio-recorded and transcripts on responses to the open-ended questionnaire were compiled to contribute to the qualitative data gathering process. This study was concerned with “words, sounds, feelings, emotions”, and other characteristics that are not easily quantifiable as opposed to quantitative data collection method which relies on the use of “questionnaires with closed-ended questions, methods of correlation and regression, mean, mode and median”. According to Neuman (2000), the quantitative approach is criticised for analysing numerical values and emphasising pedigree; not being useful in unveiling meanings ascribed to events or experiences by research participant; and, not being suitable for use in understanding complex organisational processes and/or contexts.

Data gathered through in-depth interviews were coded using the grounded theory perspective to identify emerging themes. This included open, axial, and selective coding techniques by undertaking a thorough description of all codes, determining the ‘inclusion and exclusion criteria’, identifying examples of actual text for each theme and theme’s boundaries, where they are not identified (Ryan & Bernard, 2000). Strategies for coding and sorting of segments of data as suggested by Miles and Huberman (1994) were employed. All comments and responses from

research participants were extracted. Coding was organised around three to seven major themes. For comments/responses that appear to be outliers, a miscellaneous category was created. Afterwards, results from this category were revised to see if they fit within the developed framework. Where some comments/responses address more than one category, they were coded in each of the categories they are addressing. Having grouped comments/responses in overarching categories, each category created were reviewed for additional layers of the organisation. Using the interview method, research participants were able to reflect their understanding and feelings about the phenomenon and their level of interaction at the value-development and power relations. Face-to-face interviews with research participants helped in seeking clarifications and elaboration on the answers since the questions were open-ended, evolving and non-directional.

1.9 Significance and Contribution of the Study

According to Ritchie *et al.*, (2003:26) qualitative research can make a meaningful contribution to research in several ways: contextually, providing a description of the phenomenon; explanatory, understanding the rationale and association in the context of the phenomenon; evaluative, measuring the efficacy of the phenomenon; and generative, assisting in the generation of theoretical positions, strategies, or actions. The significance to be offered by the research study is multi-dimensional as it can be differentiated at the primary and secondary levels. Besides, the research study contributes to the corporate governance body of knowledge in three ways, that is, theoretically, conceptually, and philosophically. The starting point begins with the evaluation of the significance of the research study and thereafter its contribution.

1.9.1 Significance of the Study

The significance of this study is characterised by the following two levels:

- The primary level: For purposes of SARAs, there appears to be scarce academic literature on corporate governance generally within the African continent and within the South African context (Thomas, 2012). Whilst scholars in the developed economies have used this basic premise and developed a sizable literature on corporate governance, in Africa, there had not been many studies on corporate governance (Okeahalam, 2004). The research study is an attempt to contribute significantly to the elimination of this gap as identified and to make an input to the ongoing development of corporate governance body of knowledge within the context of SARAs.
- The secondary level: At the secondary level, outcomes of the research process may prove to be significant to a variety of stakeholders. Recognising members of the public as a critical

stakeholder, it may ignite citizenry activism turning them into watchdogs of good corporate governance within SARAs (Mwaura, 2007). Arguably, the corporate governance compliance framework will empower the government to enable managers in the public sector, as well as members of boards to execute their mandate and for holding them accountable.

1.9.2 Contribution of the Study

The study contributes to the corporate governance body of knowledge in three ways: theoretically, philosophically, and conceptually.

1.9.2.1 Theoretical Contribution

Glaser and Strauss (1967:32) argue that the theorising process involves the creation of either substantive theories, meaning “theories for a substantive or empirical area, e.g. patient care, race relations, etc., and formal theories meaning theories developed for a formal or conceptual area of sociological enquiry, e.g. formal organisation, stigma, behaviour, socialisation, etc.” Contribution of the study involves the generation of a new formal theoretical construct within the social sciences. The authors further provide four aspects against which practical usefulness can be measured: “fit, understandable, general and control – to illustrate how well-grounded theory has a solid fit between data and theory, is understandable to those living the phenomenon being explained, is general enough to apply to the diversity of social context from which the theory emerged, and provide a measure of control for those living with the phenomenon”. Ritchie *et al.*, (2003) stress that generative research focuses on producing new ideas to contribute to the development of social theory, or to refine, or stimulate policy solutions by, for example: “developing new conceptions or understandings of social phenomena; generate new solutions to persistent social problems; identify strategies to overcome newly defined phenomena or problems; and determine actions that are needed to make programmes, policies, or services more effective.” The new theoretical construct developed by the study is amenable of being fit and understandable within the social science paradigm. It will be employed generally within the corporate governance field and provide a sense of control in its application (see Chapter 5).

1.9.2.2 Philosophical Contribution

The foundation of every science is paradigmatic thinking which consists of specific assumptions on the type or form of reality (ontology), the manner of understanding such reality (epistemology), and the process of systematically accessing the knowledge and understanding of that reality (methodology) (Guba & Lincoln, 1994). The study employs the phronesis methodological perspective recently developed to explore the corporate governance phenomenon in the context

of SARAs to understand the power relations and rational elements involved. As a newly established perspective, the study contributes to the enrichment of the pronesis paradigm.

1.9.2.3 Conceptual Contribution

Listening to the polyphony of voices and integrating diverse experiences and feelings surrounding the corporate governance phenomenon has translated into the conceptualisation of a corporate governance compliance framework to aid SARAs' in the interpretation and application of good corporate governance practices (see Chapter 6). The epistemological assumption is that the conceptual framework will contribute to the development of the corporate governance body of knowledge and improvement of levels of compliance with corporate governance.

1.10 Chapter Outline

Chapter 1 sets the tone for the overall research study. It provides an overview and context by laying down a baseline and offering direction for the focus of the research study. The chapter offers a roadmap to the research study by highlighting the rationale and objectives to be achieved by the study to understand the depth of non-compliance to corporate governance by SARAs. This is succeeded by the research methodology layout and ultimately evaluation of significance and contribution of the research study to the enrichment of the corporate governance phenomenon.

Chapter 2 evaluates the evolution and the changing nature of corporate governance phenomenon by examining descriptive elements and landscape thereof. To understand the corporate governance phenomenon more fully, the chapter tackles some of the dominant theoretical frameworks, such as political theory, agency theory, stakeholder theory, stewardship theory, resource dependency theory, and institutional theory, as developed by scholars to shape the phenomenon theoretically. Additionally, the chapter presents the Anglo-Saxon, Continental, and hybrid corporate governance models forming the architecture of corporate governance theoretical lenses.

Chapter 3 provides a framework for the research process. It locates the study within the qualitative paradigm and the justification thereof. The chapter presents the pronesis and explorative methodological perspectives to investigate the application of the corporate governance phenomenon. The methodological perspectives will be employed in the context of the

interpretivism philosophy and inductive approaches to analyse the phenomenon more fully. The chapter also tackles data gathering and analysis techniques employed by the study.

Chapter 4 discusses the South African Regulatory Agencies' corporate governance landscape. The journey begins by defining the functional areas of the target population and illustrating their regulatory responsibilities. Thereafter a comprehensive discussion of the corporate governance responsibilities and structures established to support effective and efficient implementation of corporate governance practices follows.

Chapter 5 embarks on a journey of conceptualising and theorising a new theoretical perspective to be known as Ubuntu. The chapter illustrates the philosophical foundations and characteristics of the Ubuntu theoretical perspective as underpinned by African ontological and epistemological perspectives. As a distinct theoretical perspective, the chapter presents a contrast between the relationship of the Ubuntu theoretical perspective and other existing theoretical perspectives, such as agency, stakeholder, and stewardship. In the ultimate end, the Ubuntu theoretical perspective is presented as a new corporate governance lens expanding on the tenets of the stakeholder theory.

Chapter 6 presents a corporate governance compliance framework for serving as a guiding instrument to SARAs in managing good corporate governance.

Chapter 7 evaluates comprehensively corporate governance practices within the EAAB and the HPCSA through in-depth interviews with research participants to understand the root-causes and factors and variables leading to non-compliance with good corporate governance standards. Additionally, the chapter explores some of the major consequences of non-compliance with good corporate governance practices. Lastly, some of the key findings of the research study are presented.

Chapter 8 concludes the research study by presenting recommendations, tangible measures, and actionable strategies to guide SARAs generally in their implementation of corporate governance practices. Furthermore, the major limitations to the study and suggestions for future research

towards the development of the corporate governance body of knowledge are presented. Ultimately, the chapter lays down concluding remarks on the research exercise undertaken by the researcher.

1.11 CONCLUSION

In this chapter, we presented a contextual overview of the research study. We have comprehensively elucidated the rationale, purpose, and objectives of the study. Moreover, we evaluated the research methodology adopted by the study. Ultimately, we presented significant elements and contribution to be offered by the study. In the next chapter, we evaluate the evolution and development of the corporate governance phenomenon. In addition, we also examine some of the dominant theoretical frameworks and models surrounding the corporate governance phenomenon.

CHAPTER 2

CORPORATE GOVERNANCE THEORIES AND MODELS

2.1 Introduction

For the past four decades, corporate governance has been the foremost centre of devotion within organisations, nationally and internationally for a range of motivations such as ever-increasing corruption and corporate governance malpractices, socio-economic development and upheavals, systemic risk, and escalating inequity (Amoako & Goh, 2015; McGregor, 2015a; Pargendler, 2016). The phenomenon has come to be a contemporary subject of extensive public importance and polemic and has turned into a dominant debatable subject-matter within organisations among shareholders, managers, employees, regulators, governments, and society at large (Amoako & Goh, 2015; Bebchuk *et al.*, 2009; Smolo & Smajic, 2011). It is still a sizzling subject-matter among all stakeholders within organisations and has been receiving augmented consideration in the preceding decade (Smolo & Smajic, 2011). The upsurge of corporate governance scandals, such as the world-wide financial calamities in 2008 instigated by “sub-prime mortgage in the USA, and the failure of gigantic corporations: Lehman Brothers, J.P. Morgan, Morgan Stanley, and Enron”, as a result of mismanagement and fraud, has exploded the prominence of virtuous corporate governance and place corporate governance in the glare of publicity perpetually (Dalton & Dalton, 2010; Myers & Ziegenfuss, 2006; Standard & Poor’s, 2004; Yacoob *et al.*, 2012; Young & Thyil, 2008). Over the years, restructuring of the corporate governance phenomenon has appeared as a preferential course of action and elucidation to counter this pattern of economic and social mayhems (Pargendler, 2016).

As a player within the global economy, South Africa was not spared by the corporate governance mayhems experienced world-wide. For example, companies including Steinhof, African Bank, VBS Mutual Bank, and the auditing firm KPMG have been entrapped in severe corporate governance scandals. In the public sector, companies such as Eskom, the South African Broadcasting Corporation (SABC), Denel, Post Office, South African Airways (SAA), Passenger Rail of South Africa (PRASA), and Transnet, to mention but a few, had their fair share of corporate governance failures. Additionally, a series of Public Protector’s reports: “State of Capture” (2016); “Derailed” (2016); and, “When Governance and Ethics Fail” (2014), exposed various ineptitudes hounding the public sector and triggering corporate governance collapse.

Throughout the years, many researchers have focused much attention on developing the nucleus of corporate governance which resulted in advanced manifold formulas of theoretical frameworks. A major theoretical input to the phenomenon has been the agency theory characterised by shareholder value enrichment advanced by Jensen and Meckling (1976). The necessity for an all-inclusive stakeholder-centric outlook gave rise to the construction of the stakeholder theory (Donaldson & Preston, 1995; Freeman, 1984). Donaldson and Davis (1991, 1993) introduced the stewardship theory distinguishing the significance of social and mental dynamics playing themselves out within organisations. The resource dependency theory was conceptualised to consider resource dependency variables within organisations (Barney, 1991; Hillman *et al.*, 2000). The Rawlsian theoretical framework otherwise known as the political theory (1999) and the institutional theory have been conceptualised recognising the significance of institutionalisation and distinctive features of organisations as distinct units. The various theoretical frameworks contributed to the expansion of corporate governance models. For instance, the Anglo-Saxon model has its origins from the agency theory, and the Continental European model is resolutely deep-rooted within the stakeholder theoretical framework. Aguilera *et al.*, (2008), Cuomo *et al.*, (2016), and Judge (2009) claim that addressing corporate governance challenges through solitary construction has nose-dived and there is a requirement for compound constructs to advance noble corporate governance compliance.

In Chapter 1 we highlighted a contextual overview of the study by providing its purpose, objectives, and rationale. This chapter presents an epistemology of the various foundational theoretical frameworks and the models of corporate governance. The chapter begins by laying-out a historical context of the origin and development of the phenomenon of corporate governance. This is followed by a presentation of a detailed discussion on the underlying corporate governance theoretical development and frameworks. Lastly, it examines the concomitant applicable corporate governance models found within the field of corporate governance.

2.2 Genesis and Development of Corporate Governance Phenomenon

2.2.1 Defining Corporate Governance

To appreciate the construction of the corporate governance phenomenon, the initial point should be an interrogation of the make-up of the phenomenon involving a depiction of the concept. This should be followed by a scrutiny of the genesis of the concept to comprehend how it evolved over the years, becoming a key for organisational survival. Lastly, it is desirable to provide an inclusive

account of its improvement within the organisational setting as a catalyst for organisational proficiency and effectiveness.

Scholars hold divergent perspectives on what constitutes corporate governance. Pargendler (2016) states that notwithstanding the elaborate history of corporate governance, there is no undisputed characterisation of its meaning. Many scholars and academics have endeavoured to lay down a common operational description, but these descriptions contrast from one author to the other (Du Plessis *et al.*, 2010). Although there are extensive variances in descriptions according to which a concept can be considered (Solomon, 2007) it is broadly agreed that a unanimously acceptable description of the concept of corporate governance is impossible.

Jensen and Meckling (1976) suggest that corporate governance is an expansive concept that has a variety of characteristics emphasising shareholder value enhancement. The main objective is to maintain a balance of internal and external stakeholders' interests (Davis *et al.*, 1997). Shleifer and Vishny (1997) view corporate governance as "an intricate set of constraints that shapes the ex-post bargaining over the quasi-requirements generated in the course of a relationship".

Several scholars including, Keasey *et al.*, (1997), Muller *et al.*, (2016), and Oman (2001), offer a dogmatic description of the concept by declaring that corporate governance describes the regulations, policies, systems, and structures to effectively steer the organisation. The Organisation for Economic Co-operation and Development (OECD, 2005b) defines the concept of corporate governance as "procedures and processes according to which an organisation is directed and controlled", while Cadbury (1992) likewise defines it as the system by which companies are directed and controlled. Corporate governance covers methods, systems and processes used by corporate enterprises to direct, control and hold managers accountable (King Code, 1994, 1998, 2002, 2009; Protocol, 2006).

King Code (2016) defines corporate governance as "the exercise of ethical and effective leadership towards the achievement of ethical culture, good performance, effective control, and legitimacy". World Bank (2013b) defines corporate governance as a concept which denotes a set of rules and motivations by which the management of a company is directed and controlled. It

refers to the approach according to which privileges and duties are dispersed across the board, management and other stakeholders.

OECD (2004) and Muller *et al.*, (2016) explain that the term corporate governance is about organisational arrangements, processes and systems; advocating for the establishment of fundamental organisational imperatives; delivering the resources to accomplish these objectives; and, monitoring organisational growth and success. It takes account of structures, procedures, organisational culture and systems that provoke the prosperous operation of any organisation (Keasey *et al.*, 1997) and effecting corporate governance entails processes and procedures, and relationships between stakeholders to execute these processes (Muller *et al.*, 2016). Furthermore, Oman (2001) adds to the description by including the regulatory environment, and elaborating that corporate governance encompasses conventional organisational undertakings founded on laws and regulations to manage the relationship between organisational managers and resources providers.

From the expansive variety of accounts of corporate governance, it can be construed that the concept can be generally be pigeon-holed into four multi-disciplinary approaches: control systems (Cadbury, 1992; King Code, 1994, 1998, 2002, 2009; OECD, 2001); a set of collection of governance instruments (King Code, 2016; Larcker & Tayan, 2011); guiding and monitoring organisations' processes and procedures (Cadbury, 1992; OECD, 2001); and, conserving relationships among internal and external stakeholders (Amoako & Goh, 2015; Monks & Minow, 1995). Amoako and Goh (2015) suggest that corporate governance denotes synchronisation of various organisational stakeholders' interests, for example, management, employees, customers, government, public and the environment.

Corporate governance phenomenon has over the years received serious attention in academic and public debates. Authors such as Brown (2005), Gillan (2006), Muller *et al.* (2016), and Pargendler (2016) categorise corporate governance tools into two broad categories: internal and external instruments. Internal instruments involve structural arrangements connected with internal organisational actions and decisions of the parties internally. External instruments involve corporate governance outside the organisation. These internal and external mechanisms are crucial for the monitoring of attainment of organisational goals and performance (OECD, 2004). According to Muller *et al.*, (2016) these internal and external mechanisms are inescapable and predominantly addresses corporate governance aspects like the creation of suitable corporate

governance mechanisms, processes and procedures for decision-making and in the main, they offer a framework within which management conduct and practices are fulfilled (Muller *et al.*, 2016). Stoker (1998:155) holds that corporate governance has to do with the construction of conditions for ordered rule and collective action. To realise that, the use of governance tactics vary extensively, transversely and are tailor-made for organisations. Virtuous corporate governance entails an all-inclusive approach within which shareholders, boards, management, employees, government, and the public are expected to play their respective pivotal roles within the governance framework (Amoako & Goh, 2015; Yacoob & Basiuni, 2013) and should fundamentally be grounded on the following key principles: being transparent and accountable, inducing social justice and equity, being responsive and responsible, and acting ethically and with integrity (Amoako & Goh, 2015; Aras & Corwther, 2010; Yacoob & Basiuni, 2013). Aras and Crowther (2008a, 2008b, 2008c) and Pargendler (2016) state that corporate governance principles are goal-oriented at the intensification of both shareholder value and the gratification of the other stakeholders.

As already observed, scholars and researchers offer various descriptions of corporate governance. The descriptions display some form of divergence as they are mutually exclusive from one another whilst others reflect some convergence towards a single description. On the one hand, Scholars such as Amoako and Goh (2015), Aras and Crowther (2010), and Yacoob and Basiuni (2013), define corporate governance from a principle-based approach. Others describe the phenomenon from a controlling mechanism approach (Brown, 2005; Gillan, 2006; Muller *et al.*, 2016). On the other hand, Oman (2001) and Stoker (1998), explain the concept from a regulatory-based approach. However, the descriptions as conceptualised by Cadbury (1992), the OECD (2005b), and various King Codes (1994, 1998, 2002, 2009, 2016) reflect convergence towards a single description comprising of striking resemblances guiding organisations on how to structure their corporate governance arrangements. The study approaches the corporate governance phenomenon from systems, processes, and controls perspective as presented by Cadbury (1992), the OECD (2001, 2004, 2005b), and the various King Codes.

2.2.2 Origin of the Corporate Governance Phenomenon

The existence of corporate governance can be traced from the origin of organisations. The practice thereof also tallies with the advent of limited liability corporations from the early 19th century (Vinten, 2001). Over the past forty years or so, since the 1970s the subject-matter has become the centre of intense deliberations given its significant role to change the landscape of governance within organisations. However, the phenomenon was never acknowledged until the well-founded development of the agency theory, grounded on the separation of corporate

ownership from directorship (Fama & Jensen, 1983; Jensen & Meckling, 1976). Historically, the concept was associated with the private sector in its focus on the corporation-shareholder relationship, specifically in big listed companies. Afterwards, many studies started exploring applying the concept in other corporate forms: small, medium and micro enterprises (SMME's), non-governmental organisations (NGO's) and the public sector (Abor & Biekpe, 2007; Amoako & Goh, 2015; Edwards & Clough, 2005; Halligan, 2006; Hicks, 2003; Nicholl, 2006; OECD, 2005a, 2005b, 2010).

The expression "corporate governance" was not used in the English language until the 1970s; however, since its use has grown exponentially. It was through the ground-breaking work of Jensen and Meckling (1976) that corporate governance started to acquire strong theoretical support and prominence. In the initial stages, its primary focus was on internal governance and the preoccupation was around balancing competing interests of "corporate power" on the one hand, and the need for "corporate accountability" on the other hand (among shareholders, boards and management). As such, most policy initiatives since the 1970s laid a particular emphasis "on the same formula: independence of corporate boards on the one hand, and the empowerment of shareholders on the other to address very different problems over time" (Pargendler, 2016).

In 1991, the OECD published a set of guidelines for corporate governance biased towards the private sector. The guidelines stressed economic transformation, leading to greater reliance on the private sector and market forces, attributing a rise in prominence of corporate governance to the growing awareness of the importance of private corporations, and implying that corporate governance is not only a product of greater emphasis in the private sector but also a contributing force to continued private sector dominance (Amoako & Goh, 2015; Pargendler, 2016). The first guidelines released by the OECD were in 2004, specifically intended for the public sector. Comparatively speaking, in the public sector, corporate governance has received less consideration than in the private sector (Amoako & Goh, 2015; Edwards & Clough, 2005; Halligan, 2006; Hepworth, 2004; Hicks, 2003; Nicholl, 2006). The public sector experiences corporate governance harms concerning ownership structure and control, diverse interlocutory relationships amongst stakeholders, inadequate human resources capabilities, and ineffective monitoring mechanisms (Okeahalam *et al.*, 2003). As such, the public sector also should be worthy of supplementary attention to good corporate governance. While unscrupulous conduct in the corporate sector impacts the shareholders of the company, unscrupulous conduct in the public sector impacts all taxpayers and citizens (Amoako & Goh, 2015). Virtuous corporate governance should safeguard superior public sector accountability and transparency, proficiency in service

provisioning, and enhancing greater social justice and fairness which show a robust relationship with long term growth, poverty reduction, increase in employment, and declining of inequality (Amoako & Goh, 2015; Kaufman, 2005).

The aftermath of the ground-breaking work of Jensen and Meckling in 1976 culminating in the development of the agency theory, was followed by the crafting of new theoretical frameworks either reinforcing the theoretical framework or bringing alternative perspectives in the field of corporate governance. Additionally, corporate governance models emerged, heavily influenced by the dominant theoretical frameworks such as the agency and stakeholder theories to serve as guiding instruments for good governance practices. Codification of corporate governance principles added another dimension towards the pursuance of good corporate governance by organisations.

2.2.3 Development of the Corporate Governance Phenomenon

In advancing corporate governance phenomenon, various separate developments are notable, which include: an upsurge in numerous government corporate governance reports; the institution of stock markets' regulation; and, the expansion of national and international corporate governance codes (Dalton & Dalton, 2010; Strikwerda, 2003). For example, the USA opted for a hard law slant through the Sarbanes-Oxley legislation; the UK released the Cadbury report; and, South Africa released the King report. In the early stages of the advancement of the corporate governance development agenda, a soft law approach propagating a coercive way in conforming to corporate governance has been the overriding option. Due to the growing number of corporate governance scandals, there is an emergent paradigm shift towards a hard law slant imposing sanctions for non-compliance. However, there is greater convergence towards a hybrid approach involving a blend of soft law and hard law approaches.

Present-day corporate governance phenomenon is comprehensive and multi-disciplinary and integrates several organisational utilities such as management behaviour, socio-economic capital development, financial and accounting systems, organisational governance systems, and organisational ethics simultaneously. It also incorporates other organisational components like accountability, transparency and disclosure, social responsibility, ethical behaviour, integrity, fairness, and nurturing intelligible rapport amongst all organisational stakeholders including shareholders, the board, and management (Al Saleh, 2012).

To expand socio-economic development and efficiency, much emphasis was employed on compliance with virtuous governance standards. Research studies undertaken over the years indicate direct co-relationship between compliance to higher standards of governance and the restoration of investor confidence and enhanced organisational efficiency (Chen & Nowland, 2011; Conyon, 1994; Cuomo *et al.*, 2016; Jones *et al.*, 2015; Peasnell *et al.*, 1998; Stiles & Taylor, 1993; Zattoni & Cuomo, 2008). Over the past two decades, corporate governance codes turned out to be widely held for inspiring organisations to escalate their transparency and accountability levels (Cuomo *et al.*, 2016). The earliest national corporate governance code was the Cadbury Code issued by the UK in 1992. Thereafter, there has been an explosion of corporate governance codes and guidelines transversely across the globe. Between 1992 and 1998, additional four European countries, i.e., France, Netherlands, Belgium and Spain followed the UK example by issuing their national codes. Amongst the developing countries, South Africa issued its national code in 1994, followed by India and Thailand in 1998. Ever since the world-wide financial crunch in 2007/08, the amount of corporate governance codes has increased exponentially over time (Cuomo *et al.*, 2016). The authors propose that corporate governance codes can be divided into three hierarchical levels:

- International level, denoting to codes issued by trans-national institutions, e.g. World Bank, International Monetary Fund (IMF), OECD, International Corporate Governance Network (ICGN), to promote good governance practices and principles worldwide or within a specific region;
- National level, denoting to codes issued separately and jointly, usually by several institutions within one country, e.g. stock exchange, government and professional associations to promote good governance; and,
- Individual level, denoting to codes issued by individual firms, e.g. code issued by General Motors to communicate governance principles espoused by the organisation” (Cuomo *et al.*, 2016).

Codes and guidelines advanced by trans-national organisations including the OECD, World Bank, and IMF, are assimilated in national codes of many countries like South Africa, Greece, China, Czech Republic, Egypt and Hungary. These international organisations encourage the advancement and application of these codes around the world (Cuomo *et al.*, 2016). Aguilera and Cuervo-Cazurra (2004) claim that about national codes, the form of issuer contrasts transversely and within countries and the type of formal pressure to embrace the code’s endorsements differs with the type of issuer. They indicate that “it is a forcible pressure when codes are issued by the stock exchange or investors, a simulated pressure when codes are issued by managers’

association, and a normative pressure when they are issued by the remaining forms of issuers". South Africa draws some similarities with the Anglo-Saxon countries in that, for example, the UK Cadbury Code (1992) and the King Code (1994) were first national codes placing a coercive pressure on the stock market and the private sector. As for South Africa, transforming the Public Finance Management Act (PFMA, 1999) into a governance model translated into both coercive and normative pressures, throughout the public sector. In addition, the Companies Act (2008) also propels compliance with good governance in the institution and operation of companies along with good corporate governance practices.

Cuomo *et al.*, (2016) claim that corporate governance compliance can be divided into three multi-level dimensions: firstly, at the organisational level where observance is restrained within the organisation itself; secondly, observance can be restrained at the international level where a comparative analysis is effected to compare and contrast international organisations; and thirdly, elucidating the connection between code observance and organisational performance. A comparative analysis of governance practices before and after the institution of code demonstrates a progressive outcome of codes on the growth of corporate governance practices that companies tend complying with codes' recommendations for increasing their legitimacy among investors and improving the effectiveness of their governance measures (Chen & Nowland, 2011; Conyon, 1994; Cuomo *et al.*, 2016; Jones *et al.*, 2015; Peasnell *et al.*, 1998; Stiles & Taylor, 1993; Zattoni & Cuomo, 2008). As illustrated by Cuomo *et al.*, (2016), constraints for ensuring transparent and accountable corporate governance practices may either be deliberate "soft law approach" or binding "hard law approach" and may take a hybrid slant. When execution of these governance practices is obligatory, the effectiveness of governance codes intensifies (Cuomo *et al.*, 2016).

Aguilera *et al.* (2008) submit that the usefulness of "hard law" and "soft law" methods vary contextually. Soft law is more and more appreciated as a harmonising rather than a substitute way of solving corporate governance ills (Hopt, 2011). "Hard law" regulation has both constructive and adverse repercussions for corporate governance practices. When organisations observe the recommendations of codes, they conform more in form than in substance. As a result, codes can help circumvent or diminish the usage of unscrupulous governance practices, nevertheless, they are incapable of encouraging the general acceptance of pre-eminent governance practices (Cuomo *et al.*, 2016; Haxhi & Aguilera, 2014; Krenn, 2014). In particular, Cuomo *et al.*, (2016) maintain that there are three influential elements affecting observance to codes, i.e.: the size of the organisation which inevitably places the organisation under pressure to comply by external

forces; clarifying organisational compliance in increasing market pressure over time; and, the overall institutional environment. Coherently, scholars call out for additional studies on the simultaneous application of “hard law” and “soft law” regulations in the field of corporate governance (Aguilera *et al.*, 2008). The argument is that the “soft law” approach with its harmonising nature and the “hard law” approach with its retributive insouciance are complementary to finding a middle-of-the-road to coerce companies to improve compliance levels to good corporate governance.

In South Africa, corporate governance was constitutionalised by the publication of the “King Code on Corporate Governance” in November 1994. The first King Code which became generally acknowledged as King I stressed the requirement to consolidate transparent and accountable financial controls and systems as a means towards greater accountability and prudence and emphasized stakeholder approach. The key focus of King II which was published in 2002 has been on roles and responsibilities of Directors, risk management, sustainability reporting, accountability and reporting, while King III published in 2009 placed special attention on the need to transition from “comply or explain” approach to a principle-based approach “apply or explain” approach. The focus of King IV released in November 2016 was on building effective and ethical leadership, the importance of incorporating sustainable development as well as integrated reporting within the overall financial planning and controlling processes.

The requirement to restore virtuous corporate governance in the South African public sector also gained much momentum upon the release of the King Code in 1994. Public Finance Management Act, 1999 (PFMA) was specifically designed as a governance model strongly influenced by the King corporate governance movement. Augmenting PFMA principles, government regulatory and legislative frameworks were modelled around the ensuing need for good corporate governance. With specific reference to State-owned Entities (SOE’s) in particular, the Protocol on Corporate Governance for SOE’s was released during 2006 to set out guidelines on promoting corporate governance by amongst others, clarifying the roles and responsibilities of Executive Authorities, fiduciary duties of SOE’s boards, and roles and responsibilities of CEO’s. Although King I, II and III codes were intended for a variety of corporate forms, their underlying principles strongly leaned towards the need to promote corporate governance in the private sector. In contrast, King IV has been designed to apply to all diverse corporate forms. Additionally, the Companies Act (2008) and its accompanying regulations (2011) were published to promote the achievement of greater compliance with good governance. Both the Companies Act and Regulations oblige companies to comply with a range of regulatory requirements such as the establishment of processes and

procedures, governing principles, corporate governance arrangements, in the interest of fostering good governance.

Corporate governance codes vary among countries and levels of observance with codes also vary significantly. There are far-reaching variances in how codes diffuse, evolve and adjust over time (Cuomo *et al.*, 2016). Notwithstanding the pressure for corporate governance codes convergence towards the Anglo-American corporate governance model, the divergence prevails globally (Cuomo *et al.*, 2016; Collier & Zaman, 2005; Hermes *et al.*, 2006; Zattoni & Cuomo, 2008). According to Pargendler (2016), “the corporate governance agenda has turned out to be predominantly palatable from a political perspective rendering the phenomenon a compromised solution combining a private sector focus with a reformist overtone”. Due to this compromise, corporate governance transformation is supported by progressive parities in bringing about social and economic change in the midst of facing political resistance to more state intervention while appeasing conservative forces.

2.3 Corporate Governance Theories

According to Eisenhardt (1991:205), “a theoretical framework is a structure that guides research by depending on a formal theory fashioned using an established, comprehensible account of certain phenomena and relationships”. Therefore, the theoretical framework offers direct, practical, and fascinating descriptions and illustrations to answer questions such as: what is a theoretical framework? How do you discover it? Where do you use it? What influence does it have on your research? (Molasso, 2006). Metaphorically and literally speaking, “the theoretical framework is the foundation from which all knowledge is constructed for a research study. It serves as the structure and support for the rationale for the study, the problem statement, the purpose, the significance, and the research objectives and questions” (Grant & Osanloo, 2014). The sociology of translation constitutes a way of allowing researchers to learn from the actors about what they do, how they do it and why. It is a way for the social scientist to access sites, a method and not a theory, a way to travel from one spot to the next, from one site to the next (Kvale, 1996).

Corporate governance literature can be alienated between normative studies that anchor on an all-embracing theoretical perspective and empirical investigations that seem to take a theory-neutral approach. Predominant theories generate an environmental context for researchers as

they organise, conduct and interpret their investigations, while theory-neutral studies do not assume an operational context (Van Ness *et al.*, 2009). Over the past four decades, a wide range of corporate governance theories have been advanced from a variety of disciplines, e.g. finance, economics, law, politics, and organisational theory to understand the corporate governance phenomenon more copiously (Aguilera & Jackson, 2010; Clarke, 2004; Cuomo *et al.*, 2016). There are a plethora of corporate governance theoretical frameworks such as agency theory, managerial hegemony, stewardship theory, external pressures, stakeholder theory, theory of convergence, political theory, efficiency theory, contingency theory, conflict and signalling theories, financial system theory, resource-dependency theory, institutional theory, the critique of shareholder value, post-Enron theory, new public management theory, good governance, socio-cybernetic system, and self-organising networks (Brink, 2006). Amongst the wide-ranging theories, the dominant theoretical frameworks are the agency theory, stakeholder theory, stewardship theory and the resources dependency theory. Despite these overriding ones, other theoretical frameworks such as political and institutional theories are also gaining prominence within the corporate governance landscape.

In the below section, we display an epistemological perspective of the dominant theoretical frameworks and applicable models closely connected to the corporate governance environment of regulatory agencies. The rationale behind this exercise is to provide a structure for the relevant theoretical frameworks associated with the research study. This will facilitate the drawing of relationships and the understanding of influences characterised by the theoretical frameworks and the governance environment of public entities generally and regulatory agencies in particular. In the final analysis, i.e. the desired outcome is to offer guidance in the optimisation of good governance within regulatory agencies using essential elements of the theoretical frameworks and models.

2.3.1 Political Theory

Political science relates to the expansion of social phenomena inducing the design and structure of political systems. Political systems and structures hinge on the construction of theoretical foundations to expedite execution of concepts, ideas, and methodologies for the effective governance of societies' resources. This involves resource consumption and distribution among the population. Political theory is the social science concerned mostly with citizenship and democracy. It symbolises the conceptual bridge between political philosophy and political science and relates to matters of political affairs and power such as authority, the State, forms of government and legislation, the common good, rights, justice, civil society, ethics, natural law, and private and public goods. At the core of politics is the ideology held by those in charge of

governing the society, which is guided by both political philosophy and theory, i.e. politics follow a doctrine created to guide the formation of a State in its governmental system. Political philosophy is at the root of most theories and different cultures have created their theoretical constructs, for instance, the Analects of Confucius. The term is associated with Aristotle in his book "Politics" in which he advanced his opinions about fundamental principles crucial for the appropriate administration of the State. In their inception, western political theories are constructed on models first intellectualised in the classical world. Political thinkers of the enlightenment, a movement of thought and ideas that took place in the late 17th and 18th centuries advanced the ideals of democracy and republicanism grounded on rationalism and classical philosophy. Enlightenment theories stimulated the significance of public virtue, the common good, equality, private property, free markets, and national sovereignty and individualism. Main thinkers of that period included Janne Jacques Rousseau, Allan Smith, Karl Marx, etc. In particular, the Marxism philosophy was invented by Karl Marx advanced a political and economic theory based on socialism. From Marxism emerged social democracy and thereafter democracy. All democracies include some sort of public discourse, the involvement of groups and individuals in the argumentation of and formation of their political systems.

Political theory as a subset of political philosophy and political science engages in the rational, systematic and critical study of all social phenomena related to political systems. Political theory is mostly studied in the fields of political science even though its origin is steadfastly deep-seated in philosophy. Political theorists fit across a wide variety of ideological positions and help safeguard that public governance occurs in a politically coherent fashion (Salem Press Encyclopaedia, 2016).

According to Rawls (1999:178), the construction of corporate governance organisational structures is strongly influenced by issues of justice. As such, it is imperative to enhance greater organisational democracy and foster worker-managed organisations to validate political values expressed by justice and fairness. Many liberal egalitarians have pursued Rawls's corporate governance theory of political conception of justice and have argued for more democratisation of the workplaces (Blanc, 2016; Hussain, 2009; O'Neill, 2008). Many antagonists of the political theory contest its applicability from three perspectives: firstly, they contend that it is too liberal in attitude; secondly, that it offers little substance to the corporate governance structure of organisations; and thirdly, they argue that the attempt to address corporate governance within this space is illogical (Blanc, 2016; Neron, 2015; Norman, 2011). Singer (2015:65) cites some of the restrictions of the political theory, "for instance, whether shareholders should enjoy greater democratic authority in addition to the possibility of selling their shares or whether workers should hold more democratic control". Political theorists will be constrained in their attempt to determine

some reform of corporate law and governance unless they look inside the organisation (Neron, 2015). Singer (2015) criticises Rawls's political conception of justice for corporate governance for being purely inconsistent with the internal workings of meso-level organisations and even at the general nation-state level. Blanc (2016) holds that "the rudimentary structure protestation according to which questions of corporate governance are held inevitably go beyond the scope of Rawls's political conception of justice". He reasons that justice applies to the rudimentary structure of society alone and corporate governance cannot be considered part of this structure in political liberalism. His argument is founded on three premises, i.e.: the crucial object of justice is the basic structure of society; only legally forcible institutions are part of the rudimentary structure of society; and, the corporation is not a legally forcible institution.

Blanc's (2016) criticism of the Rawlsian political theory is misplaced in that it does not recognise the role of corporate governance within the public sector. Regulatory agencies are legally coercive institutions as they are normally established through regulatory instruments. Various corporate governance instruments have a persuasive value in how these regulatory instruments are conceptualised. As such, regulatory agencies conform to the Rawlsian political theory as they constitute the basic structure of justice. Additionally, the target population of the study consists of public entities recognised as regulatory agencies since they are empowered to regulate a segment of the public function. For example, the EAAB exercises a regulatory function over the estate agents' profession in the public interest and the HPCSA controls and regulates the health professions to safeguard the interests of the public. The target population is so-called "creatures of statutes" as they are established based on specific legal instruments to promote a particular public interest. As organisational units, these regulatory agencies conform and are capable of being influenced by the constructs of the political theory conceptually and structurally.

2.3.2 Agency Theory

The agency theory has dominated the corporate governance landscape over the past four decades and has turned into a cornerstone of corporate governance across the globe. It is frequently viewed as a universal elucidation and interpretation of corporate governance (Clarke, 2014). It is by far the most universally pragmatically applied corporate governance theory within the social science field and academics and researchers have extensively used this theory as a foundation for the advancement of other theoretical frameworks (Daily *et al.*, 2003). It was originally developed by Jensen and Meckling in 1976 to explicate the relationship between owners (shareholders) and agents (managers) of an organisation. It is employed as a corporate governance theory to describe the organisational theory, managerial conduct, agency costs, and

ownership structure within the context of this relationship (Davis *et al.*, 1997; Fama & Jensen, 1983; Jensen & Meckling, 1976).

Agency theory views the contemporary organisation as “a connection of contracts between the organisation and its several constituencies and explicitly regulates the relationship between two parties, the principal (owner) and the agent (manager)” (Eisenhardt, 1989; Jensen & Meckling, 1976; Ross, 1973). More precisely, it regulates this relationship from dualistic dimensional levels, i.e., behavioural and structural perspectives. At the heart of this relationship is the essence of the agency problem which seeks to extricate and disperse managerial role (control) and financing role (ownership). The agency relationship influences managers to behave opportunistically in pursuance of their egoistic interests even at the expense of shareholders’ interests. Several scholars such as Jensen and Meckling (1976) and Letza *et al.*, (2004) stress the requirement to separate ownership from control to circumvent this latent shrewd behaviour of managers since it could be harmful to the security of shareholders’ proceeds and investment.

According to the agency theory, the relationship between capital providers and fiduciaries is intrinsically imbalanced and as a result, the separation of ownership from management inspires managers’ behaviour, decisions, and actions to deviate from those required to maximise shareholder value (Bushman & Smith, 2001; Coles & Hesterly, 2000; Van Ness *et al.*, 2009). The agency theory propagates the divergence between the interests of corporate managers and those of shareholders. It does so by intensely accentuating the need to separate ownership and control of organisational accountabilities and undertakings through the appointment of principals as governors and managers as agents. By theoretical design, these managers in turn act in a self-centred manner (Muller *et al.*, 2016). According to Jensen (2001) managers constantly work under incredible stress from their principals to safeguard and capitalize on shareholders’ wealth since shareholders’ interests are considered more important. In relation to the agency theory, the fundamental problem of corporate governance is how principals guarantee that managers act in the shareholders’ interests rather than their own (Pastoriza & Arino, 2015).

According to Eisenhardt (1989), the underlying postulation behind the agency theory is that a human being is naturally disposed to act judiciously in an ego-centric and opportunistic manner. In this regard, a human being always strives for the attainment of rewards and shuns punishment, especially financial ones (Donaldson & Davis, 1991). The bottom line of this theory is that principals delegate authority to agents to act on their behalf. Consequently, agents exploit this

delegation by acting opportunistically at the expense of their principals' wealth (Davis *et al.*, 1997). Amoako and Goh (2015) suggest that by design, agency theory perspective incentivise managers to act or behave to their advantage and the detriment of shareholder value. The process by which parties assume the principal-agent status involves entering a contractual relationship between principals and agents for the latter to manage the former's organisation on their behalf. In the context of this relationship, the main function of principals is to provide capital investment in an organisation. To safeguard their capital investment, they design governance structures and systems that will maximise their shareholder value. Management consents to the agent status when they perceive the prospect of capitalising on their value (Pastoriza & Arino, 2015).

At the centre of the agency, the theory is the over-bearing insolence to reduce the agency costs consequential from agents who act opportunistically in a self-interested manner. Inherently, different forms of corporate governance mechanisms depend on agency costs that introduces a system of corporate governance which inspires managers from pursuing objectives that fail to maximise shareholders' wealth (Hutchinson & Gul, 2004). Scholars such as Chrisman *et al.*, (2007), Donaldson and Davis (1991), and Eisenhardt (1989), propose a two-fold elucidation as a means to reduce agency costs: firstly, availability of monitoring and oversight mechanisms on the agents' behaviour and actions, including, the existence of effective governance structures, such as organisational performance reporting mechanisms, effective boards structures, and the existence of managerial authority and capacity; and secondly, the institution of a governance structure recognising the importance of performance contracting as the foundation for measuring agents' behaviour and actions. Chrisman *et al.*, (2007) illustrates compensation incentive as one of the examples of performance contracting mechanisms where financial and non-financial rewards are used to incentivise higher performance. The designing of an appropriate and effective governance structure for the organisation, including increasing the number of independent board members, serves to monitor agents' behaviour as regular audits and evaluations will be performed (Daily *et al.*, 2003).

Research indicates that many scholars have focused their attention mainly on corporate governance practices at the organisational level using the agency theory to understand governance issues such as organisational practices and policymaking, board's composition, and organisational performance versus organisational corporate governance practices (Cuomo *et al.*, 2016). Whilst the agency theory is traditionally regarded as the basic pillar for applying intricate organisational dimensions, it is seriously criticised for being one-dimensional in elevating shareholder value maximisation (Muller *et al.*, 2016). It was therefore expedient to formulate

additional corporate governance theoretical frameworks explaining relationships based on other non-economic assumptions (Davis *et al.*, 1997; Cuomo *et al.*, 2016) point out that “while agency theory is still the dominant framework, other theoretical perspectives such as institutional and multi-theories studies are gaining much ground within the corporate governance landscape”.

Scholars critical of the agency theory view it as a mechanism solely designed to address agency costs between managers and owners at the exclusion of other stakeholders (Davis *et al.*, 1997; Donaldson & Davis, 1991; Pelayo-Maciel & Sanchez-Gutierrez, 2005) since its main focus of attention is concentrated purely on those governance instruments at the disposal of shareholders to guard their interest (Shleifer & Vishny, 1997). Shleifer and Vishny (1997) illustrate that shareholders employ governance mechanisms such as the formation of agile and cautious board structures and execution of incentive-based compensation system to realise shareholders’ interests. Traditionally, the role of corporate governance was to deal with and/or prohibit agency problems. However, the corporate governance theoretical landscape has evolved, nullifying the exclusive focus on shareholder value and rendering it less favourable. Additional theoretical frameworks have emerged over time to recognise organisational constituents’ elements and stakeholders’ interests generally (Kacperczyk, 2009).

In its current form, the concept of shareholder value maximisation was a construct of financial economists in the US during the 1980s. Originally, it was designed to address the absence of shareholder value orientation which adversely affected US industries. As Clarke (2014) illustrates, the persistence upon a single corporate objective of shareholder value maximisation alone which managers are incentivised and constrained to pursue is no longer sustainable and does not lead to competitiveness in the modern day’s economies. The author challenges the concept of shareholder primacy and the concomitant insistence that the only real purpose of the organisation is to deliver shareholder value and holds that those wider stakeholders’ interests warrant recognition and protection. Agency theory enhances managers’ self-motivation at the expense of diversified organisational interests and ultimately weakens economies (Clarke, 2014).

SARAs are established by the government (shareholder) who appoints agents (managers) to pursue shareholder value and interests. Consistently, managers are expected to opportunistically rally all resources towards the achievement of shareholder interests. Pursuance of the wider societal interests to be delivered by SARAs often frustrates the need to reduce the agency costs between the shareholder and the manager. Within the limitations of shareholder primacy, the

agency theory influences how SARAs administers their operations and arranges their corporate governance structures.

2.3.3 Stakeholder Theory

Over the last few decades, sustainable development imperatives, social capital development matters and environmental issues have obtained more importance in the corporate governance landscape. To remain sustainable and competitive over time, it is no longer optional for organisations to exclusively concentrate on shareholder value maximisation. As a result, there has been unrelenting pressure for organisations around the world to guarantee that organisational undertakings and outcomes gratify interests of all stakeholders (Donaldson, 1982; Freeman, 1984). The fundamental conjecture behind the stakeholder theory is that an organisation survives to fulfil varied interests entailing diverse stakeholders. In terms of the stakeholder theory, an organisation is recognised as a social enterprise, having supplementary accountabilities to diverse stakeholders, including, shareholders, managers, employees, communities and government (Amoako & Goh, 2015; Donaldson & Preston, 1995; Freeman, 1984). These organisational stakeholders can be categorised into internal stakeholders or external stakeholders. The stakeholder theory assumes an expansive approach by extending organisational commitments and responsibilities beyond shareholder value maximisation and its bottom-line is the point that the organisation has widespread responsibilities to the society and diversity of ethical, social, and moral commitments (Amoako & Goh, 2015; Caldwell *et al.*, 2010; Caldwell *et al.*, 2006).

The basic objective to satisfy all stakeholders' interests means that organisations need to strike a harmonising act within the numerous competing interests. Davis and Thompson (1994) note that corporate governance mechanisms and structures should sanction managers to negotiate the tensions between these competing pressures for stakeholders' satisfaction. In this regard, managers should create an equilibrium balance between stakeholders' satisfaction which underscores corporate social responsibility (CSR), and shareholders' value maximisation which emphasized financial performance (FP) (Davis & Thompson, 1994).

The crux of the stakeholder-centric outlook is that managerial accountability is not restricted to the maximisation of shareholder value alone but is also liable for warranting that strategic choices are advantageous for all stakeholders (Shahzad *et al.*, 2015). Amidst competing interests, it is relatively uncertain whether the stakeholder-centric corporate governance mechanisms and structures will always be able to defuse the probable tensions. Studies suggest that most

corporate governance measures are not intended to help stakeholders' broad social and environmental agendas (Kacperczyk, 2009). Johnson and Greening (1999) note that even when some corporate governance mechanisms and structures are designed to realise inordinate social outcomes, they may only be effective in benefiting a small number of stakeholders. Given the diverse stakeholder interests, sometimes endeavours to align managerial interests with those of shareholders have not helped managers to balance the requirements of all stakeholders (Shahzad *et al.*, 2015). To ensure effective corporate social performance, organisations should successfully manage the nexus of contracts between its managers and its stakeholders (Chan & Welford, 2005; Jones, 1995; Welford, 2007; Welford *et al.*, 2008).

As we will see in Chapter 5, generally how SARAs are established and structured gravitates towards the stakeholder theoretical framework. They are established to support the government in delivering its developmental agenda. It is within this context, that they are viewed as the government's delivery machinery to achieve wider societal interests beyond mere economic benefits as propagated by the agency theory.

2.3.4 Stewardship Theory

After the epoch-making work of Jensen and Meckling, with the innovation of the agency theory in 1976, sustained demand for the expansion of corporate governance theories that are contemporaneous to a more positive outlook of managers and organisations emerged (Donaldson & Davis, 1991, 1993; Donaldson, 2005; Nahapiet *et al.*, 2005). Subsequently, Donaldson and Davis (1991, 1993) introduced the stewardship theory as a new corporate governance management slant to respond to these aspirations. As a new corporate governance management perspective, the stewardship theory offers an alternative dimension of being appreciative to the prevailing relationships between organisational ownership and control and management of the organisation. The stewardship theory contests the underlying prevailing agency theory traditions of economic value maximisation and self-interested posture of corporate governors. The stewardship theory distinguishes managers as faithful stewards who are acting on behalf of principals for the superior-good of the organisation. The stewardship theory applies psychological and sociological features to assume the behaviour of managers in carrying-out organisational choices and actions. In terms of this corporate governance management approach, managers are psychologically and sociologically persuaded to take organisational decisions and actions authentically (Davis *et al.*, 1997; Deutsch, 2005; Donaldson & Davis, 1991). As illustrated by Davis *et al.*, (1997), the stewardship theory examines the corporate governance relationship between two parties, i.e., the principal and the steward-manager as the crucial role-players within an organisation. More specifically, the stewardship theory addresses this relationship from

behavioural (individualistic) and structural (organisational) perspectives (Davis *et al.*, 1997). The stewardship theory assumes that managers are honest and capable stewards of corporate resources and they are pre-eminently positioned to act in the best interest of the organisation. It is anticipated that since managers are assigned with the day-to-day operations of the organisation, they are most accustomed with the intricacies of corporate strengths, weaknesses, opportunities, and threats and are competent to make significant organisational choices (Boyd, 1995). Comparatively speaking, given its traditional roots in sociology and psychology, the stewardship theory describes a more humanistic model of man than the economic outlook of the agency theory (Corbetta & Salvato, 2004; Donaldson & Davis, 1991).

We posit that the surrounding psychological and sociological factors play a key role in transforming corporate governors to act in a certain way. Meaning, acting opportunistically in a self-interested manner or acting as a faithful steward does not happen naturally but it takes a conscious process to act in such a manner. As Davis *et al.*, (1997) illustrates, this process involves a three-stage approach: firstly, the parties to the relationship should consciously choose to act as stewards; secondly, acting as faithful stewards is intensely predisposed by the surrounding psychological characteristics and social backgrounds of the parties; thirdly, anticipations of parties to the relationship towards each other influences their action. The literature on the stewardship theory does not indicate what the causal mechanisms that influence an individual to opt to transcend his/her self-interest are, and how the individual resolves his internal inter-motivational conflict (Pastoriza & Arino, 2015). The stewardship theory portrays individuals as stewards, intrinsically motivated to put the interests of the principal ahead of self-serving interests (Corbetta & Salvato, 2004). In this regard, managers as stewards' behaviour are disposed to augment collectivistic organisational interests (Davis *et al.*, 1997; Eddleston *et al.*, 2012). To expedite and inspire stewardship and thus amplified performance, principals should create an organisational ethos complimentary to this behaviour (Davis *et al.*, 1997) and that the creation of an enabling organisational culture and setting inspires organisational stewards to act in a stewardship model.

There is an underlying notion that there is no conflict of interest between managers and owners who are involved in a stewardship relationship. By and large, the parties are preoccupied in designing effective mechanisms and structures that facilitate effective coordination of such relationship (Donaldson, 1990). The existence of effective coordination of this relationship will result in proper orientation of organisational managers' actions to the interests of the principals. In this way, the intrinsic problem of control will be evaded (Donaldson, 2008). As Van Slyke (2006) illustrates, "the stewardship theory places superior reliance on goal convergence among the

parties involved in corporate governance than on the agent's self-interest". A steward appreciates fulfilment when the organisational interests are maximised. The steward perceives the service gained from interest alignment and mutual behaviour with the principal as higher than the utility that can be gained through individualistic, self-serving behaviours (Davis *et al.*, 1997). Stewards are enthused by intrinsic rewards such as taking collective responsibility and attainment of collective outcomes, rather than extrinsic rewards arising from exclusive shareholder value maximisation. The steward, as opposed to the agent, places superior worth on collectivistic outcomes rather than individualistic ones and appreciates the accomplishment of the organisation as his/her achievement. Therefore, the foremost difference between both the agency and stewardship theories is on the nature of motivation. The agency theory places more emphasis on extrinsic motivation, while the stewardship theory is focused on intrinsic rewards that are not easily quantifiable, such as, sustainable growth, outcomes-oriented achievement, and sense of duty (Pastoriza & Arino, 2015). Centrally, the stewardship theory pays attention to designing effective mechanisms and appropriate structures to serve as a vehicle for the conveyance and alignment of the interests of the parties to this relationship in a more coordinated and effective manner (Donaldson & Davis, 1991, 1993).

As we have already pointed out, the surrounding sociological and psychological factors influence stewards and agents' actions and behaviour. As illustrated by Donaldson and Davis (1991, 1993), this can be done through a two-stage approach: firstly, this is strongly influenced by the surrounding social context and situational factors such as working in an involvement-oriented management system as opposed to a control-oriented management system, a collectivistic culture as opposed to an individualistic one, and a low-power distance culture or when corporate governance structures give them power and discretion; secondly, the psychological factors are intensely persuasive in transforming a manager to be converted into a steward such as having intrinsic value inspiration, closer alignment to strategic organisational objectives, value commitment orientation, and greater use of personal power as a basis to influence others (Davis *et al.*, 1997). What Davis *et al.* (1997) terms "model of man" in the stewardship theory refers to someone whose actions, decisions, and behaviour are attuned to fulfil collectivistic organisational interests than individualistic ones. When both the principal and the manager choose a stewardship relationship, the principal decides to capitalise in an involvement-oriented and empowering situation because he/she trusts in the behaviour of the manager to act in a collectivistic manner rather than being self-interested. The principal-steward relationship has the potential of maximising collective benefits (Pastoriza & Arino, 2015).

At the heart of both the agency theory and the stewardship theory, over-bearing is essential to attain superior organisational success. The two theoretical frameworks contrast sharply on the underlying behavioural assumptions and structural prescriptions. On the one hand, the agency theoretical postulation is that agents are devious in their behaviour whilst the stewardship theoretical disposition regards stewards as trustworthy stewards whose interests are aligned to those of their principals (Chrisman *et al.*, 2007; Tosi *et al.*, 2003). Behind the stewardship theoretical disposition is an interpersonal power relationship that inspires and endows stewards to act collectively (Davis *et al.*, 1997) and the underlying psychological factors ease the choice of stewardship, which eventually have a progressive impact on organisational performance. Moreover, the surrounding situational factors influence organisational structural arrangements such as management approach, practices, and culture (Craig & Dibrell, 2006; Davis *et al.*, 1997; Donaldson & Davis, 1991). The existence of involvement-oriented, collectivist, low power distance cultures not only help influence the choice of stewardship behaviour but also facilitate a culture where employees are trusted with challenges, opportunities, and responsibilities (Davis *et al.*, 1997; Eddleston *et al.*, 2012; Vallejo, 2009). In organisations exemplified by collectivism, primacy is given to mutual gains and greater emphasis is placed upon cultivating a sense of belonging and loyalty to the organisation (Davis *et al.*, 1997; Nicholson & Kiel, 2007). A steward's outlook and behaviour should lead to overcoming selfish intentions of pursuing personal goals at the expense of collective goals (Pastoriza & Arino, 2015).

SARAs corporate governance environment assumes that managers charged with the overall responsibility for social and economic capital are faithful and trustworthy stewards. They typify constituents' elements characterising the stewardship theory in that managers as stewards are supposed to strive for collectivistic gains as opposed to self-interested gains, improving social capital returns as opposed to purely economic-driven ones, and being intrinsic value-oriented rather than extrinsic value-oriented.

2.3.5 Resource-Dependency Theory

The resource-dependency theory views an organisation as a unit consisting of a web of resource elements (Barney, 1991; Hillman *et al.*, 2000; Palmer & Barber, 2001). In terms of the resource-dependency theory, the organisational web of resource elements such as the board structure, chairperson of the board, Chief Executive Officer (CEO), and strategic human resources, are considered critical resources for the organisation. The combined effect of the web of resources is central to the effective execution of corporate governance. The crux of the resource dependency theory is premised on the understanding that organisational resource requirements are underpinned by a web of contacts available within the organisation. In the ultimate end, the

prominence of services and the nature of organisational performance derivative from these webs are reliant on connecting the web gaps. The resource dependency theory describes organisational success as the ability to maximise authority by accessing limited and critical resources (Pfeffer, 1972). Within the web of organisational resources, the role of the board is crucial as it is considered an essential boundary spanner through which basic resources such as knowledge and capital can be secured (Ruigrok *et al.*, 2006). Boards serve two foremost utilities for organisations: resource distribution to accomplish strategic organisational goals, and providing organisational oversight on behalf of the shareholders. Agency theorists affirm that effective oversight is a function of a board's incentives, whereas resource dependency theorists contend that the delivery of resources is a function of board capital (Hillman & Dalziel, 2003). Some studies have investigated the relationship between the corporate governance structures with the resources of the organisation (Korac-Kakabadse, 2001; Zahra & Pearce, 1989).

Due to the influence of the Anglo-Saxon corporate governance system, there is an increasing inclination of unravelling the roles of CEO and board chairperson. Research has been undertaken to understand the influence that the board chairperson is having on resource management performance (Coles & Hesterly, 2000; Daily & Dalton, 1997; Krause *et al.*, 2016; Krause & Semadeni, 2013; Quigley & Hambrick, 2012). Board chairpersons augment resource management performance by furnishing resources that go further than those provided by the CEO (Pfeffer & Salancik, 1978). They set the agenda and direction for board meetings and discussions, and institute board practices and processes (Krause *et al.*, 2016). Many boards that consider their chairpersons as treasured resources have realised superior organisational success (Krause *et al.*, 2016). The board chairperson serves as an essential connection between the board and the CEO and may offer strategic guidance to the CEO towards strategy execution and resource management (Carpenter & Westphal, 2001; Krause *et al.*, 2016). Board chairpersons execute a resource provision function by aiding in managing external vulnerabilities through providing several critical resources such as knowledge, legitimacy, and strategic advice (Hillman & Dalziel, 2003; Hillman *et al.*, 2009; Pfeffer & Salancik, 1978).

Moreover, board chairpersons provide a legitimacy resource to external stakeholders (Certo, 2003). They are essential figureheads who serve as a connection between organisational and external stakeholders' interests (Mintzberg, 1973). They are an essential resource for gaining resources from the external environment (Donaldson & Davis, 1993; Useem, 1984). Separate board chairpersons are viewed as valuable resources and they are essential mechanisms for managing and decreasing uncertainty (Hillman *et al.*, 2009; Krause *et al.*, 2016).

One of the essential perceptible features of the resource dependency theory is the diversity of boards. Diversity of board members is an essential element of this theory since it can lead to expansive networks (Siciliano, 1996). Gender-related differences in board composition accounted for favourably to the treatment of stakeholder-related issues (Galbreath, 2011). Female board members have been found to possess a superior orientation towards discretionary investments such as those required for corporate social responsibility (CSR) (Ibrahim & Angelidis, 1994). As quoted in Pargendler (2016) “during 2013, women accounted for only 16, 9% of directors of Fortune 500 boards and 11, 9% of board seats in the Russel 300 companies. Gender quotas in the boardrooms have spread to several countries such as Belgium, France, Germany, Italy, and the Netherlands. Even though the USA has desisted from directing a quota system, the California Senate has urged California public companies to have one to three female directors by the end of 2016”. Generally, the Securities amended its proxy rules in 2009, to require disclosure of the company’s policy concerning diversity in the director nomination process (Pargendler, 2016). To maximise gender representation within the boardrooms, South Africa has embraced a “hard law” slant by requiring public entities to include women and people with disabilities within their boards.

One of the utmost essential resources of the organisation is human resources (Barney & Wright, 1998). In his study, Supangco (2006) indicated that human resources are important to generate sustainable competitive advantage leading to a greater realisation of organisational goals. Human resources planning processes play a crucial role in ensuring that human resources are planned and adequately deployed to attain organisational success. In this instance, the role of the CEO as a figurehead to offer strategic advice and direction is also important. Studies have also examined CEO’s as important resources for the organisation (Finkelstein *et al.*, 2009). As an appreciated resource to the organisation, the CEO plans and executes the day-to-day operations of the organisation.

To achieve greater success, SARAs rely on the web of resources associated with the public entity. These webs of resources involve amongst others, boards, role and expertise of the CEO, and human capital otherwise known as HRM. Their boards are empowered to mobilise resources towards the achievement of organisational social and economic capital. Most of their founding legislation requires diversification of boards by involving females, black people, and people with disabilities that has been considered a valuable resource for organisational success.

2.3.6 Institutional Theory

In the recent past, scholars have explored corporate governance theories from an institutional perspective. The institutional theory addresses the procedures, processes and practices by which social structures (normative and behavioural systems) are established by elucidating resemblances and variances in social settings, relations between structures and behaviours, or tension between freedom and order at the societal, institutional, organisational, and inter-personal relations levels (Scott, 2004, 2012). Rossoni and Machado-da-Silva (2010) considered the prominence of theorising corporate governance from an institutional perspective by providing two conceivable arguments in favour of espousing an institutional perspective in the governance practices: “firstly, viewing an organisation from an institutional perspective aids in swelling superior efficiency; secondly, it will stimulate the enhancement of governance systems and practices”. Institutional theory is premised on three pillars: “regulative, normative and cultural cognitive elements”. Regulative elements include the formal regulations and laws which are externally imposed on the organisation; normative elements include informal norms, values, standards, and roles; and, cultural-cognitive elements, include the shared beliefs, symbols, identities, and logics of action (Misangnyi *et al.*, 2008; Orr & Scott, 2008; Scott, 2004; 2012). Zattoni and Cuomo (2008) analysed the efficiency and institutional perspective by investigating the diffusion of corporate governance practices and found that it leads to greater organisational success.

The corporate governance environment of SARAs is reflecting elements of the institutional theory in that they are established through formal regulatory instruments. Secondly, their governance and operational systems are composed of normative values that are adopted at the institutional level. Thirdly, they from time to time adopt cultural values influenced by human resource policies, practices, and values.

2.4 Corporate Governance Models

Cadbury’s (1992) code is considered as the traditional groundwork of corporate governance not only in the UK but also in the US and elsewhere across the globe (Wanji & Howell, 2007). To this end, scholars around the globe recognise the imperative to implement virtuous corporate governance practices and principles to realise organisational goals. Sometimes the presence of corporate governance scandals impedes the achievement of these noble intentions. To address these corporate governance scandals, researchers have provided an array of corporate governance reforms to change the contemporary corporate governance landscape. Through

good corporate governance practices, organisational success and performance can be attained within a short time, leading to significant increases in economic value-add and productivity within organisations and lowered risk of systemic financial failures (Al Saleh, 2012). Benefits to be derived from applying corporate governance practices and principles by organisations regardless of size and form are well-researched globally and are not a debatable subject anymore (Ahmad & Omar, 2016). Scholars categorise corporate governance into two broad models: the shareholder model universally acknowledged as the Anglo-Saxon model, and the stakeholder model, widely recognised as the Continental European model (Ahmad & Omar, 2016; Allen, 2005; Reed, 2002; West, 2006). All corporate governance models originate from the two corporate governance models which are considered the basic corporate governance models. Over the years, we have observed the emergence of new corporate governance models stemming from the two basic models which include, value-based, Islamic model, family business organisations, and the hybrid model. Moreover, country-specific models exist such as in Japan, Germany, France, China, and India. The corporate governance models which were advanced later have embraced the basic tenets of either one of the basic models or combined best practices in each of the models and customise them as per national and socio-cultural needs.

2.4.1 Anglo-Saxon Model

The Anglo-Saxon model is originally the corporate governance system of the USA and the UK and it is deep-seated from the agency theory. The model is extensively followed across the world, especially in Commonwealth countries. It is called by different names: shareholder model, American model, Anglo-American model, market-centric model, equity-based model, principal-agent model, outsider model, and finance model (Ahmad & Omar, 2016) and has turned into a blueprint for financial and economic expansion around the world, particularly in emerging markets and transition economies (Pargendler, 2016).

The Anglo-Saxon model is premised on the view that the organisation is controlled in the interest of shareholders (Allen, 2005) and the model is principally grounded on the agency theory which holds that managers will act to maximise shareholder value unless appropriate governance structures are employed in the large organisation to safeguard the interests of the shareholders (Daily *et al.*, 2003; Fama & Jensen, 1983; Jensen & Meckling, 1976; Shleifer & Vishny, 1997; Wanji & Howell, 2007). In this regard, owners are considered principals and the managers are agents and there is an agency cost which is the degree to which earnings to the residual claimants (owners) plummet below what they would be if they exercised direct control of the organisation (Jensen & Meckling, 1976). Fama and Jensen (1983) contend that agency problems can be circumvented by large dividends payments to shareholders. The ideology of maximising

shareholder value is an ideology through which corporate executives have been able to enrich themselves.

The Anglo-Saxon model of governance essentially has distributed ownership, hence feeble oversight by the shareholders (Chhillar & Lellapalli, 2015). The shareholder value theory has been amplified through its acceptance by a worldwide network of corporate intermediaries, including international law firms, the big accounting firms, and the principal investment banks and consulting firms (Clarke, 2014). According to Allen (2005), the Anglo-Saxon model of corporate governance is more suitable for the Anglo-Saxon countries since their markets are seamless and complete. According to this model, the board represents the interests of shareholders. Therefore, safeguarding shareholders' interests remains their fiduciary restraint (Ahmad & Omar, 2016) and the major role of the board is to resolve manager–shareholder agency issues (Fama & Jensen, 1983). As an internal corporate governance mechanism, it is the board's responsibility to express the tactical direction of the organisation, to offer monitoring and control of management to satisfy the owners' and key stakeholders' interest (Nikolic & Erk, 2011) and its concern is around the reduction in the agency cost and resolution of the conflict of interest.

In the Anglo-Saxon model, the configuration of the board is usually single-tiered, predominantly composed of non-executive directors who have been elected by shareholders. However, in some single-tiered boards, there have been both executive and non-executive directors. This model does not encourage worker-participation through union representation within the board. There is usually an arm's length relationship between the organisation (the board) and the investors (shareholders) (Franks & Mayer, 1997). There are fundamental differences in the application of the Anglo-Saxon model, particularly between UK and US systems. For instance, CEO-duality is barred in the UK, whereas it is usually tolerated and practised in the USA (Meier & Meier, 2014; Siepel & Nightingale, 2012). However, the proponents of stewardship theory strongly agree to the dual roles, as they claim that it gives the incumbent more power to steer the company and make decisions without much argument by the board (Davis *et al.*, 1997). Disclosure requirements for accounting standards differ between the two, USA is currently following Generally Accepted Accounting Principles (GAAP). However, it has been recently announced that there is a shift into International Financial Reporting Standards (IFRS). An active market for takeover plays an important role in corporate governance in the Anglo-American system, as it inflicts upright restraint on the boards and management (Kimber & Lipton, 2005).

The Anglo-Saxon model is overriding and extensively followed globally. Several scholars believe that the world is heading towards a global corporate governance model through the convergence of other models towards the Anglo-Saxon model (Ahmad & Omar, 2016; Gilson, 2001; Martynova & Renneboog, 2011). As already argued in paragraph 2.3.2, the SARAs' corporate governance landscape gravitates towards the Anglo-Saxon model in certain elements having its basis on the agency theoretical framework since the agents are expected to maximise shareholder interests.

2.4.2 Continental European Model

In contrast, the Continental European model is centred on stakeholder theory presented by Freeman (2010). The Continental European model focuses on warranting that the organisation's resources are used efficiently for the benefit of all those that may influence or are influenced by the organisation (Allen, 2005; West, 2006). It is more attractive and appropriate for developing countries since their markets are imperfect and incomplete (Allen, 2005). "It takes a wider perspective and believes that managers fiduciary duty is to safeguard the genuine interests not only of shareholders but also of a broader group of internal and external stakeholders such as employees, customers, suppliers, management itself, government, political and social groups, environment, and society at large" (Ahmad & Omar, 2016). Maassen (1999) describes a stakeholder perspective as super-ordinate entities in which a variety of parties have vested genuine interests.

Under this model, the board is liable for the safeguarding of the interests of not only the shareholders but also the stakeholders (Amoako & Goh, 2015). The model is characterised by differences in ownership, board structure, nature of management, and control. The model is based on stakeholders' value maximisation approach (Hasan, 2009; Letza *et al.*, 2004). Scholars embracing a stakeholder-centric perspective have long argued for the importance and inevitability of stakeholder representation on the boards of public organisations (Jones & Goldberg, 1982) since the representation of key stakeholders on the board may provide a perception of legitimacy to organisations, and enhance their normative approval by government and society (Luoma & Goodstein, 1999).

The Continental European model integrates a two-tiered board structure, i.e. executive board made up of executives, and supervisory board which represents shareholders and employees. The supervisory board decides on compensation, appointments, and supervision of management board members, and reviews major business decisions (Bhasa, 2004a). The creation of supervisory boards varies from country to country. In European countries, in the majority of cases,

employees have the right to appoint or recommend members of the supervisory board. Employees and unions are empowered and play an important role at the corporate level in contrast to the competing model, i.e. Anglo-Saxon (Cernat, 2004). In the Continental European model, the ownership is concentrated, resulting in resilient control by the shareholders (Chhillar & Lellapalli, 2015).

Although corporate governance systems following the Continental European model show some variances in mechanisms such as ownership structure and board composition, there is overall convergence towards a single model based on stakeholder perspective of corporate governance (Collier & Zaman, 2005). Research had focused on the divergence and convergence of the corporate governance models towards a single model. Several scholars argue for a single model in regions like the US, Continental Europe, Africa, and Asia. Other scholars such as Aguilera and Jackson (2003), and Toms and Wright (2005) favour divergence and justify divergence between the models. Other scholars are hopeful for a global model of corporate governance (Jeffers, 2005; Hay *et al.*, 1996). Particularly, Hay *et al.* (1996) proposed a universal corporate governance theory to harmonise corporate governance systems globally. The theory states that corporate players must be responsible and accountable in discharging their duty to achieve socio-economic justice. Because the Continental European model is based on stakeholder approach and takes a broader perspective by considering rights of all the stakeholders of the organisation, it is receiving more attention globally which may lead to convergence towards itself overtime.

2.4.3 Hybrid Model

The main variances relating to legal, regulatory, economic and institutional environment of the economies have led to a “dual convergence”, resulting in a hybrid model, which has borrowed from both Anglo-Saxon model and Continental European models of governance. Both the models are at opposite ends of the spectrum with the Anglo-Saxon emphasising external control exercised by the shareholders in the organisation, and the Continental European emphasising internal control exercised by the various stakeholders such as creditors, bankers, employees, etc. (Jeffers, 2005). Corporate governance models embraced by various countries across the globe “do not belong to the two extreme ends of the continuum, rather they lie somewhere in between these two extremes according to the legal, social, economic and cultural dimensions of the nations” (Chhillar & Lellapalli, 2015). The stakeholder model of Continental Europe is considered to be better equipped in employing policies encompassing relations with stakeholders, while the Anglo-Saxon model is considered to be more receptive to change (Mayer, 1998). The globalisation of the world economy and the increased competition in the global markets has resulted in increased prospects of convergence of the corporate governance models. The literature accentuates on the convergence of the notions regarding the pre-eminent or optimal governance structures. However, the execution of the ideas or written governance codes is

subject to the country-level characteristics supporting the idea of partial convergence (Aoki, 1994; Bebchuk & Roe, 1999).

Initiatives have been taken at different levels by various agencies, such as the OECD, World Bank and IMF to assimilate corporate governance codes across the globe by instituting principles for good corporate governance. The conversion is taking place in both market-based (such as the decrease in the take-over activity in Anglo-Saxon countries) and network-based models of corporate governance (such as criticisms for interlocking board seats), and these transitions are analysed to be converging in character (Weimer & Pape, 1999). OECD countries are also showing a pattern of convergence as the globalisation of economies with the integration of capital markets have forced the firms to compete in the international markets leading to convergence of product costs, structural organisation of the firms and financing patterns (Stiplon & Thompson, 2001). Although the corporate governance systems are in a relentless phase of adaptation, the similarity and dissimilarity in the fundamental features such as financial systems and socio-economic orientations raise a question on the possibility of convergence of the two models (Davies & Schlitzer, 2008). On the other hand, other authors also suggest that the “one size fits all” approach is not the best solution to tackle the diverse dimensions.

Jeffers (2005) suggests that “consequences of the progressive process of convergence would be influenced by the beginning point or the initial models adopted by the firms and the path followed towards convergence. In the context of economic transition, there is a probability of formal convergence of corporate governance standards”. However, the functional convergence of governance standards can be debated. In a global context, de facto convergence (functional) lacks de jure (legal or formal) convergence, as de facto convergence can be affected by path dependence, multiple optima and rent-seeking behaviour of the stakeholders (Khanna *et al.*, 2006). Ooghe and Langhe (2002) caution that it would be unfair to compare the benefits of different corporate governance models practised by companies in isolation. It may lead to misinterpretation and the purpose is not to determine whether the model (effectiveness) is better than the other without taking into consideration the business context (Lubatkin *et al.*, 2005) in which the comparison is made.

In the last decade, many organisations have chosen to appoint non-executive independent directors as their board chairpersons, such that “about 23% of large firms have a board chairperson who is independent, and another 20% have a board chairperson who is not

independent” (Spencer Stuart, 2015). It has become ever more essential over time for organisations to continue to separate their CEO and board chairperson positions (Krause *et al.*, 2016). The agency theory claims that shareholder interests require protection by separation of incumbency of roles of the board chairperson and CEO. On the other hand, the stewardship theory claims that shareholders’ interests are maximised by shared incumbency of these roles (Donaldson & Davis, 1991). Shareholders typically view an outside director serving as board chairperson positively. As such, non-duality is thought to increase the board’s independence and power relative to the CEO (Lorsch & MacIver, 1989). Ensuring that the position of the chairperson of the board is not occupied by the CEO may improve the organisation’s relationship with a broader group of stakeholders. There is some evidence indicating that socially responsible organisations have fewer instances of CEO/chairperson duality than those organisations which are not socially responsible (Webb, 2004). Research on CEO’s would simply have applied to board chairpersons as well. As for the board chairperson’s role, governance scholars have almost uniformly conceptualised the chairperson's role as consisting of monitoring the CEO's actions. For this reason, nearly the entirety of board chairperson research has focused on CEO duality, that is, whether the CEO and board chairperson positions are combined or separated (Krause *et al.*, 2014). For example, “in the S&P 500, the separation of the CEO and board chairperson positions has increased from 26% in 2004 to 47% in 2014” (Spencer Stuart, 2015). Lorsch and MacIver (1989) also suggest that the presence of separate board chairpersons counterbalances the CEO power. Krause and Semadeni (2013) contend that board chairpersons may offer independent oversight to resource management performance following a relatively weak performance.

2.5 Conclusion

This chapter evaluated the evolution and development of the corporate governance phenomenon. This was followed by an examination of the dominant theoretical frameworks and applicable theoretical models within the corporate governance field. Moreover, the chapter explored the relationship between the different theoretical frameworks and models and how SARAs’ corporate governance environment has been influenced by these frameworks and models. In the next chapter, we create a framework for the explorative exercise to be followed by the outer chapters of the study.

CHAPTER 3

STUDY METHODOLOGY

3.1 Introduction

This study aims to investigate the level of compliance with corporate governance by SARAs to develop an implementation framework to assist them in the advancement of good corporate governance. The study seeks to identify non-compliance to corporate governance standards by SARAs through determining its nature and form, and how it is manifested; identifying the root-causes of corporate governance failure within SARAs; isolating factors and variables causing corporate governance collapse within SARAs; assessing the impact and likely consequences of non-compliance to corporate governance; determining how effective are preventative, retributive, and deterrent measures used to minimise the effect of non-compliance; and, developing an appropriate good governance framework for the SARAs to enhance their corporate governance duties and responsibilities.

The purpose of this chapter is to provide a framework within which the research process will be undertaken. It illustrates a broad overview of the study methodology. The chapter also indicates the locus or place where the research will be executed and presents data collection and analysis techniques to be applied. Lastly, the chapter covers statements around the rigour and reliability of the study as well as ethical considerations influential to the study.

3.2 Foundation of Qualitative Research

According to Guba and Lincoln (1994), “the substance of any research is grounded on paradigmatic rational thinking concerning three levels: assumptions on the nature of reality (ontology), how we can come to know that reality (epistemology), and how we can systematically access what can be known about that reality (methodology)”. Additionally, as Ritchie *et al.*, (2003) note, qualitative research paradigms such as the purpose and objectives of the research, the characteristics of the research participants, the audience for the research, and the locus and setting of the researchers themselves play a critical role in influencing qualitative research. There is a fairly extensive unanimity amongst researchers that “qualitative research is a naturalistic and interpretative approach concerned with understanding the meanings which people attribute to phenomena (actions, decisions, beliefs, values, etc.) within their social realms” (Denzin & Lincoln, 2000; Ritchie *et al.*, 2003). The way in which people being studied understand and interpret their

social reality is one of the fundamental motivations of qualitative research (Bryman, 1988:8; Denzin & Lincoln, 2000; Ritchie et al., 2003). Scholars such as Bryman (1988), Denzin and Lincoln (2000), Hammersley and Atkinson (1995), Holloway and Wheeler (1996), Mason (2002), Miles and Huberman (1994), Patton (2002) and Ritchie *et al.*, (2003) have concentrated on crucial methodological facets as defining characteristics of qualitative research such as research purpose, the significance of research participants, the elasticity of research design, the rigour of qualitative data gathered; distinctive approaches to analysis and interpretation, and derivative outputs from qualitative research.

Lincoln and Guba (1985) declare that interpretive research is based on a different set of ontological and epistemological assumptions in which the traditional notions of rationality and consistency do not apply in the same fashion as the functionally based research. Ritchie *et al.*, (2003) highlight fundamental elements which are universally agreed to by various qualitative researchers to give qualitative research its idiosyncratic character: purposes which are aimed at providing a comprehensive understanding of the social world of research participants by understanding their social and material circumstances, i.e. their experiences, perspectives, and historical accounts; understanding the perspectives of the research subjects by probing their meanings and assumptions, their viewpoints about social life in terms of processes rather than in static terms; providing a holistic perspective within explicated contexts; sustaining objectivity whereby the researcher uses personal intuition while taking a non-judgmental stance; assuming a flexible research strategy; conducting naturalistic inquiry in real-world rather than experimental or manipulated settings; using methods of data generation which are elastic and sensitive to the social context in which the data are produced; and, using techniques which usually involve close contact between the researcher and the people being studied (Ritchie *et al.*, 2003).

Two fundamentally divergent worldviews underlie quantitative and qualitative research. The quantitative view is described as being “realist” or sometimes “positivist”, while the worldview underlying qualitative research is viewed as being “subjectivist” (Guba & Lincoln, 1994). On the one hand, realists take the view that what research does is to reveal a prevailing reality (Guba & Lincoln, 1994). According to these scholars, the truth is out there, and the researcher has to use objective research methods to uncover that truth. This means that the researcher needs to be as removed from the research as possible and use methods that maximise neutrality and reduce the involvement of the researcher in the research. This is best done by methods taken generally from the natural sciences, which are then transposed to social research settings. Positivism is the most extreme form of this worldview. According to positivism, the world works according to fixed laws

of cause and effect. Scientific thinking is used to test theories about these laws, and either reject or provisionally accept them. In this way, we will finally get to understand the truth about how the world works. This is often revealed through quantitative research methods which involve techniques of randomised experiments, tests, statistical analyses, etc. (Brown, 2006; Bryman & Bell, 2007; Chreswell, 2005). In contrast, qualitative research methods involve ethnography, case studies, interviews, discourse analysis, and observations (Claire, 2010; Cook & Reichardt, 1979; Eisenhardt & Graebner, 2007; Yin, 1984). Purposes of qualitative research are fourfold: instrument formulation; illustration of results; description; and, conceptualisation. Qualitative research is equated to those methods or data gathering techniques which generate narrative as opposed to numerical data (Dudovskiy, 2016; Knafel & Howard, 1984; Wilson, 2010). On the other hand, according to Ritchie et al., (2003) qualitative research “is founded on three central tenets. Firstly, qualitative research needs to be conducted rigorously with an unequivocal methodological base to inform its design and execution. Secondly, qualitative research aims to capture and embrace the social orientation, beliefs, and behaviours operating in a diverse and multifaceted one. Thirdly, qualitative research can inform the development of contemporary social policy and theory and qualitative studies can be used to draw wider inference about the social world” (Ritchie et al., 2003).

Additionally, other scholars hold that there are three distinctive positions, i.e., realism, materialism, and idealism. Realism claims that there is an external reality which exists independently of people's beliefs or understanding about it. In other words, there is a distinction between the way the world is, and the meaning and interpretation of that world held by individuals. Materialism also claims that there is a real-world but that only material features such as economic relations, or physical features of that world hold reality. Values, beliefs, or experiences are epiphenomena, i.e. features that arise from but do not shape, the material world. Idealism, on the other hand, asserts that reality is only intelligible through the human mind and socially constructed meanings (Hammersley, 1992; Hughes & Sharrock, 1997).

Grounded theory building systematically provides an influence on particular literature by helping advance theoretical understanding. There are generally four aspects against which practical usefulness of theory can be measured: fit, understandable, general, and control – to illustrate how well-grounded theory has a solid fit between data and theory is understandable to those living the phenomenon being explained, is general enough to apply to the diversity of social contexts from which the theory emerged, and provide a measure of control for those living with the phenomenon (Glaser & Strauss, 1967; Sonali & Kevin, 2006; Strauss & Corbin, 1990; Suddaby, 2006).

On the one hand, Bogdan and Taylor (1975:143) contend that “there are seven practical phases when one embarks on a qualitative research process, which is: the research methodology, time to be consumed on the research study, nature and number of settings and subjects, description of the subject, the researcher’s mind-set, researcher-subject relationship, and checks on the data”. On the other hand, Lofland (1971:131) advanced “a five-step approach to follow: inception and social relations, personal feelings, materials collection, analysis, and retrospect”. Knafli and Howard (1984) propose minimal requirements for qualitative research process should include preparation for data collection, length of time spent collecting data, how data were recorded and the amount of data collected, steps taken to organise, categorise, or summarise the data prior to final analysis, management of threats to the validity and reliability of the data, and the process by which conclusions were derived from the data.

Ritchie *et al.*, (2003) contend that the following key aspects influence the quality of qualitative studies: contextual setting of the research; significance of research participants' frames of reference; elasticity of research design; rigour of qualitative data; distinctive approaches to analysis and interpretation; and, kind of outputs that derive from qualitative research. The study puts the phenomenon of corporate governance under a microscopic eye. In so doing, the study reinforces the notion that to obtain the reality about the level of compliance to corporate governance within SARAs, epistemological assumptions based on qualitative research methods are of the essence to explore. The study, therefore, adopted a qualitative research paradigm to understand the nature and forms of non-compliance to corporate governance by SARAs.

3.3 Study Design, Philosophy and Approach

Research methodological perspectives offer a clear focus and direction of the research study. Amongst others, they assist in conducting an objective social enquiry. As such, research methods and perspectives adopted should be appropriate for the study of social phenomenon. In this context, knowledge is developed inductively through the accumulation of verified facts from research participants experiencing the phenomenon. In the final analysis, since facts and values are distinct, they can make it possible to conduct an objective enquiry (Bryman, 1988; Ritchie *et al.*, 2003). The underlying research methodological perspectives informed the conducting of the epistemology of the corporate governance phenomenon within the perspective and context of regulatory agencies.

3.3.1 Study Design

Social Science from an Aristotelian perspective presents a new hands-on approach to social inquiry. It is a major step forward in an innovative and flourishing field of research (Flyvbjerg *et al.*, 2012). This phronetic or Aristotelian methodological perspective in social science and organisational research was developed by Jennifer Rowley, Paul Gibbs, and Bent Flyvbjerg, inspired by the ideas of Aristotle's philosophical concept of "phronesis" in the sense of behaviour that relies on value-judgment, practical wisdom, or prudence in a dynamic and complex context. Phronetic research is an approach based on a contemporary interpretation of the classical Greek concept of "phronesis" loosely translated as practical wisdom, practical judgment, common sense, or prudence (Flyvbjerg, 2006a; Throgmorton, 1996). Flyvbjerg (2006a), Flyvbjerg *et al.*, (2012) and Kuljak (2014) advocate that the principal objective for research with a phronetic approach is to elucidate values, interests, and power relations as a basis for praxis. Aristotle states that "phronesis is an intellectual virtue that is reasoned, and capable of action about things that are good or bad for man" (The Nicomachean Ethics "N.e.", 1140a24-b12, 1144b33-1145a11).

Comparatively speaking, the explorative methodology is intended to examine a relatively unknown area to obtain new insight into a phenomenon to conduct a preliminary investigation and to determine priorities for further research (Chreswell, 1998; Cook & Reichardt, 1979; Garbers, 1996). On the one hand, the explorative research methodology is advantageous in that cumulative and predictive knowledge in social sciences can be obtained. On the other hand, the phronetic methodology is advantageous in analysing and changing social phenomenon that relies on values and power of social actors (Flyvbjerg, 2006a). Flyvbjerg further argues that social science should analyse social phenomenon taking into consideration value and power to change reality. The author developed four-stage value-rational questions as phronetic methodological guidelines that research participants should answer from their perspective:

- a) Where are we going?
- b) Is this development desirable?
- c) Why, if anything, should we do about it? and
- d) Who gains and who loses and by which mechanisms of power?

Research shows that the phronetic methodological perspective has not been fully exploited in corporate governance research. Mayak (2007) investigated the lives and careers of Indian business elites from a practical wisdom perspective. Rowley and Gibbs (2008) scrutinised the concept of practically wisdom organisations. Cairns and Wright (2012) advanced an example of a critical scenario method that could be used by managers in international business. Colombo

(2011) explored virtue as a crucial increment to legal rules and regulation of corporate enterprises. Arjoon (2012) examined the integration of virtue, ethics, human dignity, and natural law ethical principles of subsidiarity, solidarity and the common good into business practice as a corrective to some aspects of market behaviour. Garah *et al.* (2012) provided an exploratory overview of practical wisdom for management in different contexts from Islamic traditions, both from academic and practitioner-oriented perspectives. Ruwhiu and Cone (2013) used a narrative approach in their study of culturally bounded pragmatic leadership in the world of Maori philosophy, ethics, and knowledge. Verhezen (2013) illuminated how wise decision-making might be integrated into a model of corporate governance and analysed how to embed the notions of accountability and responsibility in corporate governance. Kuljak (2014) provided an empirical overview of corporate governance aspects that matter for phronetic research. It is the author's view that the value-rationality could contribute to the search for answers that are practical, prudent, and capable of changing the reality of corporate governance within SARAs.

The phronetic methodological perspective in corporate governance philosophy and the theory of corporate governance already accommodate themselves to the reality that values and power are issues that matter in a globalised world, within corporations, financial institutions, political players and international organisations having significant power to shape the society in line with their values. They acknowledge that corporate governance is a playground where interests of owners, capital, work, environment, politics, global community and other corporate stakeholders are continuously interfering at the organisational level (Kuljak, 2014; Rowley & Gibbs, 2008). Focusing on values, placing power at the core of the analysis, getting close to reality, emphasizing little things, looking at practice before discourse, studying cases and contexts, asking "how" and "why" questions, moving beyond agency and structure and dialoguing with a polyphony of voices constitutes the hallmark of the phronetic methodology (Flyvbjerg, 2006a; Flyvbjerg *et al.*, 2012; Kuljak, 2014; Rowley & Gibbs, 2008). According to Rowley and Gibbs (2008), an organisation is capable of learning through the process of practical wisdom associated with the seven pillars of wisdom: understanding dynamic complexity, developing personal wisdom competency, deliberating towards ethical models, refreshing shared sustainable vision, group wisdom dynamics, deliberated praxis, and embodied learning.

The discussion on the phronetic and explorative paradigms reveals convergence and divergence between the two paradigms. On the one hand, the research study reflects convergence to the explorative paradigm in that it is an exploration of the prevalence, root-causes, and effects of the collapse of corporate governance within SARAs. On the other hand, the complexities surrounding the phenomenon of corporate governance, the underlying values, and power relations amongst the social actors land itself into the playground of the phronetic methodological perspective. In

applying the convergence and divergence of the two paradigms, the generation of new insights into this phenomenon has been discovered. To understand the depth of compliance to corporate governance by SARAs, the different cases and contexts were analysed. Considering the importance of value-judgment, a great deal of analysis focused on how SARAs execute their corporate governance roles and responsibilities in practice. The power to be unleashed at the different corporate stakeholder levels constituted the core of the analysis. The analysis focused on corporate governance failures within SARAs.

It was crucial to trace SARAs' performance record over time to determine their levels of compliance with corporate governance principles. More emphasis was laid on providing a detailed contextual analysis on specified events and their relationships. To achieve this, a combination of primary and secondary data collection methods was employed. Primary data was gathered through scheduled interviews with open-ended questionnaires to conduct a comprehensive contextual analysis of the phenomenon. Considering the convergence and divergence of the phronetic and explorative paradigms, the research design therefore comprised of two phases. Phase I represented an analysis of corporate governance values, practices, power relationships, and contexts to determine the level of compliance by SARAs through qualitative review of theoretical frameworks and applicable models on the phenomenon using the phronetic methodology. Phase II involved an epistemological enquiry into the phenomenon to discover the root causes and effects of failure to adhere to corporate governance principles. A qualitative review of data and contexts was conducted through in-depth interviews with selected research participants within SARAs, administering a questionnaire with open-ended questions. Theory building from cases involved using empirical evidence from cases to create theoretical constructs and propositions (Eisenhardt, 1989; Eisenhardt & Graebner, 2007).

3.3.2 Study Philosophy

The term "epistemic" is derivative from the intellectual virtue that Aristotle calls "episteme" which is generally interpreted as "science" or "scientific knowledge". "A person has scientific knowledge when his conviction is conditioned in a certain way, and the first principles are known to him" (N.E., 1139b18-36). This ideal became dominant during the period of the ancient Greek philosophers, Socrates and Plato, and subsequently during the enlightenment period. During these periods, the ideal has turned out to be the only legitimate view of what constitutes genuine science. Rational events like preparation of research and other social sciences, which are not scientific in the epistemic sense, have found themselves constrained to strive for and validate themselves in terms of this enlightenment ideal (Flyvbjerg, 2006a; Flyvbjerg *et al.*, 2012).

The person possessing practical wisdom “phronesis” understands how to manage in each particular circumstance that can never be associated with or reduced to the knowledge of general truths about managing. Phronesis is a sense or a tacit skill for doing the ethically practical rather than a kind of science. For Plato, rational humans are moved by the cosmic order; for Aristotle, they are moved by a sense of the proper order among the ends we pursue. This sense cannot be enunciated in terms of theoretical axioms but is grasped by phronesis (Taylor, 1989). Flyvbjerg (2001) and Flyvbjerg *et al.*, (2012) contend that phronetic researchers focus on practical action and practical knowledge about the sociological, ethnographic, and historical contexts.

This study relied heavily on the interpretivism philosophy as its dominant philosophical underpinning. Its premise has been on in-depth contextualisation and analysis of the phenomenon of corporate governance in relation to its application on the SARAs. It demanded intense interaction between the researcher and the research participants within the context of a qualitative research methodology. The abstraction of the phenomenon as a principle potentially leads to the drawing of generalisations on how it is manifested and contextualised. The qualitative analysis of the concept allowed for comprehensive dialogical reasoning and engagement. Applying the interpretivism philosophical underpinning in the critical assessment of the phenomenon, multiple interpretations of its origin, development, and contextualisation emerged (Myers, 2008). Moreover, the underlying corporate governance values, power relations, cases, and contexts were extensively scrutinised to understand concepts and theoretical positions.

Qualitative research tends to place prominence and significance on the human, interpretative aspects of knowledge about the social world, and the significance of the investigator's interpretations and understanding of the phenomenon being studied (Ritchie et al., 2003). Silverman (2000:63-67) warns researchers against three unhelpful approaches: simplistic inductivism in which researchers submerged themselves in the research setting, anticipating that constructs and ideas will surface through in-depth exposure; kitchen sinkers whose minds are muddled by unordered and unstructured ideas; and, grand theorists who need to be reminded of the role of new data in their study. It is essential to have a reputable logic of the substantive issues that the research topic involves and to be vibrant about how they build on what has been generated by previous research (Ritchie et al., 2003).

The study integrated human interest socially constructed through open-ended questions and interviews with research participants to obtain access to reality. Firstly, what becomes essential was to ensure that the results are representative of the interpretations of the research participants directly experiencing the phenomenon. Secondly, comprehensive interpretation and analysis of the phenomenon have been plausible to theory development or refinement. A high level of validity was obtained from data generated since it was honestly provided. While a great deal of objectivity was maintained throughout the research process, the subjective epistemology approach could not be avoidable given the eminent relationship created between the researcher and the research participants. Phronetic research is dialogical in the sense that it incorporates polyphony of voices with no one voice, including that of the researcher, claiming final authority. Its goal is to produce input to the ongoing dialogue and praxis which is set in a context of power rather than to generate ultimate, and unequivocally verified knowledge. This goal accords with Aristotle's maxim that in questions of praxis, one ought to trust more in the public sphere than in science (Flyvbjerg, 2006a; Flyvbjerg *et al.*, 2012).

3.3.3 Study Approach

Phronesis is the intellectual activity most pertinent to praxis. It focuses on what is variable and on that which cannot be encapsulated by universal rules. Phronesis requires an interface between the general and the concrete; it requires deliberation, judgment, and choice (Ruderman, 1997). Phronetic researchers ought to go beyond the problem of relevance by anchoring their research in the context studied (Flyvbjerg, 2006a). Campbell (1986:128–129) and Lindblom and Cohen (1979:84), have noted “that the expansion of social research is restrained by the fact that researchers tend to work with problems in which the reaction to the question “who will notice if you are wrong” is often prevalent”. Bailey (1992:50) calls the outcome of such research “so what” results.

Social science, in general, and specifically in research on corporate governance, should not and cannot follow the epistemic approach as practised by natural sciences in their attempt to produce explanatory and predictive theories. Rather, knowledge should offer contextually relevant answers that are practical, prudent, and capable of changing the reality of corporate governance since the eminent traits of corporate governance include values, interests, and power that influence different cultural contexts (Kuljak, 2014). The seventeenth-century writers such as Isaac Newton and Francis Bacon affirmed that knowledge about the world can be acquired through direct observation (induction) rather than deduced from abstract propositions. The inductive research approach was used dominantly throughout the research process. The study involved the collection, analysis, and interpretation of data that are not easily reduced to numbers. This

data relates to the social world and the concepts and behaviours of people within it (Claire, 2010). Corporate governance in practice involves complex human interactions and inter-relationships requiring complex understanding, contextualisation, and analysis.

Phronesis functions based on practical rationality and judgment. Flyvbjerg (1989) argues that practical rationality and judgment evolve and operate primarily by virtue of in-depth case experiences. Practical rationality is best understood through cases whether experienced or narrated. Phronetic researchers thus recognise a human privilege and a basic condition of meaningful dialogue in context (Flyvbjerg, 2001, 2002, 2006a). Qualitative research methods allow for the discovery of new variables and relationships, understanding of complex processes, and influencing the social context (Creswell, 2005; Sonali & Kevin, 2006). Applying the qualitative approach, more especially on the comprehension of the context of corporate governance in relation to SARAs has been further examined to add more insight into the causes and effects of its failure. Critics of the qualitative research approach hold that it is biased, limited in scope, and anecdotal (Creswell, 1994; Denzin & Lincoln, 1994; Garbers, 1996; Myers, 2008). Qualitative research is useful because it often describes the settings in which policies and programmes will be actualised. In this regard, as a known phenomenon, the corporate governance concept was used to generate untested conclusions concerning its application within SARAs. In undertaking this study, no formulation of hypotheses has been generated, but rather research questions, aims and objectives that need to be achieved during the research process. In-depth interviews are probably the most widely used method in qualitative research. They can provide an undiluted focus on the individual. They provide an opportunity for detailed investigation of people's perspectives for an in-depth understanding of the personal context within which the research phenomena are located, and for very detailed subject coverage. They are also particularly well suited to research that requires an understanding of deeply rooted or delicate phenomena or responses to complex systems, processes or experiences because of the depth of focus and the opportunity they offer for clarification and detailed understanding (Ritchie *et al.*, 2003).

It is difficult to overstate the importance of theory to the research endeavour. Theory allows social scientists to understand and predict outcomes of interest, even if only probabilistically (Cook & Campbell, 1979; Kerlinger & Lee, 2000). Theory also allows social scientists to describe and explain a process or sequence of events (DiMaggio, 1995). Theory acts as an educational device that can raise consciousness about a specific set of concepts (Brief & Dukerich, 1991). Campbell (1990:65) defines theory as “a collection of assertions, both verbal and symbolic, that identifies what variables are important and for what reasons, specifies how they are inter-related and why, and identifies the conditions under which they should be related or not related”. Theory development and refinement are important in the undertaking of a social enquiry process. This

process will result in a detailed understanding of the phenomenon through which key constructs, inter-relationships, and contexts are identified and described (Glaser & Strauss, 1967; Strauss & Corbin, 1990). It was conceivable that through this study, new theories and generalisations on the concept of corporate governance within the context of SARAs' environment would emerge.

3.4 Population and Sampling

The objective of qualitative research is to gain an understanding of the nature and form of the phenomenon, ascertain meanings and interpretations, develop explanations or formulate ideas, concepts and theories. As part of the research planning and exercise, population and samples need to be chosen to ensure the inclusion of relevant constituencies, events, and processes to illuminate and inform the understanding. Various units are chosen to exemplify expected or known circumstances and characteristics salient to the subject matter. The chosen circumstances and characteristics should be diversified to augment the chances of identifying a full array of factors or features related with a phenomenon and to enable investigation of interdependency between variables (Ritchie et al., 2003). Appropriate and deliberate decisions need to be made about research participants, settings, or actions to determine the scope and range of the population and sample (Burgess, 1984).

Sampling techniques explicitly assist the researcher to identify several cases or elements within the population to represent the population and to reach conclusions about the population. Determining the target population and sampling is useful in making the research of any type and size manageable; it significantly saves the costs of the research; it contributes to more accurate research results and findings; it provides an opportunity to process the information more efficiently; and, it accelerates the speed of primary data collection (Brown, 2006). The process of sampling in primary data collection involves the following stages: defining target population; choosing sampling frame; determine sampling size; selecting methods of data collection; collecting the primary data; data analysis; and, reaching conclusions (Dudovskiy, 2016).

3.4.1 Population

Unleashing corporate governance in an organisation is a dynamic process involving multi-level and multi-dimensional complex relationships and practices amongst the variety of role-players. Its practical implementation elucidates human interactions involving diverse interpretations and practices at the organisational level. These complex relationships and practices require driving the governance role by the board, executing the strategic role by management, and performance

of the tactical and operational role by the middle-management and lower-level staff. Given the nature and context of the study, a comprehensive and intensive social enquiry was required. It was, therefore, necessary to restrict the target population to a small but manageable number of SARAs. Therefore, the target population was limited to two SARAs, i.e. the EAAB and the HPCSA to constitute the total population of the study.

The sampling frame consisted of a combination of officials operating at the management echelon, as well as board members within the selected SARAs to gather their diverse perspectives on their feelings and emotions regarding the application of corporate governance within their SARAs on a multi-level basis. Of essence also, was to investigate their feelings and emotions surrounding complexities of values and power relations at play. To make the study more manageable and more efficient, at least four officials from the management and four board members in each of the sampled SARAs were selected to participate in the research process.

Several factors accounted for the selection of the target population. As we have seen in Chapter 1, Thomas (2012) lamented the scarcity of research underpinned by corporate governance theoretical and philosophical aspects. There is, therefore, a need to undertake a contextual and evaluative journey to unravel the corporate governance phenomenon generally and to explore its practise within regulatory agencies to fill this gap. Regulatory agencies are established by the government to fulfil certain regulatory functions (see Chapter 4). Considering the rationale for the establishment of regulatory agencies as well as the nature and importance of their specialised offerings relative to the regulatory roles each play in their respective functional area, it was necessary to evaluate how this is carried out in line with good corporate governance standards and practices. Given their level of autonomy vis-à-vis other Public entities in the discharge of their regulatory functions, it is important to investigate how this is executed within the corporate governance environment. Finally, it was expedient to evaluate their historical performance of compliance to corporate governance to inform the development of appropriate practices and constructs.

3.4.2 Sampling

3.4.2.1 Sampling Technique

Purposive sampling is precisely what the name suggests. Members of a sample are chosen with a 'purpose' to represent a location or type in relation to a key criterion. Purposive sampling is intended to achieve two objectives: to ensure that all the key constituencies of relevance to the

subject matter are covered; and, to ensure that diversity is included within each of the key criteria. Some diversity is included for a holistic exploration of each character element in the study (Ritchie *et al.*, 2003). The non-probability sampling method has been adopted to conduct this study since it is the most ideal for phronetic and explorative studies. The purposive sampling technique has been applied to undertake the research process. Not each group member had an equal chance to participate in the study. Research participants were selected based on the judgment of the researcher.

3.4.2.2 Sampling Size

Qualitative research studies generally involve small-scale samples. This is done to make the research study more manageable and focused. Since the study is direct and intense with research participants, research outputs may be generalised. Consequently, at the board level of each regulatory agency selected, four members were identified to participate in the study. Likewise, four members at the management level of each regulatory agency were selected to participate in the research process.

3.4.2.3 Inclusion Criteria

The sample size has been drawn based on the extent to which research participants interact with the phenomenon of corporate governance, their practical knowledge and level of value-judgment in relation to the phenomenon, and the values and power-relationships at play.

3.4.2.4 Exclusion Criteria

Qualitative review methods have been chosen for reasons of having samples that are small in scale and purposively selected based on salient criteria; they assume data collection methods which usually involve close interaction between the researcher and the research participants, which are interactive and developmental and allow for emergent issues to be explored; they produce data which are very detailed, information-rich and extensive; the analysis is open to emergent concepts and ideas and which may produce detailed description and classification, identify patterns of association, or develop typologies and explanations; they produce outputs which tend to focus on the interpretation of social meaning through mapping and representing the social world of research participants (Ritchie *et al.*, 2003). The nature of the research undertaken demanded interaction with participants who are directly involved in the application of the phenomenon to understand their feelings, emotions and experiences. Moreover, to understand practical and complex elements surrounding the phenomenon, it was essential to involve research participants having practical knowledge and wisdom of the phenomenon. It was therefore inconceivable to include those operating outside the realm of corporate governance since their inclusion might not lead to obtaining reliable and conclusive findings.

3.4.2.5 Recruitment of Research Participants

Invitation in the form of letters was sent out electronically to potential research participants inviting them to participate in the study.

3.4.2.6 Process of Obtaining Informed Consent

Research participants were informed through obtaining their consent about their voluntary participation in the study as well as their constitutional right to privacy and confidentiality.

3.5 Data Collection and Analysis

Data collection can be divided into two categories: secondary and primary. For contemporary studies, researchers get close to the phenomenon being studied during data collection and continue to be closer to the process of data analysis, feedback, and publication of results. Combined with the above-mentioned focus on relations of values and power, this strategy typically creates interest in the research by parties outside the research (Flyvbjerg, 2006a; Flyvbjerg *et al.*, 2012). Knafl and Howard (1984) indicate that stages to be followed in data reporting include: specific data collection techniques used, time spent in collecting data, the quantity of data collected, steps taken to organise and process data, and limitations of the data. A key feature is striving to be as objective and neutral as possible in the collection, interpretation and presentation of qualitative data (Ritchie *et al.*, 2003). According to Dudovskiy (2016) qualitative data analysis can be conducted through the following three phases: “phase 1: developing and applying codes involving categorisation of data into explicit themes by allocating them meaningful labels such as events, behaviours, and activities; phase 2: identifying themes, patterns, and relationships by scanning primary data for words and phrases used by respondents as well as primary and secondary data comparisons; phase 3: summarising the data”.

3.5.1 Data Collection

Qualitative research methods for data collection and analysis are not mystical but they are powerful, particularly when used to construct new or refine prevailing theories (Sonali & Kevin, 2006). Social theory conceptualisation favours qualitative data collection methods that gather rich data directly from those people experiencing the phenomenon. Although several qualitative data collection methods exist, social theory research, in general, depends on three data gathering techniques, namely interviews, observations, and the analysis of archival information (Marshall & Rossman, 1989; Sonali & Kevin, 2006; Strauss & Corbin, 1990). Social theory idiosyncratic features are its commitment to research and discovery through direct contact with the social world, combined with a rejection of a priori theorising (Locke, 2001). Qualitative data on prevailing theoretical positions and models were collected to be acquainted with their content, nuances and

weaknesses. The prevailing theoretical frameworks and models provided a sound-footing for ex-post theorising with a contextualisation of findings and novel theoretical contributions with the framework provided by them. Glaser and Strauss (1967:32) contend that “the theorising process involves the construction of either substantive theories, meaning theories for a substantive or empirical area, e.g. patient care, race relations, etc., and formal theories meaning theories developed for a formal or conceptual area of sociological enquiry, e.g. formal organisation, stigma, behaviour, socialisation, etc.”

There are generally three acceptable forms of interviews: structured, semi-structured, and unstructured. Structured interviews are common in the fields of surveys, telephone interviews, and market research. Structured interviews generally employ a sequence of questions and allow the researcher to obtain a great deal of control over the process. In contrast, semi-structured interviews or in-depth interviews are flexible. Semi-structured interviews provide a middle-of-the-road between the two extremes and provide larger elasticity to the participant in respect of the direction he/she prefers. The objective of a semi-structured interview is to explore a subject matter more openly by allowing interviewees to express their feelings and ideas in their own words. Unstructured interviews are prevalent in the field of study research. Usually, the questions posed to the interviewees are spontaneous and free-flowing. The interviewer does not have a set of questions prepared in advance. Instead, the questions arise more naturally (Esterberg, 2002).

The in-depth or otherwise known as a semi-structured interview is often described as a form of conversation (Burgess, 1984; Lofland & Lofland, 1995). The in-depth interview method is described by Webb and Webb (1982:130) as being a conversation with a purpose since the researcher engages intensely with research participants on the subject-matter. According to Rorty (1980), fundamentally in-depth interviewing is a process through which knowledge about the social world is constructed in normal human interaction. In-depth interviewing assists in obtaining a full account of the participant's perspective on the subject-matter (Burgess, 1984; Lofland & Lofland, 1995; Ritchie *et al.*, 2003). It is the researcher's task to use appropriate means to ensure that research participants are at ease to convey their feelings and experiences on the subject matter. From their perspective, Ritchie *et al.*, (2003) note two key features of in-depth interview method: firstly, it is capable of combining structure with flexibility; secondly, it provides a high level of interactivity between the researcher and research participants thereby facilitating the production of the material through such interaction. “The in-depth interview method permits the researcher to explore copiously all the factors that underpin research participants' answers, i.e., reasons, feelings, opinions, and beliefs” (Ritchie *et al.*, 2003:141).

The study involves an in-depth contextual analysis of the corporate governance phenomenon to discover the underlying constructs and concepts in relation to compliance with corporate governance by SARAs. Through in-depth interviews, research participants can reflect their understanding and feelings about the phenomenon and their level of interaction at the value-development and power relations. This helped in seeking clarifications and elaboration on the answers since the questions were open-ended, evolving and non-directional. As such, as Ritchie *et al.*, (2003) suggest, achieving breadth and depth involves asking a combination of content mapping questions (to map and identify the component elements of dimensions) and content mining questions (to explore them in detail). According to these authors, both types of questions require probing questions. During the interview process, clear and non-leading questions are key. It is the authors' viewpoint that to suggest that only open questions have a role is to understate the specificity that good in-depth interviewing achieves. The study integrated both primary and secondary data to explore the corporate governance phenomenon. Analysis of secondary data involved analysis and review of journals and textbooks, SARAs' specific documentation review, and review of newspapers. To understand corporate governance compliance level within the SARAs, in-depth interviews were scheduled with identified research participants.

3.5.2 Data Analysis

Data analysis is a constant process involving two inter-related and inter-dependent stages. The first stage involves data management and the second stage involves the unravelling of the descriptive or explanatory accounts arising from the research exercise. The intertwined nature of the two stages is reflected in the sense that interpretation and the assignment of meaning take place throughout the analytical process (Ritchie *et al.*, 2003). There is a wide range of interpretive or analytical approaches employed in qualitative research. Most commonly used in social research are content analysis, narrative analysis, and constant comparative method of grounded theory. Graneheim and Landman (2003) explain that qualitative content analytical approaches focus on analysing both the explicit or manifest content of a text as well as interpretations of the latent content of texts that can be interpreted or interpolated from the text but is not explicitly stated in it. Content analyses use standardised measurements to code, characterise, and compare contexts (Berelson, 1952; Guba & Lincoln, 1994; Krippendorff, 1980). Penetration and usefulness of qualitative analysis have the feature of striking a balance between abstract and general concepts on the one hand and description and quotations from settings' participants on the other (Lofland, 1971).

Qualitative data is important as a means to an end. Data collected is translated into concepts, and in turn, used to illustrate concepts. Data collected is used as a catalyst for conceptualisation

(Knafl & Howard, 1984). Normally, qualitative data take the form of verbatim of in-depth interviews. In this study primary data was collected through in-depth interviews using questionnaires with open-ended questions. Scheduled interviews were arranged on a semi-structured approach with identified key officials and board members to understand their feelings and experiences on the context and application of the phenomenon to obtain various perspectives. A questionnaire with open-ended questions was developed and used during the interviews. Even though strong similarities were maintained in the questions asked across all the research participants, to aid in the constant comparison process, some flexibility in questioning was allowed to provide research participants with some control to decide what aspects of the phenomenon are most important from their experiences. To aid in the undertaking of a comprehensive analysis of the phenomenon, audio-recordings and transcripts from in-depth interviews with research participants were collected.

The study was concerned with words, sounds, feelings, emotions, and other elements that are non-quantifiable as opposed to the quantitative data collection method which relies on questionnaires with closed-ended questions, methods of correlation and regression, mean, mode, and median. A quantitative approach is criticised for analysing numbers and emphasising precision, but it is not particularly useful in revealing the meanings that people ascribe to particular events or activities and not well-suited to understand complicated organisational processes and contexts (Neuman, 2000). The vantage of qualitative research, in this context, provided contextual, evaluative, descriptive, and explanatory elements of the corporate governance phenomenon to understand the research participants direct feelings and experiences on its practice in relation to SARAs.

Glaser and Strauss (1967:28) explain that “the grounded theory approach aims to generate theories that explain how some aspects of the social world works. The aim is to develop a theory that emerges from and is therefore connected to the reality the theory is developed to explain”. The constant comparative method is a method for analysing data to develop a grounded theory. The authors suggest that when used to generate theory, the comparative analytical method can be applied to describe social units of any size. This process involves: identifying a phenomenon, object, event or setting of interest, identifying a few local concepts, principles, structural, or process features of the experience or phenomenon of interest, making decisions regarding the initial collection of data based on one’s initial understanding of the phenomenon, engaging in theoretical sampling. Comparison groups would be selected based on their theoretical relevance for fostering the development of emergent categories.

Strauss and Corbin (1990) describe some flexible guidelines for coding data when engaging in a grounded theory analysis:

- “Open coding: the process of breaking down, examining, comparing, conceptualising, and categorizing data;
- Axial coding: a set of procedures whereby data are put back together in new ways after open coding, by making connections between categories, using a coding paradigm involving conditions, context, action/interactional strategies and consequences; and
- Selective coding: the process of selecting the core category, systematically relating it to other categories, validating those relationships, and filling in categories that need further refinement and development (Strauss & Corbin, 1990:91)”.

Data collected through interviews were coded to identify emerging themes. This included a detailed description of each code, inclusion and exclusion criteria, exemplars of real text for each theme, exemplars of the theme’s boundaries if abstract (Ryan & Bernard, 2000). Miles and Huberman (1994) provide a very thorough discussion of strategies for coding and sorting segments of data. All comments and responses from interviewees were extracted. Coding was organised around three to seven major themes. For comments/responses that appear to be outliers, a miscellaneous category was created. Afterwards, results from this category were revised to see if they fit within the developed framework. Where some comments/responses address more than one category, they were coded in each of the categories they are addressing. Having grouped comments/responses in overarching categories, each category created were reviewed for additional layers of the organisation. This exercise enabled finding a strong theoretical understanding of an event, object, setting or phenomenon. Theory-building and explanation process was guided by principles of grounded theory (Glaser & Strauss, 1967) and elements for coding data (Strauss & Corbin, 1990). Presenting and discussing specific results in the context of their theoretical relevance demonstrated how conceptual formulations are grounded in the data (Knafl & Howard, 1984). The King Code on Corporate Governance which was released during November 2016 narrowed the corporate governance compliance principles from 75 as contained in the previous King Code (2009) to 16 compliance principles. The 16 corporate governance compliance principles assisted in measuring corporate governance compliance levels within SARAs. Additionally, to assist in reaching the level of data saturation, content analysis of secondary data was conducted.

3.6 Rigour and Reliability

Hammersley (1992) views generalisation from two perspectives, i.e., empirical and theoretical. The author describes “empirical” generalisation as the application of findings from qualitative research studies to populations or settings beyond the particular sample of the study and “theoretical” as propositions, principles, or statements from the findings of a study for more general application. As for Ritchie *et al.*, (2003:264), “generalisation can be understood as involving three inter-related and separate concepts: firstly, representational generalisation, i.e., generalising a sample to the parent population from which the sample is drawn; secondly, generalising to other settings or contexts beyond the sampled one (inferential generalisation); thirdly, theoretical generalisation which draws theoretical propositions, principles, or statements from the findings of a study for more general application”. Generalisations are thus assertions which are context-free, and their importance lies in their capability to reach extrapolation (Kaplan, 1964:91; Ritchie *et al.*, 2003). An in-depth contextualisation and analysis of the corporate governance phenomenon is plausible for general application to other contexts and setting where the phenomenon finds expression. Additionally, the theoretical constructs, propositions, and statements arisen from the study can be generalised within every context and setting where it is applicable.

Several scholars agree that quality in qualitative research can be measured against eight aspects: worthy topic, rich rigour, sincerity, credibility, resonance, significant contribution, ethics, and meaningful coherence (Cook & Reichardt, 1979; Glaser & Strauss, 1967; Guba & Lincoln, 1994; Hammersley, 1992; Lincoln & Guba, 1985; Locke, 2001). To measure the rigour of qualitative research, Locke (2001) proposes three metrics: the extent to which it is pragmatically useful, its credibility, and its theoretical contribution. Guba and Lincoln (1994) and Lincoln and Guba (1985) furnish an alternative set of criteria by which rigour of qualitative research can be measured: credibility, transferability, dependability, and confirmability. Quint (1967:109) asserts that “by its very nature, qualitative research often provides the empirical grounding for more rigorously structured research” Ragucci (1972:489-490) stresses that “a major contribution to the rigour of qualitative research is an accurate and detailed description of a point of view in a social world”. For their part, Knafl and Howard (1984) add that qualitative research also serves as an adjunct to primarily quantitative studies. To be credible, theory has both a greater range of analytic generalisability and achieves rhetorical plausibility between author and reader through clear presentation of the data and rich description of the social context within which the data were collected and analysed (Locke, 2001). The outcomes of the study would be pragmatically useful to all social actors affected by the phenomenon of corporate governance. Its theoretical contribution will enhance the theoretical lenses shaping and contextualising the phenomenon.

Bernard (1994) and Ritchie *et al.*, (2003) assert that reliability refers to whether you get the same answer by using an instrument to measure something more than once or otherwise known as replicability. In simple terms, research reliability is the degree to which research method produces constant and reliable results. Research reliability can be divided into the following categories: test reliability, relating to the measure of reliability that has been obtained by conducting the same test more than one time over a period with the participation of the same sample group; parallel forms reliability, relating to a measure that is obtained by conducting an assessment of the same phenomena with the participation of the same sample group via more than one assessment method; inter-rater reliability, relating to the measure of sets of results obtained by different assessors using same methods; internal consistency reliability, is applied to assess the extent of differences within the test items that explore the same construct to produce similar results. Ritchie *et al.* (2003) assert that the replicability of research study depends largely on the meanings and interpretations of a particular phenomenon by research participants. Moreover, the researcher should consistently and rigorously adopt qualitative research methodological perspectives that are reliable and dependable to achieve greater reliability.

3.7 Ethical Considerations

The Constitution of the Republic of South Africa (1996) guarantees fundamental human rights of freedom, equality, and human dignity. Specifically, section 11 guarantees one's right to dignity and privacy. To be credible and reliable, all kinds of research studies should conform to the basic constitutional tenets and certain ethical standards dependant on the nature of the research to be undertaken. The content and context of the research ethics vary from discipline to the nature of the study. At the very least, it is of utmost importance to maintain the highest level of objectivity in discussions and analysis throughout the research process (Bryman & Bell, 2007). In so doing, the risk of subjectivity and bias would be decreased. Since the research study is qualitative, in the formulation of questionnaires and the conducting of interviews, use of offensive, discriminatory and unacceptable language was avoided at all costs. Throughout the research process, an adequate level of confidentiality and security of the research data have been maintained (Bryman & Bell, 2007).

3.7.1 Permission and Informed Consent

Informed consent should be based on an understanding that participation is voluntary (Holloway & Wheeler, 1996). Research participants' consent to participate in the study was obtained by

informing them of their voluntary participation in the study. Furthermore, research participants were assured of the protection of their privacy.

3.7.2 Anonymity

Research participants were duly informed of their choice and freedom to participate in the research. Where they choose to participate in the study anonymously, their right to anonymity was secured.

3.7.3 Confidentiality

For purposes of conducting in-depth interviews, participants were assured of their privacy and confidentiality of information shared.

3.8 Conclusion

The philosopher Rene Descartes (1637) wrote the “Discourse on Methodology” in which he focused on the importance of objectivity and evidence in the search for truth. A key idea in his writing was that researchers should attempt to distance themselves from any influences that might corrupt their analytical capacity. The study methodology as illustrated, sketches-out the research process and direction. Its underlying objectives are to enable the researcher to focus attention on the research methods applicable, to avoid the delusion of research methods, and to provide a systematic approach to the research process. The study methodology constitutes the basis of the next chapters to the research study. The following aspects will, therefore, be covered: analysis of SARA’s corporate governance landscape; presentation of key theoretical constructs towards the development of the corporate governance literature; development of an implementation framework suitable to advance corporate governance within SARAs; epistemological analysis into the inside of corporate governance happenings within the research population and sample; consideration of the emerging key recommendations arising from the explorative exercise. Aristotle found that “every well-functioning organisation and society was dependent on the effective functioning of all three intellectual virtues: episteme, techne and phronesis. At the same time, however, Aristotle emphasised the crucial importance of phronesis as the single virtue of prudence” (N.E., 1144b3301145).

CHAPTER 4

CORPORATE GOVERNANCE LANDSCAPE OF REGULATORY AGENCIES

4.1 Introduction

Chapter 1 outlined an overview and context of the research study. Chapter 2 presented a broad perspective of the dominant theoretical frameworks and models applicable within the corporate governance field. Chapter 3 set-out the research study's research methodological perspectives to guide the research process. In this chapter, we examine the corporate governance environment within which SARAs operate by tackling the following pertinent matters:

- A contextual overview of the regulatory environment within which SARAs operate generally and the EAAB and the HPCSA, in particular;
- Understanding the statutory roles and responsibilities of the EAAB and the HPCSA in the discharge of their respective mandates;
- An in-depth analysis of their corporate governance strategic and operational matters; and
- An in-depth contextualisation of their role to promote professional conduct and ethical behaviour within their scope of operation to protect public interests.

4.2 Rationale, Definition, and Functions of Regulatory Agencies

Globally, governments establish public entities generally and regulatory agencies in particular as a means to support the achievement of socio-economic developmental goals. Their governance arrangements are ever-more essential for governments to warrant that they deliver on their corresponding mandates. An epistemology into their operational mechanisms, corporate governance structures, and administrative systems are of particular importance since they are established to serve wider societal interests. This epistemology would involve an examination of

their make-up, their statutory roles and functions, their underlying significance, and their corporate governance arrangements.

Gildenhuis (1988:4) offers four ideologies encapsulating government's role towards its citizens, namely, "laissez-faire capitalism, socialism, social welfare, and economic welfare. In terms of the laissez-faire theory, the government's most important role is to provide an enabling environment for open competition among the citizens". Citizens are protected through various instruments such as the enforcement of laws by the judiciary, preservation of individuals' rights, and safety of the country's national sovereignty (Gildenhuis, 1997:6). The socialist theory contrasts fundamentally from the laissez-faire theory in that it encourages the utilisation of civic resources for the societal good and restricts free enterprise. The socialist ideology propagates "for the redistribution of civic goods and societal benefits such as free health services, social grants, and free education. In this regard, the government's strategic role in the regulation of markets, distribution of civic goods, and rendering of social welfare services for all citizens" (Gildenhuis, 1988:8). The role of the social welfare state is to guarantee the basic standard of living to all its citizens through providing education, pensions, medical care, housing, and protection against loss of employment. The social welfare state creates an enabling environment to ensure its citizens have equal opportunities for a good life (Gildenhuis, 1988:9). The economic welfare state accentuates the economic welfare of the individual and is grounded on democratic ideals and free enterprise, with minimum government involvement in the actions of the individual. The economic welfare state intends to create an environment in which an individual is free to develop his/her economic welfare, and this will enable the individual to look after his/her welfare. The government regulates the relationships between individuals through an independent judicial system based on common law principles (Gildenhuis, 1997:16).

Over the past few decades, the role and significance of regulatory agencies have increased rapidly as government machinery to deliver public services (Nagarajan, 2008). To highlight the crux of regulatory agencies, Wilensky (2014) points-out that nowadays agency decision-making influences virtually every aspect of our lives, from the quality of the air we breathe, to what appears on food labels, to whether we have to take off our shoes for a security check at the airport. "In the context of regulatory agencies, the government develops a system of rules intended to resolve contradictory ideologies and defend the rights of individuals and institutions" (Otobo, 1997:44). Over time, lawmakers have gradually delegated some of their law-making authority to regulatory agencies (Wilensky, 2014). The ambit within which regulatory agencies operate includes a wide range of areas, such as, issuing of legal administrative instructions and orders, issuing secondary

and subordinate legislation to regulate a particular matter, and formulation of operating rules and procedures to promote public interests. Some of the reasons justifying the formation of regulatory agencies include the need to deliver specialised expertise to intricate regulatory and supervisory powers, the need for accelerated service delivery turn-around, and the need to reduce intrusion by political office-bearers to execute a variety of regulatory functions such as regulation of specific conduct, conducting investigations and disciplinary processes, etc.

Regulatory agencies are organisations established by government empowered to execute a monitoring and evaluation function, providing guidance, and the controlling of a variety of regulatory functions in the interest of protecting public interests. There are several “good governance” reasons advanced by governments for the formation of regulatory agencies, i.e., firstly, reduction of bureaucratic hurdles; secondly, need to accelerate and improve service delivery standards within the public sector; and, thirdly, legitimising public decision making processes and procedures through the separation of regulatory authority from direct political intrusion (Gill, 2002). To attain these goals, the government grants regulatory agencies management autonomy for resource allocation to realise intended regulatory objectives and the autonomy to interpret and apply regulatory and policy prescripts (Gill, 2002). Regulatory agencies are established by the government as a vehicle for legitimising regulatory, normative, and cultural preferences of citizens and the public. Regularly, as the society evolves, some of these elements remain constant and others change transforming the role of government. As for Bourgon (2007:7), for regulatory agencies to operate optimally and independently, “they require robust financial performance management principles and practices which support a regulatory public function capable of delivering public services more effectively and efficiently on time”. To circumvent issues of mandate and scope-crip as well as acting beyond the constraints of their powers, government as overall “regulator uses coercive powers to permit or prohibit certain activities” (Schoeman, 2007:128).

Below, we first observe the founding principles influential to the establishment of regulatory agencies. Secondly, we examine and analyse the descriptive elements of regulatory agencies. Thirdly, we will lay down the functional areas of regulatory agencies. Fourthly, and lastly, we will observe some of the criticisms levelled against the establishment of regulatory agencies as an alternative form of delivering public services.

4.2.1 Rationale for Establishment of Regulatory Agencies

Countries worldwide found public entities generally and regulatory agencies in particular, for various reasons like socio-economic growth and development, market regulation, employment creation, and stimulation of local investment. They have various corporate forms which depend on factors like proportions of governance and autonomy, their institutional arrangements, their administrative hierarchy, their overall purpose, roles, and strategic functions, their ownership arrangements (full, majority, or minority ownership by the government, listing or not on the stock exchange, government's shareholding arrangements, legal status). Governments across the globe, especially within developing countries create and invest in them since markets are imperfect or incapable to provide for important societal needs like effective mobilisation of capital and infrastructure development for the domestic economy (OECD, 2005a; PWC, 2015; World Bank, 2002). How they are defined varies from country to country. The OECD (2005a) defines them as "enterprises where the state has significant control through full, majority or significant minority ownership. They are known by many names: government corporations, government business enterprises, government linked-companies, parastatals, public enterprises, etc." (OECD, 2005a).

Both the OECD (2005a) and World Bank (2002) have developed a variety of common motivations for state ownership of public entities: they are set-up to render public services, for example, health services and the provisioning of education to improve the living conditions of the public; they are used for the creation of employment and the maintenance of sound labour relations, particularly, within strategic economic sectors; they are used as a form of curtailing private and foreign control of the local economy; they are used to generate public funds and investments; they are used to increase access to public services and encourage local economic development and industrialisation. Their ownership arrangements can generally be categorised into three forms:

- "Centralised, meaning that their ownership and control is centralised within a particular Ministry or Department;
- Decentralised, different public entities are overseen by different ministries; and,
- Dual, one single ministry often the ministry of finance or specialised body performs certain ownership functions through all companies while other functions are performed by different ministries" (OECD, 2005a; World Bank, 2002).

The World Bank (2013) identified the following four underlying principles to reflect the role of government for creating an enabling environment for corporate social responsibility and regulatory authority: "instituting formal legislation and regulatory authority which provide penalties;

government acting as an enabler for a supportive environment by mobilising different spheres of government for economic growth and social development; solidification of public-private partnerships towards socio-economic development and service provisioning; and, providing political support”.

Good governance requires a good government, an effective public sector, and effective public sector institutions attuned to service delivery, more transparent, and more responsive. As already observed, one of the underlying objectives for the establishment of SARAs is the regulation of a market segment for a variety of reasons, such as the execution of specialised regulatory activities, discharging of expertise outside the bureaucratic constraints, accelerated delivery of public services, and better and effective regulation. In this instance, a specific segment of the market may be placed under the administration of a particular public entity to be administered in accordance with specific statute and regulations. The EAAB and the HPCSA are some of the forms of public entities called regulatory agencies as they have been established to regulate a segment of the market to promote public interests. South Africa follows a decentralised form of administering public entities. Each line-ministry is entrusted with the responsibility to oversee public entities responsible for the related functional area. Some other scholars, such as McGregor (2015a) and Kanyane and Sausi (2015) argue for a more centralised model for the proper rationalisation and coherent administration of public entities. Kanyane and Sausi (2015) further suggest that an overarching legislative framework be formulated for the control and administration of public entities from a single source and overseer. It is the opinion of the researcher that a decentralised model is a vantage for a variety of reasons: the decentralisation model allows for greater and equitable distribution of political powers and administrative responsibilities amongst the different EA's; Specialised powers and expertise entrusted to public entities generally and regulatory agencies particularly, through the specific regulatory frameworks, can better be expressed and administered by line-functionaries; decentralisation enables efficient monitoring and accountability. The decentralisation approach can be reinforced through streamlining and rationalisation of the crafting of legislative and regulatory frameworks responsible for the establishment of public entities. This should involve concerted and deliberate efforts to ensure that these regulatory instruments are embedded with good governance injunctions and principles. Doing so requires a consistent and uniform approach structurally and procedurally within the law-making process. Below, we will observe the defining elements of the regulatory agencies, their functional areas and criticisms levelled against them.

4.2.2 Defining Regulatory Agencies

Regulation through agencification has a long history in contemporary South Africa and there is growing research on agencification as a form of delivering public services (Luyt, 2008). Over the past four decades and indeed after the attainment of constitutional democracy in 1994, there has been a growing number of regulatory agencies with a wide range of forms differing in their statutory foundations, their make-up of organisational design, and management autonomy (Christensen & Legreid, 2004). To discharge their regulatory function effectively and efficiently, regulatory agencies have additional competencies such as making of rules to regulate their specific functional area, monitoring the effective implementation of the rules, and imposing sanctions for violation of these rules (Meister, 2010).

Luyt (2008:7) points out that “there should be two important interrogatories to be considered when government ponders formation of a regulatory agency: firstly, whether there exists a valid justification for the regulation of a particular public function or service; and, secondly, whether such public function or service can better be regulated by an independent regulatory agency”. On the one hand, Laking (2002) offers the following reasons as the basis for the formation of regulatory agencies: the need to improve service delivery; the need to circumvent bureaucratic hurdles; the need to pay market-related wages; the need to attract talent and expertise. Therefore, entrusting regulatory agencies with greater management autonomy is viewed as the single alternative to responding to major failures within the public governance system (Laking, 2002). On the other hand, Puraite and Deviatnikovaite (2013) suggest that the following aspects require consideration when forming regulatory agencies: the specific statutory functions to be performed; determination of organisational development and design and leadership approach; conducting feasibility of their long financial sustainability and determining sources of their financial viability; determining the scope and ambit of their quasi-legislative and quasi-judicial powers; determining their accountability and reporting processes and procedures; their level of autonomy or independence regarding decision-making.

Thatcher and Stone Sweet, (2002) define regulatory agencies as: “governmental entities empowered to exercise specialised public function, separate from that of other institutions, but, neither directly elected by the people nor directly managed by elected officials”. They are government agencies accountable for “exercising autonomous authority over some area of public activity in a regulatory or supervisory capacity”. They are independent of other branches or arms of the government (Christensen & Legreid, 2004; Meister, 2010). Gill (2002) has defined the concept of autonomy in two ways: policy autonomy, referring to a specific public law power; management autonomy, referring to personal power. Regulatory agencies are usually part of the

executive arm of government, with statutory authority to execute their functions with oversight from EA and parliament. Their statutory powers are generally open to criticism by a competent judicial authority. They are commonly established to enforce industry standards, safeguarding and protecting public interests, or to oversee the use of public services. Majone (1994, 2001b) contends that by design, regulatory agencies are “entrusted with statutory independence from the pressures of political decision-makers to secure the legitimacy and stability of regulatory policies and to reinforce decision-making efficiency through technical expertise”. The greatest significant motivation for the formation of regulatory agencies, as well as the main determinant for the specific regulatory design chosen in each sector, is the issue of legitimacy (Majone, 1994, 2001b). As for Meister (2010), financial autonomy is a fundamental distinguishing factor ensuring the autonomy of regulatory agencies.

Regulatory agencies are organisations whose legal status is encapsulated in public and administrative law and whose functions are alienated from the executive. They have specific autonomous powers that are not like those afforded the executive since the executive has the authority to intrude where they are failing to discharge their statutory functions (Pollitt, 2004; Pollitt & Talbot, 2004). According to Meister (2010), regulatory agencies are useful in three ways: firstly, they have the required technical expertise and knowledge to deliver public services; secondly, they are powerful organisations that have specialised knowledge and competencies about the target sector; thirdly, they are independent to provide credibility and legitimacy in their actions. Generally, regulatory agencies have a twofold purpose: having the legal authority for market regulation through socially orientated values and safeguarding the interests of the public from dishonest conduct (Christensen & Legreid, 2004). Within the regulatory agency’s environment, the empowering legislation establishes social control based on public consultation and participation processes through parliamentary processes. These legislative development processes and mechanisms are useful tools to increase transparency, efficiency and effectiveness of regulation as well as reducing costs (Meister, 2010).

Critically, the regulatory agencies system is composed of two main components, on the one hand, it has consisted of the organisational design and structure and the empowering statute on the other. The organisational design and structure determine the organisational governance system (internally and externally), their service delivery model, and the level of their autonomy and independence. The empowering statute is concerned with the legal rules which establish the regulatory functions such as quasi-legislative and quasi-judicial powers (Puraite and Deviatnikovaite, 2013). According to Laking (2002), in the main, the regulatory provisions should

address the following main forms of external political direction: setting-out the strategic planning framework and contractual arrangements for the delivery of public services which is constantly monitored and review, setting-out the vision, mission, and strategic goals and objectives, setting-out specific performance measures and deliverables, implementing human resource planning processes and allocating human and financial resources to achieve intended outcomes, implementing performance monitoring and reporting processes, setting-out powers for the EA to give policy or strategic directives transparently, powers for the EA to intervene by dismissing the board if and when there are failing to discharge their fiduciary functions diligently and competently (Laking, 2002).

Distinguishing features of regulatory agencies include: they are organisationally alienated from the executive authority; secondly, “they are public organisations with statutory powers, i.e., quasi-legislative and quasi-judicial; thirdly, the leadership of these institutions are neither elected by the people nor directly managed by the politicians; fourthly, the powers and responsibilities of these institutions are given under the public law” (Bouckaert & Peters, 2004). Furthermore, Politt and Talbot (2004) has identified three central features of regulatory agencies. Firstly, their structural separation from the executive arm; secondly, their performance is managed and reviewed through a network of contractual arrangements which is monitored through regular reporting; and, thirdly, autonomy to allocate human resources, financial resources, and other managerial tasks. According to Wilensky (2014) delegation to regulatory agencies provides a renewed potential for government action that reflects the public interest. The classic advantages of administrative power such as insulation, flexibility, and expertise, are particularly important in the context of “wicked problems” in two ways: firstly, delegation to regulatory agencies can ensure hands-on action where politics would otherwise inhibit new legislation; secondly, it can ensure that the public interest is prioritised over economic interests, providing more effective regulation. For regulatory agencies to function efficiently and effectively, political authorities should refrain from involvement in individual cases but at the same time, they are required to intervene to reinforce their role as general regulators through the formulation of laws and rules or by the use of other general control instruments (Christensen & Legreid, 2004).

The importance of agencification by the government is indisputable as they play a crucial role in assisting in the delivery of public services. It is the researcher’s viewpoint that regulatory agencies can be divided into the following characteristic elements: regulatory authority separating a regulatory agency from the parent department and EA through a legislative framework that outlines their scope and powers. In legal jargon, they are called “creatures of statutes” as they

are legally allowed to execute their regulatory function within the purview of the statutes establishing them. Secondly, they are entrusted with a quasi-judicial role to administer their regulatory authority. For example, one of the underlying objectives of the EAAB and the HPCSA is to regulate professional conduct and to enforce compliance to high ethical standard through quasi-judicial structures. Thirdly, it is in the public interest that regulatory agencies are governed effectively and efficiently. Therefore, the principle of good governance is of paramount importance. Across all organisational levels, effective leadership at the governance and executive levels are key, implementation of effective and efficient systems and processes, as well as, gearing the general staff complement to espouse Batho Pele principles when performing their respective statutory role.

4.2.3 Functions of Regulatory Agencies

According to Majone (1996) and Thatcher and Stone Sweet (2002), the role of political office-bearers in the regulatory course is becoming irrelevant and outdated in favour of the impact of “non-majoritarian” technocrats that are working at arm's length from elected public representatives. Within this context, Otobo (1997:44) argues that “within the regulatory agency environment, the government’s strategic role is to design the rules of the game through rule and policy-making. The author elaborates that “these rules and policies most regularly cover a wide variety of public functions”. In this regard, governments assume the responsibility of being a producer and sponsor as opposed to its traditional role as a service provider”. Regulatory agencies exist to realise two fundamental functions, i.e., an enabling role and rule-making role. They are an enabler in political decision-making processes. They are not only crucial in the execution phase but are enthusiastically participating in all processes, for examples, in agenda-setting and offering strategic direction. Within the rule-making process, they make available administrative systems, technical knowledge and expertise, and warrant that they function autonomously (Maggetti, 2007).

Traditionally, regulatory agencies are established to accomplish the following critical functions: laying down policy prescripts and conditionality’s for their adherence; setting compliance standards; imposing sanctions for non-compliance; enforcement of quasi-judicial and administrative orders. They cover a wide variety of professions, for examples, regulating the estate agency profession to protect consumer interest and promoting acceptable public health standards and safety. Regulatory agencies are responsible for the formulation of rules regulating the conduct of the regulated professions and activities, application of quasi-judicial processes through adjudicating on cases, and investigation of public complaints with a view of addressing them. In their discharge of rule-making function, they apply and interpret laws passed by

Parliament since they have the required technical know-how to do so. Regulatory agencies execute a judicial role when in-house legal practitioners and adjudicators assist in resolving either individuals' disputes against regulators or complaints against agencies themselves. They are legally sanctioned to impose administrative fines and sanctions on those who infringe agency rules. They are also empowered to subpoena and cross-examine those who may have violated the law (Christensen & Legreid, 2001; Maggetti, 2007).

First and foremost, regulatory agencies are empowered to execute an executive function specifically designated, including the provisioning of ways and means to achieve socio-economic goals. These goals are strongly influenced by public policy-making processes. These are processes by which governments translate their vision into strategic programs and actions to deliver socio-economic outcomes (Meister, 2010). Christensen and Legreid (2004) hold that they are a special form of agency, who comparatively speaking, can be contrasted with other agencies by distinguishing their similarities and differences. Politicians delegate crucial regulatory functions to regulatory agencies such as rule and "policy formulation, information gathering and dissemination, monitoring and oversight, enforcement, adjudication, and application of rewards and sanctions" (Christensen & Legreid, 2001; Christensen & Legreid, 2004; Maggetti, 2007; Meister, 2010). In the normal course of events, strategic activities and operations performed by regulatory agencies involved, implementation of strategic priorities and programmes set by Parliament through rulemaking and compliance standards-setting. Furthermore, regulatory agencies monitor and enforce compliance with the compliance standards and rules by imposing sanctions and penalties when appropriate. While not subordinated to the executive, regulatory agencies' authority is restricted within the confines of the public policy set by the government (Meister, 2010).

Regulatory agencies play a vital role in political decision-making processes which are associated with the regulation of a specific sector. To empower them to deliver their mandates successfully they should possess the crucial technical expertise and know-how. Regulatory agencies are considered to have organisational strengths and capabilities capable of cumulating several competencies within the targeted sector. Given their independence from the political span of control, they are capable to command integrity and legitimacy in their actions and operations (Maggetti, 2007).

To make sure that regulatory agencies achieve their roles and responsibilities, they should implement governance mechanisms such as the following: transparently executing their regulatory functions; conducting their affairs in an accountable manner; implementing consultative and participatory decision-making processes; providing explanations of administrative actions by furnishing reasons for such actions; ensuring that administrative actions are taken fairly and impartially and promoting non-arbitrary and responsive decisions; and, ensuring that administrative decisions are reviewable by courts or other competent tribunals (Laking, 2002). Baldwin and Black (2008) contend that to be truly responsive, regulatory agencies have to be vigilant not only to the compliance of the regulators but in the following other ways: being responsive to the regulatory agencies' operational and regulatory frameworks; being consciously aware of the broader institutional environment of the regulatory regime; understanding the different logics of regulatory tools and strategies and the strategic and operational performance environment.

The central role being played by government in instituting the "overall legal and political rules through which various regulatory agencies will operate cannot be over-emphasised" (Denhardt & Denhardt, 2007:1). In this regard, the government plays a critical role in "ratifying, codifying, and legitimising decisions that arise from within the various regulatory agencies". The government provides an enabling environment by fusing different spheres of government for socio-economic growth and social stability. The government should ensure that it institutes broad fundamental corporate governance principles and practices which should apply to regulatory agencies. The government should provide strategic direction to the regulatory agencies and resolve resource distribution and dependency issues that may negatively affect them. The government should strike a balancing act between the competing socio-economic interests amongst the different sectors or policy networks. As a figurehead, the government should assist in negotiating and facilitating relationships across a wide spectrum of agencies usually utilizing incentives instead of directives. It should create an assurance that a single sector will not dominate others (Bourgon, 2007:11; Denhardt & Denhardt, 2007).

4.2.4 Criticism Against Regulatory Agencies

As Politt and Talbot (2004) argue, at the centre of agencification motive is the quality of service. This, as a result, exposes the government to political risks as there is an expectancy from regulatory agencies to assume significant policy and operational responsibilities. However, to reduce these probable risks, governments should specify clear statutory and policy guidelines on intervention measures demonstrating how and when they can intervene within the strategic affairs of regulatory agencies. Non-issue of such guidelines may result in governments losing political

control. As such, creating regulatory agencies can create a constituency for that agency that is politically problematic to reverse. When governments endeavour to re-assert control over agencies, the most vocal opponents may well be the agencies themselves (Politt & Talbot, 2004).

Within developing and emerging economies, robust and autonomous regulatory agencies are understood as a requirement of efficient market regulation and control (Laking, 2002). Regularly, international organisations have enthusiastically endorsed regulatory agency independence to safeguard their interests in the delivery of aid programmes. Consequently, this may have the potential of governments in these economies establishing regulatory agencies purely for compliance purposes rather than for socio-economic development (Laking, 2002). Sometimes, there may be tension between the strategic goals of a regulatory agency vis-a-vis those of the EA. When this happens, effective delivery of public services will be adversely affected due to many incongruous goals and functions. Arguably, granting regulatory agencies more autonomy will result in the less ambiguous and more efficient delivery of services.

Common arguments often raised in favour of agencification, include, having clear, specific, and unambiguous objectives; and, liberty to make management decisions without following bureaucratic hurdles (Gill, 2002). Comparatively speaking, they usually outperform those with multiple or unclear objectives and limited managerial freedom (Gill, 2002). However, as Laking (2002) argue, cautionary measures should be taken when delegating managerial freedom to regulatory agencies. Specific attention should be paid towards how government's broader interests will be safeguarded by such regulatory agency; how will the government ensure that the regulatory agency is carrying out the public policy or administering the law properly; whether the regulatory agency is not creating new risks or unintended liabilities for the government (Laking, 2002). Entrusting statutory power to a regulatory agency needs to be made explicit from the outset. This should involve the setting of the vision, mission, strategic goals and objectives, and policy directives of the regulatory agency; having contractual arrangements detailing-out performance targets and expected outcomes and outputs; providing for intervention measures in cases of non-conformance to the agreed-upon goals and objectives (Gill, 2002; Laking, 2002).

Puraite and Deviatnikovaite (2013) contend that it is important to isolate regulatory authority from a political authority to advance political continuity, to increase legitimacy and credibility of the regulatory assurances made by policymakers, and to demonstrate abilities of expertise. Other scholars such as Laking (2002) and Wilensky (2014) feel that the widespread of independent regulatory agencies can be associated with the changing role of government. Modern

governments operate like arbitrators and regulators, but not like entrepreneurs or market players. The extent of fulfilling the goal of independence for the regulatory agencies remains an empirical question. Whilst it is generally accepted that establishment of distinct and specialised regulatory agencies is advantageous in the creation of clearer delineation of roles and responsibilities and enhancement of greater efficiency, but “it may also lead to increased complexity, problems of coordination, higher transaction costs, and reduced potential for effective political control and accountability” (Christensen & Legreid, 2001; Christensen & Legreid, 2004).

It is a misnomer to treat regulatory agencies as autonomous since they are not fully autonomous. Their independence and freedom are constrained by their enabling statutes and policies. They are established to grant discretionary powers to impartial professionals who are expected to be knowledgeable and have the necessary expertise in the field. Contrarily, these professional experts sometimes become politically motivated and self-interested. It is therefore important to “treat the formulation, adoption, and implementation of regulatory reforms and policies as political, rather than technical phenomena” (Christensen & Legreid, 2004).

Some scholars such as Laking (2002) and Wilensky (2014) agree that agencification can yield beneficial outcomes. Indeed, some regulatory agencies have assisted governments in achieving socio-economic outcomes. However, others have caused unprecedented problems for public governance. Overall, there are serious concerns about the fragmentation of public governance within agencies and the feasibility of directing and controlling complex operations through agency agreements. Typical agencification problems include loss of political control over agency operations; abrogation of political accountability; non-compliance to good human resources planning, practices and policies; “exposure of the government to financial, political, and employment risks; exposure to reputational damage; opportunities for political patronage and corruption” (Laking, 2002).

As maintained by Wilensky (2014), agencification as an alternative form of delivering public services is controversial. There are fears that agencification infringes constitutional separation of powers principle between the legislature, the executive and the judiciary intended to provide adequate checks and balances to safeguard against oppressive governments. However, there are advantages for agencification such as provisioning of expertise and maintenance of independence from political processes which are progressively significant during complex technological advancements brought by the 4th industrial revolution and political polarity

(Wilensky, 2014). It is the researcher's viewpoint that the phenomenon of agencification does not encroach on the constitutional separation of powers. Agencification is rather necessary for the advancement of public services in a more effective manner. As an intrinsic element of the executive arm, regulatory agencies are not immune from checks and balances that are always available to keep them on their toes. Despite the best intentions, more often, government regulation disrupts freedom of market activity and market conditions which eventually result in harmful effects. "Poorly designed regulations may cause more harm than good; stifle innovation, growth, and job creation; waste limited resources; undermine sustainable development; inadvertently harm the people they are supposed to protect; and, erode the public's confidence in government" (Beales *et al.*, 2012). Christensen and Legreid (2004) argue that there should be a balancing act amongst the divergent viewpoints on agencification. The authors hold that "on the one hand there is to be more managerial autonomy and discretion and more decentralisation, flexibility, deregulation, and devolution. On the other hand, central administrative and political control is to be increased through contractual arrangements, performance management, centralisation, co-ordination, and re-regulation".

Given good intentions, regulatory agencies have the capacity of delivering their regulatory functions with greater efficiency. Their sustainable development is often frustrated by various factors like overlapping functions amongst regulatory agencies and various public entities thereby undermining service delivery initiatives; duplication and misalignment of regulatory activities in their establishment; challenges regarding over-regulation stifling flexibility in the implementation of their regulatory functions; over-handedness and/or interference by politicians. Greater co-ordination and collaborative efforts may be necessary between and amongst line-departments to mitigate some of the unintended consequences.

4.3 Statutory Functions and Responsibilities of EAAB and HPCSA

As already observed, the EAAB and the HPCSA are known as regulatory agencies established through various acts of parliament to regulate specific functional areas or market segments. As regulatory agencies, they are also entangled in complicated accountability relationships with different stakeholders. Moreover, as they function "at arm's length" from government, is not only their relationship with political actors that matter in fully understanding their accountability relations but also lesser formal accountability mechanisms against professional peers or the wider public matter (Meister, 2010). These mechanisms can potentially configure a comprehensive system of controls that keep them accountable without conflicting with their independence

(Majone, 1994, 2001b; Maggetti, 2007). Below, we consider the different functional areas of each of these regulatory agencies by elaborating on their specific statutory functions and responsibilities.

4.3.1 Functional Area of EAAB

The Estate Agency Affairs Board (EAAB) was established as a statutory entity in 1976 in terms of the Estate Agency Affairs Act, 112 of 1976 “the EAA Act”. As a regulatory agency, the EAAB is bestowed with the mandate to regulate actions of estate agents to safeguard the public interest. The EAAB regulates the estate agency profession by warranting that all persons carrying out the activities of an estate agent as a service to the public are licensed to do so by the EAAB. A fidelity fund certificate (FFC), which is to be renewed each year, is issued as confirmation of such licensing and validation that such person is lawfully eligible to carry out the activities of an estate agent. Another core function of the EAAB is to manage and control the Estate Agents Fidelity Fund (EAFF) to protect property consumer interests. The EAFF serves as an insurable cover for potential claimants who have suffered financial losses resulting from actions of unscrupulous estate agents. As a regulator within the real estate sector, the EAAB is responsible for regulating, maintaining, and promoting professional conduct of estate agents having due regard to the public interest. To this end, estate agents are under an obligation to comply with the tenets of the code of conduct. Estate agents are required to undergo prescribed education and training qualification to enable them to act competently and professionally in the discharge of real estate services. The EAA Act grants the entity quasi-judicial powers to investigate complaints against estate agents and institute disciplinary proceedings against offending estate agents where required. For effective streamlining of its service delivery, the mandate of the EAAB is built on five key regulatory pillars, namely: licensing of estate agents with the organisation, education and training of estate agents, inspection and Investigation of estate agents to ensure compliance with the EAA Act, disciplinary of estate agents found to be non-compliant to the EAA Act, and processing of claims against the EAFF.

The EAAB enforces and monitors industry compliance through regulation. The EAAB is therefore responsible for ensuring that all qualifying estate agents are issued with a valid FFC on time for them to trade legally. The EAAB is also responsible for the professionalization of the industry by ensuring that every person trading as an estate agent acquires the right qualifications as prescribed in the legislation. Additional responsibility conferred on the EAAB is to be a supervisory body in terms of the Financial Intelligence Act (FICA). As a supervisory body, the EAAB is mandated in terms of FICA to enforce and monitor industry compliance with the provisions of the

FICA and report to the Financial Intelligence Centre (FIC) on potential money laundering activities as well as reporting of suspicious financial transactions.

4.3.2 Functional Area of HPCSA

The Health Professions Council of South Africa (HPCSA)'s regulatory roles are to: "uphold quality health care of the public; prescribe standards of education and training of health practitioners; and, maintain highest standards of ethical and professional conduct by health practitioners" (Health Professions Act, 56 of 1974). To safeguard public interests, health practitioners involved in any of the health care professions integrated into the scope of the HPCSA are obliged by the Health Professions Act, 56 of 1974 "HP Act" to register with the HPCSA and failure to do so constitute a criminal offence. The HP Act governs all operational and strategic activities, "clearly defines the scope of each regulated profession, and sets clear processes to be followed by the HPCSA in achieving its statutory mandate". The HPCSA's statutory role is somewhat complex as it involves regulatory arrangements for a wide range of health professions, each being supervised by a professional board. The entity, therefore, plays a coordinating role by determining the strategic policy of the professional boards concerning finance, education, registration, ethics, and professional conduct, disciplinary procedures, and scope of the professions, inter-professional matters, and maintenance of professional competence. Moreover, it plays a quasi-judicial role by adjudicating in matters of dispute between professional boards and between professions grouped in such boards and mediating between the professions as well as between the professions and the public.

As a regulatory agency, the HPCSA is empowered to institute disciplinary proceedings regarding any complaint, charge, or allegation of unprofessional conduct against any registered health practitioner. If a registered practitioner transgresses the rules of conduct laid down by the HPCSA, such practitioner will be subjected to a disciplinary process where appropriate sanction may be imposed. In the public interest, the entity set standards for health practitioners' education and training, professional skills, conduct, performance, and ethics; keep a register of registered health practitioners meeting required standards; and, act for non-compliance. A member of the public may verify with HPCSA whether a health practitioner is registered.

4.4 Corporate Governance Arrangements of EAAB and HPCSA

According to McGregor (2015b), the foremost objective of corporate governance is to guarantee that public services are distributed in an equitable and cost-efficient and cost-effective manner

underpinned by Batho Pele principles of service delivery. The World Bank (2002) recognises the following four elements of good corporate governance FOR public entities: optimally functioning human resources and financial management; executing organisational functions in an accountable and transparent manner; developing and implementing legal frameworks appropriately; and treating and handling organizational information with the required disclosure requirements and transparency. The PWC Report (2015) notes that some common motives are surrounding the formation of public entities such as developing strategic interventions for socio-economic development and stability; investing in the national economy; implementing prudent fiscal, political, and CSR systems. In particular, the CSR system “encompasses the outcome of corporate activities within government entities targeted at fulfilling the organisation’s economic, ethical, legal, and discretionary responsibilities towards all the stakeholders” (Wood, 1991). The following discussion considers the corporate governance arrangements of SARAs. The starting point will be on the legal architecture and executive oversight accorded to these regulatory agencies. Thereafter, we will investigate their corporate governance structurally as well as their responsibilities towards the promotion of ethical behaviour when delivering their respective mandates.

4.4.1 External Governance Arrangements of EAAB and HPCSA

Regulatory agencies operate within a somewhat complex external governance system. Not only are they expected to comply with a wide range of legal architecture, but they are also involved in external governance arrangements through executive oversight by the EA’s. Below, we consider the legal architecture governing regulatory agencies as well as their external governance arrangements.

4.4.1.1 Constitution of the Republic of South Africa, 1996

In South Africa, the Constitution (1996:2) is the supreme law within the country and any law that is inconsistent with it is considered invalid. Accordingly, the Constitution empowers the government to establish various organs of state to aid the government in delivering public services (section 239). The Constitution (1996:195) lays down basic values and principles governing public administration and the corporate governance fundamentals to be followed and provides that public administration should be governed through democratic values and principles, including, upholding and maintaining high standard of professional ethics; stimulating the efficient, economic, and effective use of public resources; preserving a development-oriented public administration; provisioning of public services in an impartial, fair, equitable, and without bias; being responsive to people’s needs and inspiring public participation in policy-making; constructing accountable and transparent public administration by nurturing timely, accessible, and accurate information; cultivating good human resource management and career-

development practices, to maximise human potential; guaranteeing a broadly representative public administration of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation. Government's developmental goals as mandated by the Constitution finds application through the various policies and programmes expected to be developed and implemented across all spheres of government as well as public entities.

4.4.1.2 Public Finance Management ACT, 1999

Pre-1994, government's budget planning and expenditure control was administered under the erstwhile Exchequer Act of 1975 severely condemned for being rule-bound and narrowly focused on financial expenditure control. One of the fundamental challenges facing the newly created democratic government in 1994 was modernising the system of financial management in the public sector towards enabling public sector managers to focus on their actual managerial roles and be held accountable, as well as to reduce waste and corruption in the use of public assets. Hence, the promulgation of Public Finance Management Act, No.1 of 1999 (PFMA) to promote good financial management to maximise service delivery by means of effective and efficient use of limited financial resources. The PFMA gives effect to Chapter 13 of the Constitution requiring government "to establish the National Treasury, to introduce uniform treasury norms and standards, to ensure financial accountability and transparency and to set operational procedures for borrowing, guarantees, oversight over government revenue funds". The PFMA has, therefore, become the cornerstone of public management governance within South Africa and it is, therefore, a guiding instrument for prudent and efficient public financial planning and management within government and all its entities. Van der Nest *et al.*, (2008:546) assert that "the introduction of the PFMA has ushered in stringent measures to implement principles of corporate governance at SARAs especially through improved financial management that forms the cornerstone of sound service delivery and overall contribution to the development of the economy". The PFMA specifies fiduciary duties and general responsibilities of 'boards of public entities, heads of departments, accounting officers, managers, and employees generally, and provides for personal liability in instances where there is a potential breach of legislative duties.

4.4.1.3 Executive Authority Oversight Role

As we have already observed in the preceding sections, the government establishes regulatory agencies and provides an enabling environment by granting them rule-making powers and regulatory authority within a specified functional area. The respective founding statutes, e.g. the EAA Act and the HP Act lay down governance arrangements and control mechanisms to ensure executive oversight by the government as the sole shareholder of the EAAB and the HPCSA. To strengthen the executive oversight role, these regulatory agencies are compelled to comply with

several additional legislative, regulatory, and policy frameworks. They are obligated to enforce the prescripts of the PFMA in the conducting of their daily organisational operations and activities. Additionally, the Treasury Regulations (2001) requires them to prepare multi-year strategic and annual operational performance plans setting-out the contractual arrangements between them and their respective EA's.

Notwithstanding this public management governance instrument provided by the PFMA the understanding and know-how of EA's, their Directors-general, and CEO's of public entities generally to carry out their corporate governance roles and responsibilities vary sharply. There are some capable and skilled EA's, Directors-general, and CEO's, which is an exception than the rule. Taking accountability for SARAs entails particularly understanding and know-how of the conceptual value of corporate governance. How well it is understood depends on the intellectual capacity and integrity of the EA, Director-general, or CEO. Deficiency of intelligibility, confidence, and capability to supply "public services in a cost-effective and cost-efficient manner" can be some causes of disruptive governance of SARAs (McGregor, 2015a). It is therefore vital for the government to put in place effective oversight of SARAs through the implementation of effective systems, processes, and practices supported by efficient institutional support.

There is indeed some evidence suggesting that regulatory agencies have improved both the quality and the credibility of public performance (James, 2003). Christensen (1999) suggests that the boards as governance structures can potentially provide a buffer to regulatory agencies from parliamentary interference by blurring political accountability. Regulatory agencies' boards may be rendered dysfunctional if there is frequent and uncoordinated intervention by the EA. There is no justification for the establishment of a regulatory agency where the EA's officials take day-to-day operational decisions.

4.4.2 Internal Governance Arrangements of EAAB and HPCSA

The corporate governance phenomenon as a favoured approach is well-entrenched within the private sector. There is a need for the public sector to undergo a paradigm change from bureaucratic, traditional, and rigid public administration practices and procedures, to align with private sector best practices. Consequently, this will expose the public sector to new organisational governance arrangements characterised by corporate ethos, "such as quality management, research and development, and human capital management, in an environment characterised by political oversight" (Thornhill, 2007:13). The various King Codes on Corporate Governance (1994, 1998, 2002, 2009, 2016; Protocol, 2006) play a pivotal role in ensuring that

SARAs are committed to and fully endorse their underlying corporate governance principles and practices. To achieve good governance, SARAs should comply with high standards for good governance, constantly review and adapt their governance structures and processes to facilitate effective leadership and sustainability. They need to recognise their responsibility to conduct their affairs with prudence, transparency, accountability, fairness, and in a socially responsible manner, thereby safeguarding the interests of all its stakeholders.

At the outset, to be effective, SARAs' boards should be strengthened by having more independent board members. These boards should be capacitated to discharge their monitoring function prudently. There is growing recognition that SARAs' boardrooms have failed to discharge their fiduciary responsibilities (Mwaura, 2007; Okeahalam *et al.*, 2003). "Board members ought to transition from their historical roles as mere "pawns" of management to become effective monitors of corporate officers" (Pargendler, 2016). Effective monitoring necessitates a certain level of separation from management. Social activists view independent board members as an ideal mechanism to render corporate governance management more sensitive to the public interest. On the other hand, other scholars, by contrast, regard the rise of independent board members as perfectly consistent to maximise shareholder value (Muller *et al.*, 2016; Pargendler, 2016). Since the contractual relationship between the shareholders and the organisation is difficult to safeguard, therefore, for this reason, the board should be regarded principally as a governance instrument of shareholders (Pargendler, 2016; Yacoob & Basiuni, 2013).

One of the reasons for the establishment of regulatory agencies is that they deal with complex matters requiring specialised expertise. As it can be observed, the council of the HPCSA or the board of the EAAB are consisting of complex internal corporate governance arrangements. For example, the HPCSA council is consisting of 32 members drawn from the various health professions stakeholder groupings of a combination of members registered in terms of the HP Act and designated by various professional boards of the HPCSA; community representatives not registered in terms of the HP Act; representatives of the Departments of Health and Education; representatives of the South African Military Health Service (SAMHS), and the South African University Vice-Chancellors' Association. The EAAB's board consists of a total number of 15 members, five members representing each of the following stakeholder groupings: consumer interests, estate agency profession, and specialised expertise, such as law, finance, and property. The Council or board members of the EAAB and the HPCSA are appointed on a part-time basis for a period of up to 3 years. The council or board of the respective institutions execute corporate governance responsibilities, including, resources planning, monitoring management, and

exercising control over the organisations' activities. They develop a broad policy for the organisations, provide inputs on various aspects and make decisions on matters of strategic importance.

To assist in the effective and efficient functioning of council and board, the various SARAs establish committees consisting of a mixture of prescribed committees in accordance with various King Codes on Corporate Governance (1994, 1998, 2002, 2009, 2016), other legal instruments, and the PFMA (1999), Companies Act (2008), as well as sector or market-specific committees. For example, the professional boards under the HPCSA are coordinating entities of healthcare practitioners registered with the HPCSA. The respective professional boards that are established for a specific profession, deal with any matters relating to a specific profession. The professional boards are 12 in total and they include dental Assisting, Dental Therapy & Oral Hygiene; dietetics and Nutrition; emergency Care; environmental Health; medical and Dental (and medical science); medical Technology; and Occupational Therapy, Medical Orthotics.ng Opticians; physiotherapy, Podiatry and psychology.

All the organisations under study have audit and risk management committees partially or totally independent from the board or council chaired by an independent non- executive Chairperson. Audit and risk management committees are established to provide quality assurance on the reliability and integrity of both financial and non-financial activities of the different organisations. These committees monitor the internal controls in place, to ensure that organisational interests and assets are protected. They ensure that an effective internal audit and external audit systems are in place and their roles and functions are sufficiently clarified and coordinated to provide an objective overview of the operational effectiveness of the organisations' internal controls, risk management, governance, and reporting. They should monitor the process of addressing significant matters that might impact on internal controls arising out of the internal and external audit reports. The EAAB and the HPCSA consider corporate governance and the management of risk as fundamental mechanisms to drive good organisational practice and they are committed to ensuring that good governance is practised. Their processes and practices have their origin in the principles of integrity and accountability. This is evidenced by numerous regulatory and control systems that government as the overall shareholder has put in place to guard against maladministration.

4.4.3 Promoting Professional Conduct and Ethical Behaviour

Trust in governance is a reliable variable indispensable for good corporate governance of SARAs. As a dependable variable, trust is capable of being divided into two dimensions. The first dimension relates to a state of mind that influences “attitudinal, perceptual, and behavioural outcomes” (Schoorman *et al.*, 2007). “From an economic inclination, trust has the capacity to reduce transaction costs in organisations due to reduced spending on control” (Das & Teng, 1998; Dyer & Chu, 2003) and “increases the risk for opportunism” (Nooteboom, 1996). Schoorman *et al.*, (2007:712) define trust as “the willingness of a party to be vulnerable to the actions of another party based on the expectation that the other will perform a particular action important to the trustor, irrespective of the ability to monitor or control that other party”. Trust is predominantly distinguished between system trust, and person trust (both internally within the organisation and externally with stakeholders. System trust describes the trust in system processes, management systems, or governance structures. Person trust describes trust in individuals or groups (Sydow, 2000). Trust is reflected in stewardship theory with its psychological predisposition and a fundamental postulation that stewards serve higher-order needs and aim for the good of the organisation they work for (Schoorman *et al.*, 2007).

The second dependable element equally important is corporate governance ethics. Ethical issues are “situations of ethical decision-making in which a choice has to be made between two equally desirable or undesirable alternatives” (Walker & Lloyd-Walker, 2014). Ethical issues relate to the “justification of actions and practices within specific situations and are a philosophical reflection on the moral life and the principles embedded in that life” (Buchholz & Rosenthal, 1996). According to Schoorman *et al* (2007), “the effect of ethical leadership at the organisational level can be reflected in two ways: directly influencing employees at the adjacent layer within the organisational hierarchy, and indirectly by influencing the overall organisational culture, which permeates more than just the next layer in the hierarchy”.

Both trusts from a psychological perspective and corporate governance ethics play an important role within the regulatory agencies’ landscape. Centrally, regulatory agencies are ever-more expected to promote the highest ethical behaviour amongst the various sectors they are regulating. For instance, within the HPCSA, there is “a human rights, ethics and professional practice committee which is set up primarily to promote respect for human rights and the rights of patients amongst persons registered with Council and to accordingly advise the council and professional boards on such matters like human and patient rights and dignity; establishment of

appropriate guidelines of ethical conduct and maintenance of high standards of professional practice amongst health practitioners; analyse issues raised by committees of the preliminary inquiry and professional Conduct committees regarding treatment and care of patients; provide guidance to the professions concerning the interpretation of the policies, rules and rulings on ethical and professional conduct". Within the EAAB and the HPCSA, disciplinary committees are set-up to investigate complaints against registered practitioners that may result in the imposition of the appropriate sanction, depending on the outcome of such disciplinary hearing.

Given the need to create a human rights culture, be it in the provision of health care and the rendering of real estate services, the EAAB and the HPCSA, regulate professional conduct and prohibit undesirable practices to protect the public through the codification of organisational policies, guidelines, and codes of conduct, prohibiting ill-practices, such as unprofessional conduct; unauthorised advertising; criminal convictions; improper relationships; discrimination. Violation of such policies and codes of conduct may result in such practitioner being charged and subsequently be disqualified to practice, ordered to take certain steps to remedy the malpractice, or a fine be imposed upon such practitioner. The prerequisite for the registration of practitioners with the various regulatory agencies guarantees practitioner's conferral of professional status; right to practice the profession that he/she is qualified for; assurance that no unqualified person may practice these professions; and, credibility as a competent practitioner who may command a reward for his/her services. Practitioners are required to register with the regulatory agencies so that the public can be sure that: they are sincere; they meet standards of professional conduct; and, members of the public are protected.

4.5 Importance of Corporate Governance to Regulatory Agencies

Scholars such as Amoako and Goh (2015), McGregor (2015a), Mwaura (2007), and Okeahalam *et al.*, (2003), advocate that properly constructed and effective legal and regulatory framework, government's activism, inclusive stakeholder management approach, credible and effective transparency and disclosure and accountable and board activism, are the foremost building blocks towards virtuous corporate governance within SARAs. When corporate governance works, it provides the safety net "to ensure that the main components are in place to create social capital outcomes". SARAs' boards are accountable for determining strategic direction and to ensure that the CEO and management deliver socio-economic targets on time.

Corporate governance is premised to attain the following key objectives: "efficient, effective, and sustainable SARAs that contribute to the welfare of societies by creating employment and

solutions to emerging challenges; responsive and accountable SARAs; recognition and protection of stakeholder's rights. Corporate governance is crucial for appealing to both local and foreign investors and assuring them that their investments would be secured and efficiently managed, in a transparent and accountable manner, create competitive and efficient enterprises, enhance accountability and performance of those entrusted to manage SARAs, promote efficient use of limited resources" (Okeahalam *et al.*, 2003). The following are considered to be key pillars for corporate governance practices for SARAs' good governance: management takes decisions "to maximise strategic objectives; incentives for management to work towards the organisation's strategic objectives; sanctions for misdemeanours; a mission statement that places a priority on good corporate governance; public policy statement that emphasises strict ethical behaviour; sustainable development; easy access to information about the organisation; risk management; monitoring people's ethical behaviour" (Amoako & Goh, 2015; Larcker & Tayan, 2011; McGregor, 2015a; Monks & Minow, 1995; Mwaura, 2007; Nordberg, 2011; Okeahalam *et al.*, 2003). The study by Yacoob and Basiuni (2013) categorises corporate governance model into the following main "five different aspects of governance: the existence of governance structure; ownership and shareholders' rights; roles of the board; availability of regulatory framework and control mechanisms; and disclosure and transparency requirements". When corporate governance operates optimally, "the three key players: the management, the board, and the shareholders, provide a system of checks and balances, a system for a transparent and accountable system for promoting objectively determined goals and benchmarks" (Pargendler, 2016). In particular, the board is seen as the primary means for shareholders to exercise control over management (John & Senbet, 1998) and has obligation to determine the organisation's overall strategy and to ensure that adequate controls are in place to protect shareholder value (Keenan, 2004). In the context of SARAs, the board has other fiduciary duties including the protection of public interests and ensuring the highest standard of ethical behaviour by the various stakeholders.

It is contended that the board as a governance structure faces three major challenges: identifying organisational changes to enhance governance generally; applying the changes to enhance organisational performance; and, finally, identifying methods or techniques required introducing the changes (Amoako & Goh, 2015; Yacoob & Basiuni, 2013). Fundamentally, to be effective, SARAs' boards should espouse to the following basic principles: accountability; oversight over the management's activities; organisational strategy making; and policymaking. Yacoob and Basiuni (2013) categorise these aspects into two: compliance roll, referring to accountability and oversight role; and, organisational performance role, referring to strategy formulation and policymaking role. Therefore, the selection of board members is considered an utmost important factor for determining who exercises control (Mace, 1986; Styles & Taylor, 1993). Selection of

board members who are qualified and knowledgeable in their field and competent in decision making is a prerequisite for an effective board (McGregor, 2015a; Thomas, 2012). For SARAs, the government normally nominates board members to represent its interest (Khongmalai *et al.*, 2010). Although the board members are nominated by the government (as the shareholder), they act as stewards of the organisation because of their ostensible obligation (as civil servants) to serve the nation and not to advance their personal interest in the organisation (McGregor, 2015a; Mwaura, 2007; Thomas, 2012).

Sincere disclosure and transparency are indicators of good corporate governance. With sincere disclosure, prevailing and prospective stakeholders can distinguish between good and bad corporate decisions at an average level (Soltani & Maupetit, 2013). Disclosure and transparency should, therefore, decrease the organisation's cost of capital, as investors become sceptical (Harjoto & Jo, 2011; Soltani & Maupetit, 2013). Sokol (2009) argued the importance of laws and legal provisions to promote good corporate governance and transparency. Transparency is depending on the governance mechanism brought about by the enforcement of legal and regulatory requirements. An empirical study of state-owned hotels in China by Tang *et al.* (2006) also suggested that "among other critical issues, lack of transparency as a result of a conflict of interest between ownership and management worsened the situation". Muller *et al.*, (2016) identifies different types of ethical issues in different contexts: "transparency issues, which refers to a reluctance to report actual performance; relationship issues, which refers to inappropriate inter-personal or informal relationships; and, optimisation issues, which refers to optimising activities to meet organisational objectives".

The strategic human resource management as a discipline and complementary aspect of promoting good corporate governance recognises three basic approaches organisations should employ for controlling employees: "outcome control, which permeates an organisation's and provides for legitimate evidence of performance; behavioural control, which diminishes through the hierarchy and is appropriate when management understand the nature and the means-ends relationship of the tasks; and, span control, which is socially exercised through belongingness to certain groups" (Brown & Eisenhardt, 1997; Eisenhardt, 1989; Ouchi, 1980; Ouchi & Johnson, 1978). The control mechanism reflects agency theory with its economic view towards governance and its underlying assumption of opportunistic and self-interested agents who need to be controlled (Jensen & Meckling, 1976).

The concept of corporate governance underlies the need for a paradigm shift from bureaucratic traditional and rigid public administration practices and procedures to alignment with possible best practices in the business environment. Consequently, SARA is now exposed to new organisational governance arrangements characterised by corporate ethos, such as quality management, research and development, human capital management, and entrepreneurship in an environment characterised by political oversight (Thornhill, 2007:13). The various King Reports on Corporate Governance (1994, 1998, 2002, 2009, 2016; Protocol, 2006) play a pivotal role in ensuring that SARA is committed to and fully endorse their underlying corporate governance principles and practices. To achieve good governance, SARA should subscribe to standards for compliance, constantly review and adapt their structures and processes to facilitate effective leadership and sustainability. They need to recognise their responsibility to conduct their affairs with prudence, transparency, accountability, fairness, and in a socially responsible manner, thereby safeguarding the interests of all its stakeholders. Luyt (2008:1) contends that “based on research done by the Public Service Accountability Monitor (PSAM), the South African government as the owner has wasted resources, weakened the value of the business and delivered, too often, inferior services to citizens”. The government as purchaser overspent, failed to get value for money, produced a moral hazard, denied citizens choices and accountability for services and crowded out more efficient and effective private delivery of goods and services. The government as regulator distorted markets, protected poor performers, misallocated resources, added to the transactional costs and compromised competitiveness (Luyt, 2008:1).

4.6 Conclusion

In conclusion, to ensure that regulatory agencies are well-managed, the government is persistently required to monitor the interplay of their complex governance arrangements. This will in turn guarantee full maintenance of principles of democracy and social equity. The government should guarantee that democratic processes are maintained and that public interest is served. Emphasis should be laid on a governance system that ensures efficient, effective, and accountable public administration underpinned by sound policy choices, effective management strategies, and ethical posture. “These reforms require a broader definition of public results, an expanded view of the role of government and a dynamic understanding of the field of Public Administration. This situation requires support from a new synthesis of Public Administration, which considers the historical foundations, the current realities of practice as well as new insights from other disciplines” (Bourgon, 2007:14).

Having understood the contextual corporate governance operational and strategic landscape of SARAs the following chapter delves into extensive scrutiny of additional theoretical constructs

that may be adopted by SARAs to promote their compliance to corporate governance. The theoretical lenses to be constructed will be premised on the foundation of African philosophical and ontological perspectives.

CHAPTER 5

UBUNTU THEORETICAL PERSPECTIVE

5.1 Introduction

Chapter 5 details the corporate governance phenomenon in general terms and emphasizes stakeholder theoretical perspective, for a plausible generation of a new theoretical perspective called “Ubuntu theory” having its genesis upon African philosophical perspectives and value-system. The chapter provides argumentation towards recognition of Ubuntu theory as an expansion of the stakeholder perspective by offering a contextual setting for the employment of the theory. Additionally, the chapter lays down a theoretical grounding of the Ubuntu theoretical perspective and provides an elaborative analysis of its philosophical foundations, identifying its distinguishing features and characteristics, understanding its contextual relevance, and contrasting the Ubuntu perspective against other dominant theoretical perspectives applicable within the corporate governance field.

5.2 Genesis of a Theoretical Perspective

All forms of research find their basis on theoretical assumptions, although such assumptions are probabilistic, noted, or ill-informed. There are some wide agreements among researchers that various social research studies can add value to theory through clarifying how the social world works. Social research is more beneficial when the intricacies of theory and social enquiry are supportive of each other to the extent that data collection and analysis is based on it (Denzin & Lincoln, 2000; Ritchie et al., 2003:25). Without research, theory remains a simple rhetoric (Silverman, 2000:86). According to Campbell (1990:65), theory is “a collection of assertions, both verbal and symbolic, that identifies what variables are important and for what reasons, specifies how they are inter-related and why, and identifies the conditions under which they should be related or not related”.

Social theoretical research focuses on the testing, creating, or development of how human beings perceive the world around them. In this regard, social researchers undertake social research to develop new theories or refine current theories (Patton, 2002:215; Ritchie et al., 2003:20). Scholars such as Reay and Whetten (2011) and Whetten (1989) characterise the development of a theoretical perspective into three elements: the “what”, “how”, and the “why”. The “what” seeks to explain the phenomenon and the related aspects extensively; the “how” explains the

constituent elements are associated; and, the “why” clarifies the rationale underlying the identified elements and how they are related. As for Molasso (2006), a theoretical perspective offers a direct and practical description for answering questions, such as, what is a theoretical perspective? How is it found? Where is it used? What impact is it having? Theory development and refinement are important in the undertaking of a scientific enquiry process. This process will result in a detailed comprehension of the corporate governance concept through which key constructs, inter-relationships, and contexts are identified and described (Glaser and Strauss, 1967). An important factor to consider for a theoretical perspective to be reliable and dependable, it should be amenable to generalizability (Lee & O’Neill, 2003; Smith & Hitt, 2005; Whetten, 1989).

The ground-breaking work of Glaser and Strauss (1967) offer guidance towards generation and refinement of theoretical perspectives in social and business sciences using the grounded theory methodological perspective. They describe the grounded theory as the systematic founding and interpretation of theory from data collected in social and business studies. Their seminal work was followed by a series of their studies (Glaser, 1978, 1992, 1995, 1998, 1999, 2001; Strauss, 1987; Strauss & Corbin, 1990, 1994, 1997) intended to further develop the grounded theory methodological perspective to generate new or refine existing theoretical perspectives. Strauss (1987) offers a comprehensive explanation of grounded theory methodology by stating that “the methodological push of grounded theory is focused on the development of theory, without discrimination of the types of data, areas of research, or leaning towards the interests of a particular theory”. Grounded theory is rather concerned with a qualitative analysis that is inclusive of numerous unique features using a coding paradigm to ensure conceptual theoretical development and thickness. Four distinct features are apparent in the definition of “grounded theory: the primary objective of this methodological perspective is theory construction, gathering of data in a systematic way, data analysis, and theoretical sampling”. Glaser and Strauss (1967) stress that the gathering, coding, and analysis of data should be simultaneously performed since doing them separately might be a hindrance to theory generation. According to Urquhart *et al.*, (2010), applying effective grounded theory requires thinking beyond data labels.

According to Glaser and Strauss (1967), generating theory or refinement thereof should not be approached haphazardly, but instead should assist in abstract categories from the data. They offer a three-stage approach to theory generation and refinement: stage 1: applying open-coding to identify descriptive elements and categories; stage 2: applying selective coding to interpret categories, elements, and constructs; stage 3: formulating theory through theoretical coding and constant comparison. Glaser (1978) posits that “analysing substantive theory can be done by

comparing it with other related theories”. Strang and Meyer (1993) explain that theorisation can provide legitimacy through transposing thoughts into detailed formats in accordance with the environment in which they occur.

Grounded theory methodological perspectives have gained much traction over the years and are considered a key feature of qualitative studies (Miles & Huberman, 1994). Emphasising the importance of the grounded theory methodological perspective, Urquhart *et al.*, (2010) state that grounded theory methodological perspective is invaluable when formulating contextual and process-oriented descriptions or explanations. Martin and Turner (1986) view grounded theory methodological perspective as “an inductive theory discovery methodology that gives the researcher flexibility to formulate a theoretical trail of the broader characteristics of the topic when at the same time using empirical data to ground the study”. It presupposes continuous interchangeability of data gathering and analysis processes. Two segments are underlying grounded theory process building: conceptualisation that considers categorisation, and theory scoping (Orlikowski, 1993; Urquhart *et al.*, 2010). Opponents of the grounded theory method such as (Benoliel, 1996; Elliott & Lazenbatt, 2005) view the method as a means of coding data and not necessarily theory generating.

It is our view that grounded theory methodological perspectives have over five decades been used to generate or refine new theoretical perspectives in the fields of social and business sciences. The ground-breaking study by Glaser and Strauss (1967) and subsequent development of the grounded theory methodology have been instrumental in shaping previous and current research. Indeed, many scholars and researchers are and have used grounded theory methodological perspectives to conceptualise and theorise new and existing constructs. Theoretical perspectives grounded on this methodological perspective offer a contextual setting for its practical application in real-time life experiences. This study has employed the grounded theory methodological principles to generate a new theory called Ubuntu as an extension or refinement of the stakeholder theory. The journey towards the generation of this new theoretical perspective begins with a diagnostic overview of the concept of Ubuntu philosophical grounding consisting of its description, its underlying principles, and some of the criticisms levelled against the concept. This will be followed by an analysis of its essential characteristics forming the bedrock of conceptualisation and theorisation of the Ubuntu theory. The conceptualisation and theorisation process will delve into the rationale, the contextual setting, the descriptive elements, and contrasting of the Ubuntu theory with other existing dominant theoretical perspectives.

5.3 Philosophical Grounding of The Ubuntu Concept

While it is not standard practice to start a definition of philosophical concept with a story, the researcher deemed it necessary to defy convention and provide a brief introductory story thus:

“In certain regions of South Africa, when someone does something wrong, he is taken to the centre of the village and surrounded by his tribe for two days while they speak of all the good he has done. They believe each person is good, yet sometimes make mistakes, which is really a cry for help. They unite in this ritual to encourage the person to reconnect with his true nature. The belief is that unity and affirmation have more power to change behaviour than shame and punishment. This is known as Ubuntu – humanity towards others” (Author unknown).

Murithi (2009a:226) defines Ubuntu concept as an African philosophical perspective influenced by the underlying need for the fulfilment of what it means to be humane. Broodryk (2010) explains the concept as the symbol of being a human being endowed with humaneness and humanity principles. As can be observed in the following paragraphs, the Ubuntu concept has over the years been exposed to diverse backgrounds and contexts and subjected to different interpretations and definitions to find its better expression. The following paragraphs set-out a critical evaluation of the philosophical underpinnings of the concept with a view of differentiating its underlying definition, principles, criticisms, and characteristics. As a precursor to the identification of its characteristic elements, we begin by setting out the history and development of Ubuntu; to be followed by a consideration of the underlying principles surrounding the concept; and, lastly, an examination of the criticism levelled against the concept as an independent concept.

5.3.1 Origin and Development of The Ubuntu Concept

Over the years, academics, writers, and scholars offered an array of variations of the concept of Ubuntu, resulting in the concept being defined loosely according to different contexts and settings. Himonga *et al.*, (2013) describe the concept as an olden traditional African worldview or a philosophy of life, strongly influencing social morality through commonly determined value-system. Ubuntu concept views human beings as spiritual beings moved by a pervasive spirit of solidarity reflective of inter-group common value-system underpinned by individualistic and collectivistic tendencies, communalism and caring for one another, being hospitable and being respectful towards one another (Mangaliso, 2001). The concept embodies fundamental African value-system signifying African social morality, social interactivity, thoughts, and conduct towards

each other within communal gatherings (Sulamoyo, 2010:41). The concept stands-out as an exclusive African livelihood, a philosophy of a culture capable of being replicated within other socially-oriented perspectives, belief systems and traditions (National Heritage Charter, 2005). Louw (2010:2) states that Ubuntu is fundamentally rooted on two cardinal principles, i.e. having unconditional respect for one another and being empathetic and compassionate for others translating to being humanness or humaneness which ultimately invokes an undying sense of caring, sharing, and understanding for one another. Ubuntu represents a campus for social morality interconnecting people (Bennett, 2011) and, it is a distinctive African value-system and social morality encouraging communalism and communitarianism amongst the people (Mbigi, 1997; Kamwangamalu, 1999).

Historically, African traditional and cultural systems are based on the belief that all worldly beings and things, seen and unseen, are inter-woven and inter-connected (Armah, 2006). This sense of interwovenness and inter-connectivity within the African traditional and cultural systems is bounded on rational inter-relationships the cosmos, divinity, humanity and reality. Armah (2006) posits that it is this interwovenness and inter-connectivity that distinguishes the Ubuntu concept from other worldviews and philosophies. Swanson (2008) reckons that the concept of Ubuntu dates back from the pre-colonial era and it has been useful in guiding social morality and the resolution of conflicts amongst African communities.

Many Sub-Saharan African communities, especially around the eastern, central, and southern Africa, have for many centuries ago, applied Ubuntu as a formidable social cohesive force (Mnyaka & Motlhabi, 2005:215; Muchiri, 2011; Ntibagirirwa, 2009:10; Ramose, 2010:300; Taylor, 2014). Ubuntu being a central dominant narrative surrounded their psycho-social behavioural interactions and inter-relationships (Mangaliso, 2001; Taylor, 2014). The South African context of Ubuntu originates from the African maxim: “motho ke motho ka batho – Sotho”, or “umuntu ngu muntu nga bantu – Nguni”, translated as “a person is a person through other persons”, “I am because we are; we are because I am”, “persoon is n persoon met ander persone – Afrikaans” (Goduka, 2000; Mbiti, 1970; Ramose, 1999, 2010). As Ramose (2010) suggests, the fundamental ethical perspective of Ubuntu is premised on the proverb “feta kgomo o tshware motho” directly translated as “go past the cow and catch the human being” signifying the absolute divinity of the human being relative to his/her relationship with the visible and invisible beings. Other various Sub-Saharan African countries reflect similarities to the South African context in how they generally view and apply the concept. For example, to describe the human being the Sukuma in Tanzania refers to it as “bantu”, the Herero of Namibia as “avandu”, and in the central African

countries the common references thereof are “ngumtu, kubuntu, and edubuntu”, and its Kenyan Swahili equivalent is “watu”, all meaning ours or “people” (Newenham-Kahindi, 2007, 2009; Taylor, 2014).

The concept is an African philosophy of life that has over the years been applied in specific settings and general ways (Mokgoro, 1997). According to Arthur *et al.*, (2015), the concept is amenable of finding expression in specific situations, such as conflict resolution through indigenous conflict resolution mechanisms. Given its potential to foster cohesive inter-connectivity and inter-relationships amongst people, scholars such as Du Plessis (2011), Nicolaidis (2014), and West (2006), hold that the concept has a greater potential to transform contemporary South African organisational discourse. Previous research indicates that Ubuntu as a worldview or philosophical concept has found application in the various fields: political circles, corporate world, justice and conflict resolution (Capurro, 2008; Du Plessis, 2011; Nicolaidis, 2014; Olinger *et al.*, 2007; West, 2006). Khomba and Kanguade-Ulaya (2013:686) note that when properly designed and constructed, the deep-seated Ubuntu value-system can find practice outside the African continent within various contexts and settings. Given its rich value-system, Ubuntu should inherently inculcate a culture of transparency, fairness, integrity, and accountability amongst the people (Ramose, 2010; Venter, 2004) and its socialisation within communities and organizations should be strengthened through education and awareness if it were to receive wider recognition (Ramose, 2010).

From the above discussion, it can be deduced that Ubuntu is not easy to define as is the case with other African phrases. However, the following distinguishable features can be found within the multiplicity of definitions: Ubuntu has mostly been defined as an African perspective of understanding relations among human beings (Himonga *et al.*, 2013) the concept is an African philosophy of life (Himonga *et al.*, 2013; Mnyaka & Motlhabi, 2005; Ntibagwirwa, 2009; Ramose, 2010), a determining factor in influencing social conduct (Himonga *et al.*, 2013; Mokgoro, 1997; Sulamoyo, 2010), stands for “personhood, humanity, humaneness, and morality” (Brack *et al.*, 2003:319; Goduka, 2000; Louw, 2010; Mangaliso, 2001; Mbiti, 1970; Ramose, 1999, 2010). According to Taylor (2014), the term Ubuntu directs relations among people and/or communities, in line with the universal African understanding that “a person is a person through other people”. As a concept amenable to be applicable within diverse contexts, it is required that strides be taken in all fronts within the African continent generally and Sub-Saharan Africa, in particular, to develop the concept, especially within African organisations as a discipline within the corporate governance management and practice.

5.3.2 Principles Underlying the Ubuntu Concept

African societies' social morality orientation is leaned towards strong cohesive communitarianism as opposed to individualistic context promoted by western societies. Many of these societies place importance on solidarity or collectivism founded on family associations, religious connections, and ethnic bonds (Muchiri, 2011). Gildenhuis and Knipe (2000:272) postulate that to imbue principles of Ubuntu requires, amongst others, celebrating inter-group successes; feeling acceptable and being hospitable within the homestead and in the workplace; performing praiseworthy ritualistic activities to observe important dates, and thanksgiving to the ancestors through offerings of slaughtered animals for their intercession. It is the viewpoint of Muchiri (2011) that fundamentally African societal cultural norms and values of collective empathy and love are influenced by family associations, parenting, religious connections, and cultural bonds. As Shutte (2001) suggests, the underlying moral responsibility is to be "human" which means being more deeply into "community" with fellow human beings. Even though this will translate into achieving personal fulfilment, selfish motives and self-interestedness are discounted. The fundamental values of Ubuntu are characterised by being humane and loving others, giving and caring for others, sensitivity towards the needs of others and sharing with others, having compassion for others, being empathetic, being respectful and considerate when dealing with others, being patient and kind-heartedness (Msila, 2008:69-70) and the "centre-piece of Ubuntu should be around building and maintaining communalism through compassion, reciprocity, dignity, harmony, and humanity" (Nussbaum, 2003:21). The author says that "Ubuntu calls on us to believe and feel that: your pain is my pain; my wealth is your wealth; your salvation is my salvation". When elaborating on the fundamentals of Ubuntu, Tutu (1999:34-35) stresses that Ubuntu touches on the core of being human and reiterates that Ubuntu denotes: "I am human because I belong. I participate, I share". Metz (2011) states that when Nguni people say: "umuntu ngumuntu ngabantu", on the one hand, Sotho communities: "motho ke motho ka batho babang", on the other hand, this does not translate into an empirical view that the survival of human beings is dependent on one another. They are intensely documenting a norm with which humans are to comply in life: "personhood", "selfhood", and "humanness". Masina (2000) notes that Ubuntu places more emphasis on co-operation with one another for the benefit of society and promotes mutually beneficial conditions and it stresses the value of togetherness and co-existence of community members (Broodryk, 2010; Mangaliso, 2001).

Ubuntu is an all-embracing and deeply seated African worldview whose primary goal is to encourage pervasive humanity, caring, sharing, and compassion to ensure quality human community life (Fox 2010:124). Shutte (2001) posits that humans naturally survive on the relationship that they have with one another, which is the central component of Ubuntu and not

just a mere obligation. It is the development and growth of a person that is of crucial importance. Ramose (1999:52) argues that “being human is to affirm one’s humanity by recognising the humanity of others and should be understood as being human “humaneness” which constitutes the core meaning of this aphorism “umuntu ngumuntu ngabantu”. Marfo (2015) states that the concept is premised on factors such as simplicity, participatory in nature, flexibility, completeness, relevance, and compatibility with local settings and its main focus is on love, empathy, sharing, forgiveness, and co-operation in addressing similar problems underlying the core of humanity. For Ubuntu to be effective, the following key principles are essential: the full participation of the parties, joint problem-solving approach, consensual decision-making, mutual respect, the flexibility of the process, and empowerment. Matolino & Kwindigwi (2013:199) note that “Ubuntu rests on some core values such as humaneness, caring, sharing, respect and compassion”. Ubuntu is an encompassing African phrase to denote “humanness” – for compassion and a sense of belonging. Mangaliso (2001:32) views Ubuntu as “a way of life which stresses the importance of community, solidarity, sharing and caring”. He elaborates that “as an ideal, Ubuntu means the opposite of being selfish and self-centred. It promotes cooperation between individuals, cultures and nations. Ubuntu thus empowers all to be valued to reach their full potential in accord with all around them”.

Ubuntu transcends the notion of individualism by encouraging communitarism or collectivism (Taylor, 2014) and consequently, acting in solidarity or collectively means being hospitable, compassionate, friendly, generous, and caring for one’s fellow human beings (Goduka, 2000). Tutu (1999) emphasises that a human being who has Ubuntu is free and lives peacefully with others, and does not feel threatened when others achieve success because he/she recognises that they belong to a greater whole and this ultimately leads to the building of cohesive relationships and restoring communal harmony (Mbiti, 1970). Ubuntu means to be more humane “being in a just and loving relationship with others” and thus, being more humane optimises the entire web of relationship (Tutu, 2004). Stressing the need for communalism and humaneness the Ghanaian scholar Adu Amoah (2012) holds that the saying “boa me na me boa wo” portrays the extent to which human beings harmoniously depend on one another.

Mbigi (1997) quoted by Poovan *et al.*, (2006:18) postulates that “there are centrally five key cardinal pillars of Ubuntu: communal survival, a spirit of solidarity, compassion, respect, and human dignity”. As Mulaudzi (2007) argues, these principles may be employed when reviewing various leadership and governance matters within the public sector like “sharing problems, opportunities, responsibilities and inclusive decision”. Eygelaar (1998:159) in Le Roux (2000:43)

states that “the values of Ubuntu are respect, dignity, empathy, cooperation and harmony between members of society and people who possess Ubuntu will have characteristics such as being caring, humble, thoughtful, considerate, understanding, wise, generous, hospitable, socially mature, socially sensitive, virtuous, and blessed”. The characteristics of Ubuntu are, according to Metz (2011:45), *inter alia*: “the human experience of treating people with respect; humanness, which means that being human comprises values such as universal brotherhood and sharing, treating and respecting others as human beings; a way of life contributing positively to sustaining the wellbeing of people, the community or society; and, a non-racial philosophy applicable to all people as human beings”. Ubuntu refers to a depiction of humaneness while its philosophy revolves around “mutual support, respect, interdependence, unity, collective responsibility which covers a common purpose in all human endeavours” towards service to humanity (King Code, 2009, 2016; Taylor, 2014). Mbigi and Maree (1995) identified four key principles of Ubuntu as “morality, interdependence, the spirit of man, and totality”. Swanson (2008), is of the view that Ubuntu provides an encompassing vision of the community based on compassion, respect, cooperation, and is considered ethical conduct aligned with the spiritual foundation of African societies.

Scholars such as Adu Amoah (2012), Mangaliso (2001), and Taylor (2014), describe the characteristics of Ubuntu by differentiating it from the traditional western philosophical thought and ethical conduct. It is from this perspective that Khoza (2006) stresses that Ubuntu covers numerous values which include among others: “caring, reciprocity, sharing, compassion, hospitality, cohabitation, co-operation, and tolerance”; thus Mangaliso (2001) explains that Ubuntu finds its thrust on principles like: “treating others with dignity and respect; willingness to negotiate in good faith; providing opportunities for self-expression, honouring achievement, and self-fulfilment; understanding the beliefs and practices of indigenous people; honouring seniority, especially in leadership; promoting equity in the workplace; and, being flexible and accommodative”.

Fox 2010:123), expands principles of Ubuntu by incorporating aspects such as: “non-racialism philosophy or value system according to which all people are regarded and treated as human beings; a philosophy of tolerance and compassion; a philosophical concept that accepts humankind is one whole, comprising various racial groups; supreme goodness breathed into man, which transformed a man into a living soul; a being called “human”, reflecting the image and likeness of God in man; a divine spark, which as soon as it was instilled in the human soul immediately transformed and elevated man into a distinctively different being endowed with

intelligence and power of dominion over the rest of the created beings; and, the quality and dignity of the human personality". It should be borne in mind that Ubuntu also means a commonly accepted behavioural pattern of a community in which caring for one another is a central ethos (van Binsbergen, 2001:53) and contains a broader African experience stressed in humanism and communalism (Gyekye, 1998; Khoza, 2006). In his words, former Ghanaian President Kwame Nkrumah has in 1964 referred to Ubuntu as "consciencism". According to Taylor (2004), philosophically or ethically speaking, Ubuntu is all about human relationships and how such relationships are expected to be practised (Taylor, 2014).

African societies place greater emphasis on communalism, regarding a person's completeness being as embedded on his/her relationships with others (London *et al.*, 2014:11) and thus, the core guiding principle is "umuntu ngumuntu ngabantu" symbolising that the individual's existence is dependent on that of the entire community (Brack *et al.*, 2003). As a distinctive African value-system, Ubuntu inherently embodies underlying notions of inclusivity and can be employed as an overarching vehicle for common values expression and well suitable to spearhead the development of a genuinely plural culture and its underlying principles has the ability of general and specific application within various disciplines, such as, "politics, business, corporate governance, justice, conflict resolution and reconciliation" (Olinger *et al.*, 2007). Skelton (2002) describes the concept as an African philosophy that defines humanity and community life; and to Murithi (2006) it is a cultural perspective according to which Africans view their world, while Swanson (2008) regards it as a state of being more humane.

Conceptually and theoretically, the Ubuntu concept and its underlying principles speak of the essence and existence of the person or human being at the centre of the discourse in relationship and co-existence with other persons or human beings. Anything not directed at the wellbeing of the person or "motho" is viewed in a lesser manner. Moreover, practising the spirit of Ubuntu moves beyond the living into the realm of the ancestral relationships and future generations. It is a web that creates the inter-connectedness between the dead, the living and the future generations. All things considered, Ubuntu encourages sustainable development in our co-creation and co-existence.

5.3.3 Criticism Against Ubuntu Concept

Several scholars have attacked and criticised the concept of Ubuntu from its conceptual formulation, its interpretation, to its application. West (2014:57) laments the existence of numerous interpretations of Ubuntu, which vary a lot, resulting in a universal definition not being

possible to be agreed to. Scholars such as Mokgoro (1997) and Anderson (2003) regard Ubuntu as a complex concept having diverse forms of description which are context-dependent and contend that practising Ubuntu is far from straightforward and one-dimensional, but is, and must always, be, complex and multi-dimensional.

Given its diverse conceptualisation, interpretations, and general applicability, Broodryk (2010) assert that the concept of Ubuntu is being applied to everything and anything, across business disciplines, in any context and is just generally accepted that the concept has acquired various definitions from societies such as social and human scientists, philosophers, politicians, as well as communities. It is also viewed differently across people whereby it is understood to be an African ideology, doctrine, perspective, philosophy, and “a community-based mindset” (McAllister, 2009; Olinger *et al.*, 2007). According to Metz (2011), three major reasons are making Ubuntu inappropriate for public morality in the current South African environment. Firstly, the concept is broad; secondly, it does not recognise the importance of the freedom of individuals; and, thirdly, it is more suitable for old style, not so big scale culture and does not fit in very well in modern and industrialised society. As for Mokgoro (2010:225), Ubuntu as a worldview would be eluded if the objective thereof is to compress it to a universally defined concept and is therefore intentionally designed to have general application within diverse settings and contexts.

West (2014:57) criticises the concept for being ambiguous and frustrates all endeavours to use it in either general or specific settings. Metz (2007a) opines that the best way to develop a comprehensive African behavioural theory is to follow Tutu’s view of Ubuntu which promotes harmonious relationships and avoid those deemed to be not aligned to this understanding. Matolino and Kwindigwi (2013:201) in Metz (2011) argue that “the popularity of Ubuntu has resulted in it becoming anything to anyone who so wishes to deploy it and does not admit of the precision required to render a publicly-justifiable rationale for making a particular decision”. West (2014:53) laments the lack of clarity on how Ubuntu values can be universally applied across Africa since it is merely generalised and thus cannot be considered a principle, but simply has a big area of application (Bennett, 2011:46).

In critiquing western public administration system of governance, Adu Amoah (2012) states that as a science and practice, it has been forced onto the African continent. In its developmental discourse, the major debates of public administration tend to assume a totalising, universalistic, nomothetic posture as they both undermine and ignore other worldviews. Like any other African

worldview or philosophy, trickled-through indigenous knowledge systems, the evolution and development of Ubuntu as a recognisable public morality measure is bound to be subjected to criticism whether fairly or unfairly. It is incumbent on scholars and researchers to contribute to the further improvement of the concept.

5.4 Characteristics of the Ubuntu Concept

Several scholars such as Bewaji and Ramose (2003), Brack *et al.*, (2003), Dandala (1996), Enslin and Horsthemke (2004), Gade (2011, 2012), Iroanya (2005), Karsten and Illa (2001, 2005), Mnyaka and Motlhabi (2005), Mudimbe (1985), and Versi (1998), merely outline the characteristics of Ubuntu without offering a justification and grounding for the concept. The authors do not offer any basic rules to justify their characteristics of Ubuntu (Taylor, 2014). From the foregoing discussion on the different philosophical values and principles characterising the Ubuntu concept as reflected in paragraph 5.3, in the context of an organisational environment, the following inter-related and inter-dependent variables can be deduced: Ubuntu calls for solidarity and inter-dependence within organisations for the greater good of the society; it encourages social cohesion within organisations amongst individual employees; it encourages employees and organisations to promote humanity and act humanely when dealing with one another; it encourages employees and organisations to handle one another and stakeholders in a dignified and respectful manner; it serves as a rule of conduct for inculcating morality within individual employees and Organisations alike; and, for organisations to implement sustainable development driven initiatives and programmes. Each of the characteristics is discussed more fully below.

5.4.1 Inter-Dependence

The Ubuntu concept is being described by Hofstede (2001) as “collectivistic”. House *et al.*, (2004) points out that the concept depicts a “humane orientation culture”. Mangaliso (2001) explains that one of the most significant attributes of Ubuntu is placing of the concept at the centre of the discourse due to its high measure of harmony and continuity throughout the system. Tutu (1999) emphasises that Ubuntu is the crux of being human “my humanity is connected with and inextricably bound to yours”. It relates to the fullness of humanness -- I am because I belong.

Van Rensburg (2007:73) argues that the fundamental philosophical underpinning of Ubuntu is the understanding that people have instincts towards being inter-dependent as human beings and that their social orientation is expressed in the manner in which people uphold this view. Inter-

dependence or collectivism attitude is displayed when consciously acting in mutually beneficial ways. In this instance, attitudinal human instincts, such as emotions and motives play a crucial role in positively orienting people to be sympathetic to others and offering a helping hand to achieve greater societal needs. Failure to exhibit inter-dependence or collectivism, Metz (2011) states that they are uninterested in each other's flourishing. Since everyone should be treated equally, by implication, Ubuntu, therefore, aspires a classless society that values each other's contribution and development.

Ochieng-Odhiambo (2010) explains that in practical terms collectivism or inter-dependence signifies that individualistic gains and successes are measured relative to society's interests. In turn, society should not be oblivious but celebrate its members' individual successes. This state of affairs is the central core of Ubuntu which should permeate African value-system, such as, being respectful, treating each other with dignity, co-existence, and survival, solidarity spirit, and compassion. Practising Ubuntu exhibits invaluable norms like "patience, hospitality, loyalty, respect, sociability, liveliness, endurance and sympathy" (Mangaliso, 2001). Ubuntu relates to human beings' oneness, common humanity, and the mutual responsibility flowing from their inter-connectedness (Metz, 2011).

Fundamentally, of essence is to create greater solidarity to serve as the foundation for Ubuntu concept. As such, one of the cornerstones characterising the concept of Ubuntu should be the need to foster "inter-dependence", "collectivism", or "solidarity" within all human endeavours. The African worldview considers human beings to be extricably bound together spiritually. To achieve this goal, all human developments and initiatives should be geared towards the attainment of solidarity and collectivism. If there is togetherness, common destiny and mutual benefit outcomes can be attained.

The concept of solidarity gravitates towards and can be equated to viewing the workplace from institutional theoretical lenses. Institutional lenses, such as the political and institutional theories consider corporate governance from a structural and institutional basis. Corporate governance structures, therefore, find better expression if they are cohesively attuned to achieve greater solidarity and inter-dependence.

5.4.2 Cohesion

Cohesion brings a sense of communalism and togetherness of human beings (Taylor, 2014). According to Taylor (2014:247), “cohesion, with the prefix “co” implies a two-way process – I adhere to you and you adhere to me -- we “cohere” to each other”. The social world is characterised by socio-cultural normative values about mutual responsibilities. These socio-cultural normative values have over the years shaped social inter-activity and social morality. Socialisation towards particular socio-cultural normative values is strongly influenced by the fact that humans are by nature social and distinctively communal. Human beings’ rational posture is strongly influenced by attitudinal instincts like anxiety, hope, disappointment, fear, anger, excitement, pity and remorse (Swanson, 2008). It is through this socio-cultural evolution and construction that African societies consciously cohere to communal socio-cultural normative values. As Mangaliso (2001) suggests, an acknowledgement of the importance of this African value-system, corporate governance management discourse can evolve more holistically and inclusive in approach and practice. Ubuntu is premised on the goal of creating social harmony and cohesion. The first step towards achieving greater harmony and cohesion is through respect and love for one-self that will translate in respecting and loving others. The second equally important step is respecting of the environment. The spirit of solidarity accommodates other cultural groups and it is the invisible force uniting Africans worldwide (Makgoba, 2019). Human beings survive through the help of other members of their communities.

Institutionally, to realise the goals of social cohesion, governments, organisations, and civil society should create an enabling environment by honouring communal relationships through the establishment of supportive structures (Metz, 2011). When governments, organisations, and civil society take charge and lead the way of social moral inter-activity, it will consequently yield high standards of life of the community members. Having social cohesion results in everyone serving and participating actively in the enhancement of societal wellbeing. Socially acceptable actions inter-connects and extricably bind one person to others (Tutu, 1999). African social moral ideological conceptions are more favourable to communal relationships and desirable social interactions that guide socio-cultural normative value-orientation.

African social morality places a heavier burden on the responsibility of “helping others” than in Western social morality (Metz, 2007a:236). The point of departure begins with honouring communal relationships, sharing with and caring for one another (Metz, 2014). “One has a communal relationship when: one wishes another person well “conation”; believes that another person is worthy of help “cognition”; aims to help another person “intention”; acts to help another person “volition”; acts for the other’s sake “motivation”; and, finally, feels good upon the

knowledge that another person has benefited and feels bad upon learning he/she has been harmed “affection” (Metz, 2007c:248).

The existence of solidarity and collectivism is indicative of leading to the facilitation of achieving greater cohesion. It is through social cohesion that human beings may be sympathetic to one another’s course. The stakeholder theoretical perspective demands of organisations to treat the network of stakeholders associated with the organisational equitably to satisfy their needs. It is the objective of the organisation for all stakeholders to focus on the attainment of organisational goals. If there is greater cohesion, various organisational stakeholders work together towards communal good at the expense of individual self-interests.

5.4.3 Humanity

To display “humanity” or “humaneness”, Fox (2010:123–124) argues that, the preoccupation should be centred around human factors, such as human dignity, human security, social welfare, health, beauty, love, and human development, before considering other factors, such as economics, financial and political factors. Its foundational philosophy should, according to Venter (2004:152) be based on the understanding of a favourable socially acceptable conduct. Therefore, a society marked by pervasive divisions and fractured relationships could employ this sense of humanity by committing itself to reconciliation towards harmonious and all-encompassing communalism (Marfo, 2015), translating into a harmonious communal relationship based on the understanding that within the web of humanity with everyone associated with everyone else can be created. Letseka (2014:547–548), however, suggests that a high degree of social morality associated with humaneness or being humane can be achieved by emphasising the essence of Ubuntu. Blankenberg (1999) argues that communal relationship and honouring such relationship is the foundation of all knowledge and as such, collective inter-activity is essential for attaining greater human development, through recognising that your neighbour’s experiences, knowledge and ideas are important to your personal survival.

The capacity to associate with others or coexist needs a coordinated interaction which is not rules by seniority and subordination. The greater value to be derived from communal relationships is that people associate together on their own accord. It is against the dictates of humanity to think that a person is in total control of others, is not allowed to think independently or express particular thoughts or is individually forced by law to stay in a particular area where others are not compelled to do so. Doing so will impair a person’s individual choice regarding who to interact with, how, where and when (Metz, 2011).

Through humanity, the rights and responsibilities, which are absolute to each person, are prioritised. Impoverished persons have a right to be taken out of that position through others whose responsibility it is to provide such services. This human principle is based on the understanding that being other person ignites feelings of caring, nurturing and selflessness. Group work does not necessarily overshadow the responsibility of an individual to behave humanely. The individual's behaviour within the norms of the community will thus have a positive or negative on that person's self-respect or respect by others. A human being is considered humane based on how they conduct themselves (Mnyaka & Motlhabi 2005:236). According to Ramose (2010) a recognition of the unfairness brought about by this philo-praxis has been acknowledged as having disregarded the philosophy of human equality espoused by the Ubuntu principle of "motho ke motho ka batho", which in itself promotes equality among humans. Mabuvola (2011:39), stresses that "a good example of humaneness is communities coming together to resolve problems so as to promote peace, love, respect, and working together in social harmony".

Perhaps, at the heart of Ubuntu is the need to behave in a humane manner. Centrally, these accords to one of the fundamental principles found in many religions, traditions, and worldviews, that is, "do unto others what you want them to do unto you". A person that espouses this value-system is caring and humane in character and practice. Acting in a humane manner, requires behavioural and psychological change from individuals and groups. The sociological and psychological factors are important in shaping the behavioural attributes of stewards who are charged with the responsibility to lead organisations. Of particular importance is to ensure that these stewards' attitudinal and behavioural attributes are compatible with the Ubuntu value-system and worldview.

5.4.4 Dignity and Respect

Fundamentally, how humans are treated or treating others is key to humanity and is central to human efforts towards their harmonious coexistence. The main emphasis of Ubuntu is upon mutual respect and human dignity. The tacit principle of mutual respect underlying Ubuntu constrains the parties to behave themselves in a certain manner acceptable to the society (Regine, 2009). Every human being deserves a dignified treatment due to the nature of them being members of the community (Metz, 2012:32). The state has a duty to foster community amongst the citizens by respecting their dignity as people. The feeling of togetherness with others in the community is not easily achievable when one is deeply impoverished and does not feel the assistance of others. This breeds a sense of shame, inferiority, or at not belonging to a person whose basic needs are not met while others display opulence (Metz, 2011).

Essentially, human dignity relates to one's development of humanness when associating with those who have dignity as their virtue. In this regard, individuals are considered to have dignity as their virtue in relation to their communal relationship that is inherently exhibited through solidarity with others. On the one hand, the Kantian theory postulates that human has a strong sense of esteem since they can be autonomous, while on the other hand, the Ubuntu narrative stresses that this is they are propelled by the spirit of communally relating to one another (Metz, 2011). Ramose (2010) symbolises the virtue of human dignity to the proverbial Sotho saying: "feta kgomo o tshware motho". The author suggests that there is a need for enlightening people on moral aspects of taking care of others to uphold their dignity as "motho", irrespective of how wealthy or poor they. This philosophical practise is evidenced among African people in rural and urban areas alike in South Africa and across the continent.

Ramose (2001:8) concurs when stating "that "umuntu", a human being in the biological sense, is enjoined to become a human being proper by embracing Ubuntu". "Umuntu" should be considered a proxy of Ubuntu since the important social behavioural, and lawful analysis of human dignity centres around Ubuntu. On the same breath, Cornell and Muvangua (2012:7) observe that "dignity and Ubuntu are aligned with an ethical ideal of what is considered as being human, and it can be deduced that the two are intertwined". Ramose (2010) suggests that promoting respect and dignity among human beings calls for a moral education that focuses on community-oriented individual development.

One of the fundamental constitutional injunctions running throughout the Constitution (1996) is the promotion of human dignity. This fundamental constitutional principle accords very well to the Ubuntu concept since at the centre of Ubuntu is the need to promote mutual respect and the protection of human dignity. Human dignity and respect for one another in workplaces serve as an enabler for the attainment of common organisational goals.

5.4.5 Ubuntu as a Rule of Conduct or Morality

Several scholars have extensively researched and written on the concept of Ubuntu. However, the concept would remain just a philosophical concept, if it lacks coherence and application. To find application, scholars such as Himonga *et al.*, (2013), Metz (2007a), and Taylor (2014) have confined the concept to the upholding of social morality. Himonga *et al.*, (2013) argue that Ubuntu consists of values or a belief influencing social behaviour. On the one hand, Metz (2007a:338) established a definition of Ubuntu which is based on rules when stating that: "an action is right insofar as it promotes shared identity among people grounded on goodwill; an action is wrong to

the extent that it fails to do so and tends to encourage the opposite of division and ill-will". On the other hand, Taylor (2014) states that: "an action is right insofar as it promotes cohesion and reciprocal value amongst people. An action is wrong insofar as it damages relationships and devalues any individual or group". Swanson (2008) states that Ubuntu serves as a rule that governs the ethics, morals and spiritual conduct in African societies, and the social world consists of common values and assumptions adopted by a community in sharing responsibilities.

It is the researcher's viewpoint that the Ubuntu concept will remain useless if no consideration is given to social morality. High moral conduct is necessary for an orderly and coherent application of the concept. For good corporate governance to prevail, high ethical conduct amongst the various role-players and stakeholders is key. Indeed, as we will see in Chapter 6, corporate ethics play a meaningful role in creating organisations that are ethically attuned and follow high moral campus. Corporate ethics are therefore seen as important building blocks of good corporate governance.

5.4.6 Sustainable Development

There is a three-tier approach to the promotion of Ubuntu "botho - humanness": the current generations, those who are no more (ancestors), and generations yet come (Mkhize, 2006; Ramose, 2010). African societies project a life of caring for one another, sharing and selflessness (Muchiri, 2011). Bujo (2001) emphasising on sustainable development states that it does not revolve around the "cartesian cogito ergo sum", instead it is a decisive "existential cognatus sum, ergo sumus", "I am related, therefore we are". Luhabe (2002) arguing for sustainable economic development characterised by Ubuntu states that the economy does not simply focus on the numerical presentation of economic performance indicators, but on how nations choose to distribute their economic resources in a morally justified manner. Therefore, nations must opt for strong initiatives that have the potential for yielding adequate returns for the entire people. Such economic initiatives must be made within a framework that promotes and sustains the dignity and aspirations of all the people.

The principle of "sustainable development" is becoming increasingly important given the finite nature of the planet earth. The principle permeates all spheres of development, that is, socially, economically, and environmentally. It has almost become socially immoral to consider the development of any nature without rethinking sustainability issues. Ubuntu recognises the need to "think about" the interests of future generations. As such, corporate decisions taken today should consider the interests of those "yet to be born".

Practising Ubuntu cuts across the entire web of societal interaction and development. As we have already observed, its principles may be practised within workplaces in areas, such as strategic human resources management practices, organisational stakeholder engagements, management and leadership development practices, organisational sustainable development initiatives, etc. The discussion that follows below will examine the Ubuntu concept with a view of generating a theoretical perspective that may be applicable within the workplace. The new theoretical perspective will be contrasted with existing dominant theoretical perspectives applicable within the field of corporate governance.

5.5 Justification and Grounding of Ubuntu Theoretical Perspective

“We have not done enough to articulate and elaborate on what Ubuntu means as well as promoting this important value-system in a manner that should define the unique identity of South Africans” (South African President Thabo Mbeki, Heritage Day, 2005). The study by Adu Amoah (2012) lamented lack of activism to employ public governance to generate corporate governance management theories and practices to actively develop African worldview. Metz (2011) challenges all who live in Southern Africa to reformulate how Ubuntu is viewed so that its characteristics are understood alongside those of what is considered morally acceptable. Scholars have over the years, contextualised Ubuntu in a general way, making the concept to be amenable of being practised within different settings and contexts. Converting the Ubuntu concept into formidable corporate governance and management practice that can transform organisational culture and practice to achieve organisational goals and outcomes has become inevitable.

5.5.1 Rationale for the Development of Ubuntu Theoretical Perspective

Many researchers have produced research outputs in relation to the potential of Ubuntu in particular, and other African worldviews in general, becoming positive forces within African organisations (Nussbaum, 2003). The Ubuntu concept is premised on the all-inclusive corporate governance approach which strongly persuades the furtherance of developmental goals that positively creates harmonious relationships of organisational activities that benefit the internal and external stakeholders (West, 2009). At the organisational level, it implies serving of interests of shareholders and stakeholders. It involves adopting an approach that is focused on the needs of stakeholders and driven by African value systems.

As for Browning (2006), the concept of Ubuntu pursues a humanistic approach to public governance strongly emphasising on “compassion, respect, human dignity, building relationships, personal interaction, and mutual respect”. Enslin and Horsthemke (2011) argue that the Ubuntu philosophical approach to corporate governance management practices and socio-cultural relationships together with other approaches should be assessed and measured against the value it adds towards improving relations among humans in our societies and organisations. Mbigi (1997) argues that positive actions should be taken to transform this African view into a disciplined and prosperous modern life philosophy which is envied and founded on the fundamental principles of social justice, fairness, and sustainable development, to meet *all* communal aspirations. It is not adequate for Africans to argue that the Ubuntu philosophy is simply about communalism, instead, Africans themselves should translate the concept into a formidable one capable of socio-cultural reorientation.

Taylor (2014) points out that many of the definitions of Ubuntu developed over-time by scholars, with a few exceptions, provide the moral justification to support the existence of Ubuntu as a valuable corporate governance practice. Therefore, it is necessary to offer a definition of Ubuntu that can be translated into a corporate governance approach for organisational decision-making processes within African and international organisations. This viewpoint is supported by Adu Amoah (2012) when arguing for the development of a professional public governance approach that has credibility and espouses the promotion of Ubuntu and good governance. Sigger *et al.*, (2010:38) regards Ubuntu as an under-developed corporate governance concept of management which does not have concrete rules and directives. Mangaliso (2001) opines that including Ubuntu principles in the corporate governance management approaches can enhance organisational management systems and practices. Versi (1998) asserts that organisational leadership in Africa is severely under-researched. Therefore, searching for other ontologies offering a fresh perspective for a credible African public governance system is authenticated by numerous African ontological values (Adu Amoah, 2012). Ubuntu as an African philosophy is yet to be adopted fully in African organisations as managers do not take value the advantages that have on strategic organisational matters (Mangaliso, 2001). Mangaliso’s view is that the general management systems are mostly influenced by unfounded economic assumptions that self-interest is the sole determinant of human behaviour and is maximised by remunerating employees more than the contribution they make to the organisation.

5.5.2 Context of Ubuntu Theoretical Perspective

The development of corporate governance models and theoretical constructs underpinned by African ontological, epistemological, and methodological views supported by a culture of modern

organisational ethics is a necessity. The primary goal behind such change and reconstruction in the world view is a philosophical prerogative that should permeate a process of modernisation of the African continent (Adu Amoah, 2012). To transform the Ubuntu concept into an established corporate governance concept, corresponding policies and practices should be expressed in terms which African employees and managers can easily associate with. This approach could yield successes towards developing Ubuntu into a corporate governance good practice.

Kuljak (2014) views corporate governance as an arena where the needs of shareholders, socio-economic and environmental capital, politics and international community and have a greater influence on the affairs of the organisation. The underlying principles of Ubuntu treat an organisation as a unit consisting of indivisible stakeholder interests destined to achieve common societal goals. It is clearly in the public interest that the societal goals are achieved sustainably. Organisational internal stakeholders, such as the board, managers, and employees generally should pledge their solidarity towards the attainment of the developmental goals.

The Rawlsian conception of political theory which equates corporate governance structures of organisations to matters for justice can be transposed to SARAs as they are legally coercive institutions as they are normally established through regulatory instruments (1999:178). The various corporate governance instruments have a persuasive value in how these regulatory instruments are conceptualised. As such, SARAs conforms to the Rawlsian's political theory as they constitute the basic structure of justice. On the one hand, the agency theory describes how owners (shareholders) and managers (agents) relate. The primary goal of the agency theory is that managers should conduct the organisation's business in a manner that maximises shareholder value. Indeed, it is one of the underlying objectives that SOEs generally and SARAs in particular, should work towards benefiting the shareholder, however, other objectives are associated with the agency theory. SARAs are established to promote public interests as such they are at all times expected to raise stakeholder interests which conform to the tenets of the stakeholder theory. On the other hand, stewardship theory explains a humanistic model of a man who is faithful and trusted to carry out the task at hand since it has its roots emanating from sociology and psychology, (Davis *et al.*, 1997; Donaldson & Davis, 1991, 1993). The stewardship theory combines humanistic and economic elements found within an organisation and therefore conform to the SARAs governance environment. The resources-dependency theory views the structure of corporate governance as an important resource of the organisation while the board is playing the role of seeing to it that the organisation is equipped with the necessary skills to deliver on the set activities. The institutional theory views an organisation as a unit comprised of

regulatory, normative, and cultural elements. Both the resource-dependency and institutional theories gravitate towards how SARAs are structurally established as organisational units composed of regulatory, normative, and cultural elements, and functions based on resource allocation.

The political theory is criticised for its short-sightedness of overlooking other organisational imperatives at the expense of worker democracy, fairness, and justice (Blanc, 2016; Singer, 2015). The agency theory is renowned for defining and clarifying some of the intricacies of organisational activities, however, is criticised for leaning more toward an economic perspective (Muller *et al.*, 2016). The stakeholder theory is being criticised for its inability to treat all stakeholders fairly and equitably (Kacperczyk, 2009). The stewardship theory is limited in that “it assumes that there is a harmonious relationship between managers and owners of the organisation, with the goal of governance being to have a structure and processes that promote mutual relations” (Donaldson, 1990). Whilst the resource-dependency theory recognises resources elements within an organisation and the institutional theory places more emphasis on the organisation as a unit, they fail to provide an equitable basis for involving wider stakeholder interests.

Limitations of the various corporate governance theories provide a solid grounding for additional theories for the explanation of relationships based on other assumptions that are not economic (Davis *et al.*, 1997). Although agency theory remains the most preferred framework, other theoretical views like institutional and multi-theories studies are gaining much ground (Cuomo *et al.*, 2016). From an African perspective, as Adu Amoah (2012) suggests, it is essential to construct corporate governance theoretical perspectives underpinned by African worldview and philosophy. In paragraph, 5.5.2.1 below, we explore the construction of a theoretical perspective called Ubuntu informed by African worldview and philosophy.

5.5.2.1 Defining Ubuntu Theoretical Perspective

Several authors, such as, Browning (2006) and Muchiri (2011) indicate that successful and progressive leaders in corporate management use Ubuntu philosophy, an African management approach that promotes respect for others, compassion and human dignity, with a focus on sustaining socio-cultural relationships through personal interaction and mutual respect. According to Adu Amoah (2012) the “*akan milieu*” the “*self and others*”, which covers fellow humans, the universe and the divine, should be the beginning of institutionalising Ubuntu. Research studies suggest that national culture, among other factors, have a significant effect on the designing and

implementation of strategic human resources management from Ubuntu perspective (Horwitz *et al.*, 2006; Jackson, 2004).

As discussed in paragraph 5.4 above, the conception of Ubuntu is characterised by the following key elements: solidarity or inter-dependence, cohesion, humanity, respect and dignity, rule of conduct and sustainability. Even though many scholars offer a wide range of definitions applicable to diverse societal contexts, there seems to be convergence on these key characteristics. The characteristics offer a fertile grounding upon which the Ubuntu theoretical perspective can be theorised and developed. We posit that these key elements serve as the founding principles for the theorisation and conception of Ubuntu theoretical perspective as it pertains to the corporate management and governance field.

From a theoretical perspective applicable within the corporate management and governance field, one of the key elements is solidarity, inter-dependence, or collectivism. When saying “a person is a person through others”, “motho ke moth ka batho ba bang”, “umuntu ngu muntu nga bantu”, or “I am because you are – we are because I am”, we exemplify the very essence of Ubuntu. Scholars such as Broodryk (2010), Mangaliso (2001), and Mbigi and Maree (2005b) hold that the element of solidarity or inter-dependence is characterised by the importance of community, co-existence, and inclusivity. In describing the element of solidarity or inter-dependence, Louw (2010) and Mangaliso (2001) state that Ubuntu represents a strong caring and community spirit that promotes sharing and hospitality that individuals, as well as groups, should display for one another. Armah (2006) describes the element of solidarity or inter-dependence as an ideological perspective that all things visible and invisible are connected between the universe and divine aspects of reality. The spirit of solidarity or inter-dependence implies togetherness or “peoplea” being together (Newenham-Kahindi, 2009). The principle of solidarity or inter-dependence promotes the ideology of communitarianism of human inter-connectedness (Mbigi, 1997; Kamwangamalu, 1999), and has primacy in contemporary South African business discourse (Du Plessis, 2010; West, 2006). As for Fox (2010), London *et al.* (2014), and Muchiri (2011), solidarity or inter-dependence emphasises in-group collectivism that is opposed to out-group indicating that people exist in relation to one another. Masina (2000) notes that being in solidarity or inter-dependent with one another means co-operating with one another for the benefit of all and thus a person can only be a person through others (Brack *et al.*, 2003).

The second equally important variable relates to the strengthening of cohesion. Fox (2010) states that Ubuntu emphasises the aspect of being human, thus human development should be placed above all other considerations. According to Taylor (2014) fostering cohesion entails essentially elements, such as maximum engagement of the parties, joint problem-solving approach, decision-making by consensus, and mutual respect. Cohesion brings about communalism and togetherness of the people (Taylor, 2014). As for Mangaliso (2001) ethics of Ubuntu are rooted in promoting social harmony and cohesion. A truly cohesive workforce driven by fundamental principles of Ubuntu, especially in the context of public organisations, can attain societal developmental goals with ease.

The third element is the need to inculcate a culture of humanity or botho (Sotho). Skelton (2002) describes the element of humanity as an African philosophical underpinning, and African cultural worldview of becoming more humane (Muchiri, 2011). Ramose (1999) argues that recognising the humanity of others confirms one's humanity. Khoza (2011) stresses that humanity represents a broader African philosophy embodied in humanism. To be humane means to be a loving relationship with others (Tutu, 2004). Being humane involves the common purpose to serve humanity (servant leadership) (Taylor, 2014).

The fourth element relates to the fostering of respect and dignity. One of the underlying principles of Ubuntu is treating others with dignity and respect to promote the moral quality of the person (Bennett, 2011; Mangaliso, 2001). This ultimately translates into treating people with respect and humaneness contributing positively to the sustenance of the wellbeing of the people (Metz, 2012). Human respect and dignity involve spirituality and respect for the environment (Armah, 2006). As for Regine (2009), how we treat others and are treated by others is a fundamentally human endeavour for being human. Metz (2011) conception of human dignity is that a person develops humaneness by communing with others with respect and dignity.

The fifth element relates to the establishment of social morality. Metz (2011) equates the establishment of rule-based social morality to the moral theory which indicates that human conduct is considered unacceptable if it diminishes other people's dignity emphasising on the need for a rule-based social morality. Taylor (2014) elaborates that human conduct is acceptable if it promotes harmony and mutual respect. As a social morality symbol, the social conduct element implies human relations and how such relations are to be practised (Taylor, 2014). Swanson (2008) states that social morality serves as a tool for promoting morality and inter-

dependent relationships. The principle of social morality and behaviour in Ubuntu promotes a culture of accountability and transparency (Venter, 2004). According to Swanson (2008), the social world is comprised of norms to promote mutual obligations rooted in rationality. Mnyaka and Motlhabi (2005) hold that the notion of the rule of conduct implies the existence of rights and responsibilities.

The sixth and last element relates to sustainable development. One of the underlying values of King Code (2016) is sustainable development. This fundamental value system accords well with espousing the Ubuntu perspective. In the enjoyment of the worldly order, the living should always spare a thought for the future generation. Therefore, fundamentally, all human endeavours and development should be underpinned by sustainable development imperatives.

From the discussion on the various variables of Ubuntu, the following theoretical perspective is offered. Ubuntu is an all-encompassing African philosophy and value-system which encourages a spirit of solidarity and inter-dependence amongst people, promotes cohesion, humanity, and human dignity, to achieve social and economic capital through a set of norms and standards in a sustainable manner. As a theoretical perspective within the corporate governance field, Ubuntu involves treating all organisational stakeholders equitably and respectfully. It calls up organisations to promote solidarity and inter-dependence to the achievement of common societal goals. Centrally, there is a need to promote cohesiveness and humaneness when delivering organisational activities and operations. Within organisations, all stakeholders alike should be treated with respect and dignity. Organisational developmental goals should be geared to promote sustainable development. In the final analysis, there should exist norms and standards to regulate relationships within organisations. Indeed, Ubuntu theoretical perspective requires organisations to design and implement long-term developmental goals in the interest of the living and the yet to be born thereby advancing sustainable development.

In practical terms, the Ubuntu theoretical perspective transcends the boundaries of several theories (the agency, stewardship, stakeholder, resource-dependency, institutional, and political theories, among others). The stewardship theory treats especially managers as trusted and competent stewards having the ability to grant their devotion to serving the organisation interests and outcomes. Considering the sociological and psychological perspectives closely connected to the sociological perspectives governing Ubuntu, it is arguable that managers as organisational stewards would discharge their functions in a more equitable, fairly, and justly. Secondly, Ubuntu

theoretical perspective reflects striking similarities to the stakeholder theory as they are both directed at meeting the interests of the wider stakeholders within the organisation. To a large extent, the resources-dependency theory recognises the human aspects of the organisation as resources capable of improving organisational performance. On the other hand, the Ubuntu theoretical perspective encourages human capital development as its underlying objective. Both the political and institutional theories recognise an Organisation as a cohesive structure gravitating towards the Ubuntu theoretical perspective as it treats an organisation as an instrument to promote solidarity, cohesiveness, and humanity. To achieve sustainable development, economic considerations are vital to pursue which denotes relationship with the agency theory. Moreover, Ubuntu perspective promotes an organisation unit in line with institutional theories such as the political and institutional theories.

5.5.2.2 Ubuntu Theoretical Perspective in Practice

There has been a substantial debate amongst business and social scientists around the exact meaning of Ubuntu in theoretical and practical reality. As a theoretical perspective, Ubuntu is amenable to be transposed to different social settings and contexts. Given its generalizability features, the Ubuntu phenomenon has not only been adopted by the business community but has featured in numerous Constitutional Court cases (Cornell & Muvangua 2012; Taylor, 2014). Lutz (2009) reckons that corporate governance frameworks should take an organisation as a community in which solidarity is important rather than and a mere cluster of individuals. Such an approach would incentivise management to channel its energy to promoting the common interest of all stakeholders of the organisation. This viewpoint accords very well with the underlying theoretical basis of the stakeholder perspective as it promotes a continuum of a network of relationships consisted of various constituents within an organisation.

Ubuntu theoretical perspective presupposes that a person is a rational human being if he/she participates and shares with his/her neighbours (Masina, 2000). Within an organisation, the stewardship posits cordiality and trustworthy atmosphere between the board and management accordingly translating into the elevation of organisational interests. Therefore, Ubuntu theoretical perspective should represent an organisational ethic which must permeate an organisation from top to bottom and embrace all stakeholders. King Code (2016) emphasises an inclusive and sustainable development approach to corporate governance. Specifically, it requires organisations to commit to the Ubuntu perspective in organising all their governance mechanisms strongly rooted on the principle “I am because you are – you are because we are” (King Code, 2016; Taylor, 2014; Tutu, 2004).

According to Murithi (2009a:231), “Ubuntu theoretical constructs on corporate governance practices permit citizens to actively participate in all public matters that protect human rights and promote accountable leadership”. The Ubuntu theoretical perspective finds its premises on the basis that SARAs are instruments established to ensure that their social capital and wealth portions are used to benefit future generations as mandated. This wealth has no intrinsic value and SARAs’ riches are to be a means of ensuring a good life for all in the future.

Taylor (2014) offers a practical way of employing the Ubuntu theoretical perspective. He formulated a “framework for ethical decision-making” process for applying Ubuntu. He states that on the one hand “an action is right if it promotes harmonious relations amongst people, while on the other hand, it is wrong if it constrains human relations or denigrates the dignity of other human beings”. He states that each action or transaction should be tested against the four components of Ubuntu: does the action promote cohesion amongst the parties? Does the action promote or acknowledge reciprocal value between the parties? Does the action damage relationships with the various parties? Does the action devalue any of the parties? Any action that contravenes any of the components renders the action morally wrong. Pragmatism may lead to the necessity for consequentialist resolution for the greater good of the majority of the higher-value stakeholders, but that would not make it morally right, merely justifiable.

5.5.2.3 Scenery of Ubuntu Theoretical Perspective

We posit that Ubuntu theoretical perspective as an African philosophical worldview and value-system is capable of general application within diverse contextual settings. Its general application is reflected in Thabo Mbeki’s (2005) words when stating that “the world is an interdependent whole in which none can be truly free unless all are free, in which none can be truly prosperous unless none elsewhere in the world goes hungry, and in which none of us can be guaranteed good quality of life unless we act together to protect the environment”. As for Nussbaum (2003), there is a potential for Ubuntu to be a leading force in the African workplace to transform how Africans pursue organisational activities and decision-making processes.

At the heart of Ubuntu theoretical perspective, is the promotion of an inclusive approach creating a relationship between organisational activities and stakeholders in and outside the organisation. At the organisational level, it implies serving of interests of shareholders and stakeholders. It involves a commitment to a stakeholder-centred approach influenced by African socio-cultural values. According to West (2009), Ubuntu perspective promotes an inclusive governance approach which strongly supports the pursuance of developmental goals. There is “prevalence of

Ubuntu philosophy, a humanistic approach to African management with an emphasis on compassion, respect, human dignity, building relationships, personal interaction, and mutual respect” (Browning, 2006). Mangaliso (2001) further suggests that “incorporating Ubuntu principles in management has great potential as a superior management approach when managing organisations”.

5.5.3 Contrasting the Agency Theory with Ubuntu Theoretical Perspective

The agency theory perspective tends to prefer the promotion of shareholder interests over other interests within the organisation. In terms of this theory, shareholders should hold management accountable for primarily maximising shareholder interests and the organisation exist purely to maximise profits (Bushman & Smith, 2001; Fama & Jensen, 1983; Jensen & Meckling, 1976). Organisations are under no obligation to promote other stakeholders’ interests, but they are expected to increase as much profit as possible for the shareholders (Clarke, 2014; Davis *et al.*, 1997). Since organisations exist to yield benefits for its shareholders through profit maximisation, other people will by extension also reap benefits in the long run (Fama & Jensen, 1983).

The agency theory should be criticised for its one-sided approach of profit maximisation at the expense of other stakeholder interests. Focusing only on exclusive economic self-interests might not always yield the projected outcomes for the benefit of all and has the potential of encouraging short-term planning and/or produce harmful results (Clarke, 2014). Within the agency theory perspective, the tendency is to ignore or disregard the interest of other stakeholders, such as employees, community and customers (Amoako & Goh, 2015). In this context, these stakeholders’ input is normally treated as externalities falling outside the realm of accounting and inconsistent with the pursuit of maximisation of profits (Amoako & Goh, 2015; Davis & Thompson, 1994; Donaldson & Preston, 1995). According to Stout (2007), the belief that managers are duty-bound to maximise profits for the shareholders is not legally and factually sound since shareholders do not own the organisation, but rather a “share” or “stock” making their right of ownership limited.

Implementing sustainable corporate governance practices stemming from Ubuntu theoretical perspective demands that we move beyond the traditional agency theory perspective characterised by self-interests and opportunistic behaviours to an all-inclusive African perspective encompassing the interests of all stakeholders. Encompassing all stakeholders’ interests within an organisation does not accord very well with the primary objective of an organisation along with agency theory motives. Comparatively speaking, both the agency theory and Ubuntu theoretical

perspective are on the opposing ends of the organisational spectrum as their primary objectives are incompatible to one another, i.e. the promotion of shareholder interest's maximisation on the one hand and the promotion of stakeholder interests on the other.

5.5.4 Contrasting the Stakeholder Theory with Ubuntu Theoretical Perspective

The stakeholder theory propagates for the inclusion of multiple stakeholders within the operation of the organisation. Its foundation is premised on the belief that organisations are operated through complex networks and relationships of multiple stakeholders, such as local communities, customers, employees, suppliers, etc., having inherent rights in the operational affairs of the organisation (Amoako & Goh, 2015; Rossouw, 2008). The stakeholder theory argues that management should grant legal protection and attention to these stakeholders as they have a stake in the affairs of the organisation (Davis & Thompson, 1994; Donaldson & Preston, 1995). Evan and Freeman (1993) classify these stakeholders into internal stakeholders: managers and employees; and, external stakeholders: local community, government, customers, suppliers, and shareholders. Each of the individual stakeholder groupings has a specific role in the sustenance of the organisation (Evan & Freeman, 1993). Kelly (2001) indicates that to achieve organisational goals those organisations should begin with thorough preparation of employees' income statements, assessments of productivity measures and the development of community income statements. In terms of the stakeholder theory, all stakeholders are equal and treated as such (Evan & Freeman, 1993). The stakeholder theory favours a collaborative and relational approach between the operations of the organisation and its stakeholders (McAlister *et al.*, 2003).

The stakeholder theory approach accords very well to the Ubuntu theoretical perspective in that they both portray an organisation as a single unit in which stakeholders work collaboratively towards achieving a common goal. A major shortcoming of the stakeholder theory, among others, it is non-committal to the equitable and fair treatment of these stakeholders in the face of competing stakeholder interests. In contrast with the stakeholder perspective, the Ubuntu perspective has a glaring similarity with the central tenet of social interest in individual psychology through its manifestation of anti-individualistic conduct leaning towards the survival of the group if the individual works to serve the community and its survival (Brack *et al.*, 2003:319; Bertsch, 2012:90). Mainstreaming Ubuntu perspective assists in building successful institutions and organisations and enables employees to develop a positive work ethic (Brack *et al.*, 2003). Regine (2009:21) states that to enhance social capital, organisational leaders should display Ubuntu values when they lead institutions created for the benefit of communities. Ubuntu perspective as a corporate governance framework should comply with the following guidelines: corporate leaders should use state resources more efficiently by investing in communities and they should develop

new institutional corporate governance framework built on Ubuntu principles (Nkondo, 2007:99). Botha and Claassens (2010:81) stress that “not only does Ubuntu emphasises on teamwork, but it also draws attention to relationships, and requires empathy between leaders and followers”. Botha and Claassens (2010:78) elaborate that “the implications of an Ubuntu-oriented leadership style includes not only teamwork down to grass-roots level, but also the encouragement of team members or followers to sacrifice their personal gain or goals for those of the group as a whole”. Instead, the authors state that the leadership style encompasses creative collaboration, open channels of communication, teamwork and moral obligations by all stakeholders.

According to Sulamoyo (2010:46), “employees in an African setting are more comfortable working under a management style that is clear and scientific as opposed to one that is organic”. As for Jackson (2004), such organisations are multicultural character and emphasise humanistic values and harmonious teamwork. In SARAs officials should fully understand the people they serve and centrally practice Ubuntu. “In the sphere of work, individual creativity and the solidarity of co-operation and common ownership must go hand in hand” (Prinsloo 2000:277; Washington 2010:33). According to Taylor (2014) the principle of “right action”, offers a strong deontological basis for understanding “Ubuntu in action” and provides a sound base from which to analyse and propose ethical behaviour and to make ethical decisions. For Ubuntu to be effective there must be a statement of obligatory right action – this is what you must do to act in accordance with Ubuntu. Broodryk (2010:68) considers being good and living honestly and honourably as what could be defined as right actions.

5.5.5 Ubuntu Theoretical Perspective as an Extension of Stakeholder Perspective

The conceptualisation of the Ubuntu theoretical perspective has substantially been influenced by the stakeholder perspective. In its outlook and character, the stakeholder perspective seeks to cater to the wider organisational stakeholder through a network of relationships without exception. Arguably, the stakeholder perspective purports to serve these stakeholder interests applying the same measure of recognition and significance given the diverse nature of the stakeholder interests. Additionally, the extent to which the stakeholder perspective objectively advances other societal interests beyond economic interests cannot be guaranteed.

It is relatively unclear whether the stakeholder-centric corporate governance tools of benefit to various stakeholders of the organisation other than the shareholders. Studies confirm that many corporate governance tools or interventions are not meant to benefit broader social and environmental agendas of the stakeholders (Kacperczyk, 2009). Although some corporate governance mechanisms appear to be successful enhancing social outcomes, they seem to be

only effective in making organisations respond in a manner that benefits only a few privileged stakeholders (Johnson & Greening, 1999). According to Shahzad *et al.*, (2015), attempts to bring together managerial and shareholders' interests did not assist managers to an adequate balance of all stakeholders' interests. The "stakeholder-centric" perspective of corporate governance view managers of organisations as not only are tasked with protecting and maximising the wealth of shareholders but are instead expected to translate strategic decisions to yield benefits for all other stakeholders (Shahzad *et al.*, 2015). The organisation is thus viewed as a corporate governance covenant between senior managers and its stakeholders as the foundation of sound corporate social performance (Jones, 1995; Chan & Welford, 2005; Welford, 2007; Welford *et al.*, 2008).

On its own, an organisation is a crucial part of society. "It can no longer be seen as existing in its own narrow universe (or "society") of internal stakeholders and the resources needed to create value – it also operates in, and forms part of, general society. In this view, the totality of an organisation is not just those individuals and entities within its narrowly defined value chain, but society as a whole" (King Code, 2016). As we have already observed, the Ubuntu theoretical perspective is characterised by human relations entrenched within principles, such as the promotion of inter-dependence and solidarity amongst individuals and groups within organisations, enhancement of social cohesion, promotion of humaneness and humanity in interactions, respect and dignity, sustainable development matters, and regulation of social conduct or behaviour. These characteristics offer a contextual setting within which the various stakeholders should be treated. Lesser or unequal treatment of any of the stakeholders would amount to the devaluation of the Ubuntu theoretical perspective. It is imaginable that the stakeholder theory would regard the lesser treatment of another stakeholder as a devaluation of the perspective. It is, therefore, a posit that given the striking similarities between the two theoretical constructs, the Ubuntu theoretical perspective cannot be recognised as a standalone theoretical construct but rather an extension or refinement of an existing theoretical construct. From an African philosophical perspective and worldview, there is a need to incorporate Ubuntu principles within the various workplaces. The objective remains elusive without concerted efforts for its practical reality.

5.6 Importance of Ubuntu Theoretical Perspective

The underlying tenets of Ubuntu are the promotion of social justice and fairness, human dignity, compliance with the law, as well as respecting other people and their rights. Ubuntu as a "philosophy and way of life" has been the foundation of society because of the beliefs, practices and everything else around which revolve around the person. To exhibit Ubuntu principles in our workplaces, our behaviours and activities should reflect Ubuntu values and should pervade day-

to-day activities in the organisation. A “corporate conscience” founded on people’s rights, justice, and “corporate power” need to be applied along agreed terms by those affected (Mangaliso, 2001). According to Taylor (2014), acting positively and not negatively are obligations inherent in Ubuntu. Justice Langa (*S v Makwanyane*, par. 224–225) relating to Ubuntu, opined that “... the person has a corresponding duty to give the same respect, dignity, value, and acceptance to each member of that community. More importantly, it regulates the exercise of rights by the emphasis it lays on sharing and co-responsibility and the mutual enjoyment of rights by all”.

Emphasising on the importance of Ubuntu, Littrell and Nkomo (2005) state that a fundamental way for improving organisational processes and activities is for organisations to embrace and implement modern human resource management practices and policies for current and prospective employees. According to Mangaliso (2001), blending Ubuntu principles with corporate governance might be one of the superior organisational management approaches. The author further argues that organisations that promote humaneness, a positive caring spirit, respect, harmony and responsiveness may have an advantage when compared to its competitors. Under the Ubuntu perspective, all stakeholders are equally treated as members of one big family, and thus all accumulated benefits should be of benefit to all members.

Organisational leaders with Ubuntu should become role-models in being respectful, placing value on team-work, and mutual support. An Ubuntu way of governance equals a “humane” governance style that is informed by collectiveness and communality as opposed to selfishness and individualism. Ubuntu as leadership philosophy emphasises principles of solidarity and collectivism as opposed to opportunism and materialism when facing societal challenges (Khoza, 2011; Mangaliso, 2001). Within SARAs, the spirit of Ubuntu should be fostered by everyone involved in service delivery. Regine (2009:17) connects Ubuntu and organisational leadership thus: “... the great leaders of the twenty-first century will have Ubuntu; leaders with Ubuntu recognise their interconnectedness and how their humanity is inextricably bound to others if others are diminished so are they, if others fail, so do they; they take pleasure from other people’s success knowing that their success is everyone’s success; when Ubuntu guides leaders, they realise that we are more alike than we are different; the spirit of Ubuntu leads to cooperative and collaborative work environments because people are encouraged to participate, to share, to support each other and the collective effort to be a team player; even if Ubuntu-inspired leaders hold high positions in their organisations and wield tremendous power, as they inevitably do, they still create relationships based on mutuality: mutual interest, mutual need, and mutual respect”.

Adu Amoah (2012:341) calls for the development of “neo-elites” in Africa, which consists of a transformation network of important segments of society which includes academics, business leaders and members of the civic organisations. He hypothesised the neo-elite as a conglomerate that understands its primary objective as rendering strategic, ideational, managerial, organisational, inspirational, and leadership inputs for the bringing transformation in African states. He envisions the evolvement of political leadership, public administration, and the citizenry that actively work together towards the achievement of a humane existence for all and eliminating self-interest. Within this context, actions and practices should ensure a pragmatic measurement of public interest against the envisaged quality of life as opposed to solely focusing on economic growth (Stout, 2010:5).

According to a renowned Kenyan political scientist Ali Mazrui (2002), cited in Taylor (2014), “... democracy aims at making rulers accountable and answerable for their actions and makes the society as open and the economy as transparent as possible. Indeed, accountability and transparency justify the very existence of democracy and good governance. Public accountability and transparency entail the “obligation to expose activities and results of such activities and to explain and justify them in public”. Taking this into consideration, in order “for personal Ubuntu activities by public leaders and officers to be credible, adherence to public accountability and transparency is highly necessary” (Tambulasi & Kayuni 2005:153). Understandably, leaders would pursue the in-group interests, thus the group’s perception of the leader’s ability to protect it influences the views of the leadership (Muchiri, 2011). In their study of Egyptian, West African and Southern African leadership, Eckert *et al.*, (2012) found that most leaders were good at “putting other people at ease; being fast and agile learners, and leading in diverse environments”. Furthermore, leaders were found to be “resourceful, focused, and good at problem-solving which demanded creativity”. In a closely related study, Littrell & Nkomo (2005) found that “successful African leaders are skilled in balancing conflicting demands from diverse constituents, they are resourceful, and they are creative, innovative, and adept at maximising results with scarce resources”.

5.7 Conclusion

The Ubuntu theoretical perspective provides a distinctly Southern African lens (Mokgoro & Woolman, 2010). According to the Ubuntu theoretical perspective, SARA long-term value should depend on a society which as far as possible, respect human rights, protects the environment,

and to safeguard the rights and opportunities of future generations. According to Metz (2011), it is expected of the state to honour communal relationships by acting in a manner that benefits society. Therefore, priority should be completely accorded to the well-being of the entire citizenry as the goal of public policy development and management (Adu Amoah, 2012).

The application of Ubuntu which can be universally considered can be found in President Thabo Mbeki's (2005) words when stating that "... the world is an interdependent whole in which none can be truly free unless all are free, in which none can be truly prosperous unless none elsewhere in the world goes hungry, and in which none of us can be guaranteed good quality of life unless we act together to protect the environment". This resonates with Desmond Tutu's point that "... if we could but recognise our common humanity, that we do belong together, that our destinies are bound up in one another's, that we can be free only together, that we can survive only together, that we can only be human together, then a glorious world would come into being where all of us lived harmoniously together as members of one family, the human family, God's family" (1999). Paulo Freire (1975) a Brazilian philosopher states that "the departure point for any political pedagogical project should be directly derived from the people's aspirations and wishes, and how they perceive their reality and struggles". Poovan *et al.*, (2006:20) advice "in the wake of these issues, it would be wise for African leaders to develop a value-based style of leading which incorporates the social values of Ubuntu. Particularly, Afro-centric leadership is founded on an inclusive Ubuntu-based value system, where the collectivist notion of the interdependence of people is recognised in the workplace". Again, the concept of "Afro-centricity" calls for a transformation of morals and spiritual conduct aligned to common African cultures that promote communalism, solidarity and inter-connectedness to African people, that depicts a uniquely African leadership style. Those managing in an African work environment should be able to carefully balance the demand for technical competence and be social savvy. This management approach is fast acquiring popularity in contemporary management circles. Many successful managers are increasingly seen as acting as "coaches, cheerleaders, and nurturers of champions", as compared to police, unquestionable experts, and not accepting other people's views (Poovan *et al.*, 2006). Seale (1999) argues that a new or refined corporate governance theory and its relevance need a further empirical inquiry to solidify it. "Rather than seeing theory as fixed and immutable, it is perhaps better understood as a fluid collection of principles and hypotheses". The relevance of such principles and hypotheses can only be confirmed with varying degrees of certainty informed by the existing research or other empirical evidence in support of them (Ritchie *et al.*, 2003).

In this chapter, we have observed the emergence of a new theoretical framework called “Ubuntu” influenced by African worldview and philosophy. The following chapter explores the foundation and characteristics of a framework for implementing corporate governance that can serve as a guiding instrument for SARAs when implementing corporate governance practices inspired by the new theoretical perspective.

CHAPTER 6

CORPORATE GOVERNANCE COMPLIANCE AND IMPLEMENTATION FRAMEWORK

6.1 Introduction

In the preceding chapters, an overview and rationale of the study context were outlined. An examination of the corporate governance theoretical and model constructs' conceptualisation, development, setting, and application followed thereafter. Furthermore, the study set-out ontological and epistemological perspectives to guide the research process. Then followed a critical evaluation of the corporate governance landscape within identified SARAs. Theoretical contribution in the form of the conceptualisation of Ubuntu theory as a reinforcement of the stakeholder theoretical perspective has been crystallized. This chapter lays down a compliance and implementation framework to help SARAs in their development of corporate governance systems, processes and procedures to improve their standard of conduct towards their corporate governance responsibilities and obligations.

Over the last few decades, organisational social outcomes and capital have increasingly become important to all organisational stakeholders alike and they are under sustained pressure to promote stakeholder-inclusive outcomes (Donaldson, 1982; Freeman, 1984). Organisational stakeholders requiring attention in this regard normally include government, employees, and civil society. To meet the diverse interests of these stakeholders, organisational activities should be geared to achieving economically, ethically, and legally sound social responsibilities that are responsive to the needs of stakeholders (Wood, 1991). In addition, organisations remain under pressure to safeguard and maximise shareholder value as the central deliverable of corporate governance measures and mechanisms for providing an equilibrium balancing act between the competing pressures between maximising stakeholder interests on the one hand, and shareholder value maximisation on the other (Davis & Thompson, 1994; Jensen, 2001). The significance of employing corporate governance practices and principles within public entities generally and regulatory agencies is increasingly gaining momentum in practice (Matei & Drumasu, 2015). Over time, their corporate governance arrangements, by and large, are increasingly resembling similar traits comparative to the private sector. As such, more and more efforts should be taken by governments and international organisations to put their corporate governance arrangements on equal footing with their private-sector counterpart. Unlike in the past, they are under enormous and persistent pressure to deliver on their respective

organisational activities given the constitutional democratic dispensation which has created a vast number of avenues for raising concerns and the ever-increasing citizenry activism.

Jackson (2000:267) reckons that given the complexities surrounding multiplicity and diverse stakeholders and institutional capabilities involved, necessarily, corporate governance of organisations and in particular that of SARAs warrants closer attention. As such, their corporate governance practices should involve putting in place control mechanisms and management practices to direct the various stakeholders internally and externally within the organisation. Corporate governance arrangements for SARAs can truly be considered stakeholder-inclusive because of them having a positive effect on corporate social performance and the responsibility to achieve sustainable social outcomes (Shahzad *et al.*, 2015). Scholars, such as Hillman and Keim (2001) and Wood (1991) argue that to achieve higher socio-economic capital, organisations should take a keen interest in realising the legitimate stakeholders' interests and exemplify ethical conduct and behaviour towards stakeholders. As for Sengur (2011), the practice of proper implementation of corporate governance principles is an enabler for service delivery maximisation, effective management system, and strengthened organisational value-system. Since the ground-breaking work of Jensen and Meckling (1976), consistently, subsequent research has proven the value of practising good corporate governance principles.

SARAs' corporate governance arrangements comprise of systems and processes to ensure that political, economic, social, administrative, and legal outcomes within a stakeholder-inclusivity approach generally and Ubuntu perspective particularly is achieved. When they employ fundamental Ubuntu principles, such as solidarity, cohesion, humanity, respect and dignity, positive social morality, and sustainable development, they can always act in the interest of the public. To satisfy these stakeholder needs, effective and efficient tools and instruments are required to guide them in delivering their mandates. In this light, this chapter focuses on effective and efficient instruments to govern them, stakeholder's involvement processes within the context of Ubuntu perspective, and governance mechanisms and structures requiring implementation to improve their corporate governance practices.

6.2 Purpose and Objectives of Corporate Governance Compliance and Implementation Framework

Many failures and closures of established private and public organisations during the last two decade or so have forced governments to assess their corporate governance and developed ways of improving their performance. The USA implemented the Sarbanes-Oxley Act in 2002 to regulate and govern the operations of organisations. The UK released Cadbury in 1992 to set-out corporate governance guidelines for UK corporations and consequently published the Financial Reporting Council (FRC) in 2016 as a “Corporate Governance Code of Practice” to promote efficiency and effectiveness in organisational management. South Africa released a series of King Reports on Corporate Governance since 1994 to consolidate sustainable corporate governance implementation within South African organisations (1994, 1998, 2002, 2009, 2016). Additionally, to enforce compliance to regulatory requirements of corporate governance practices, the PFMA (1999) was passed to strengthen prudent, accountable, and transparent public finance management, followed by the Companies Act (2008) to regulate a wide range of corporate governance matters affecting organisations of all corporate forms. In the light of the criticism levelled against King Code (1998) and (2002) for being biased towards the private sector, the “Protocol on Corporate Governance for State-owned Enterprises” published in 2006 was tailored for addressing corporate governance requirements for the SOE’s. As it has been observed, subsequent King Codes attempted to bridge this gap by developing codes having a general application to all corporate forms, including the public sector and the Non-Governmental Organisations (NGO) sector (2009, 2016). There is an ever-increasing demand for additional corporate governance instruments to assist organisations in meeting their corporate governance responsibilities. In this regard, given the unprecedented levels of non-compliance, it is expedient to develop a compliance and implementation framework to become a point of reference for SOEs generally and SARAs particularly in their implementation of corporate governance practices and principles.

6.2.1 Purpose of Corporate Governance Compliance and Implementation Framework

Corporate governance serves the purpose of providing a mechanism by which the organisation is motivated to inculcate organisational culture with organisational activities to achieve organisational success. It means well-defined stakeholders’ rights, robust control environment, transparency, as well as accountability. This corporate governance compliance and implementation framework are aimed at engendering a culture of developing robust governance within SARAs by establishing norms, standards and principles for managing good governance. It will also serve to establish a benchmark for good governance practices within the SARAs environment and the public sector in general. The emphasis of this compliance and

implementation framework is to offer guidance to SARAs in their practice of good corporate governance principles.

6.2.2 Objectives of Corporate Governance Compliance and Implementation Framework

Having common corporate governance compliance and implementation framework setting-out the regulatory framework, organisational ethics framework, and the internal and external governance tools have the potential of playing an important part in assisting various stakeholders involved in the governance of SARAs to understand their respective significant roles and responsibilities they ought to play. A summary of such stakeholders within their corporate governance environment is provided as follows:

- Government - laying down of the legal and regulatory framework, allocation of resources, and provisioning of oversight role;
- Board – exercising oversight over senior management;
- Management – implementing governance and risk management practices in the organisation; and
- Civil society - demanding professional and ethical conduct and whose invaluable activism is important to keep traps of happenings within the SARAs.

To command legitimacy and effectiveness, the compliance and implementation framework should define the roles of the various stakeholders. It should delineate their duties and reduce duplication of roles and responsibilities which might result in critical issues being overlooked. The framework should clearly set-out the critical role expected to be played by the government as a shareholder. It should enable boards to better understand their oversight role, enhance the management of their executive role, and for staff members to have a full grasp of their technical role. In the final analysis, the compliance and implementation framework should serve as an instrument of cultivating a culture of citizenry activism within the corporate governance environment.

The compliance and implementation framework should involve clear principles and rules like integrity, transparency, and accountability with attributes that promote good governance and serve as tools for dealing with various organisational risks which include financial, operational, political and reputational risks. The framework should also provide cogent constructs for promoting and evaluating organisational performance and development. Moreover, it should provide structured stakeholder engagement processes for collaboration. Ultimately, the framework should stimulate productivity and create a common understanding of what good governance entails.

6.3 Key Features of Corporate Governance Compliance and Implementation Framework

Matei and Drumasu (2015) suggest the following as the major determinants of good corporate governance in public organisations: proper planning mechanisms for the effective use of public resources; availability of stakeholders' engagement processes for the satisfaction of their interests; availability of effective controlling mechanisms and management systems. In their execution of organisational activities, they need to consider the economic, social, and environmental impact of organisational decisions, policies and plans. They should carefully consider demographic factors when making decisions that may have a long-term organisational impact and should ensure that socio-economic outcomes are delivered sustainably. In doing so, conflicting and competing interests between achieving various economic, social, and environmental benefits on a short-term basis will often crop up. When faced with conflicting and competing interests between long-term and short-term goals, the board needs to strike a balancing act by ensuring that appropriate trade-offs are made with due regard for public interests. Stakeholder engagement processes should ideally be employed to safeguard public interests.

As public organisations, SARAs are accountable for public expenditure through effective, efficient, and responsible use of public resources entrusted. Additionally, as regulatory agencies, they have an overarching responsibility to comply with their legislative mandates to serve the specific public interest. Essentially, they should demonstrate integrity in all their actions and have mechanisms for encouraging and enforcing stronger compliance with ethical and legal values in all levels.

Ultimately, the goal of this study is the crafting of a compliance and implementation framework to offer a sounding-board to all SARAs in carrying out their corporate governance mandates. The framework is predicated on the following essential elements constituting good governance:

- Coherent compliance to legal and regulatory mechanisms to uphold highly established standards good corporate governance practice;
- Fostering ethical as well as a value-based organisational culture;
- Establishing robust internal governance mechanisms; and
- Reinforcing a strong external governance environment.

6.3.1 Regulatory Framework

The totality of sound corporate governance could be achieved through different regulatory mechanisms such as statutory regulation "hard law" approach, voluntary code of practice "soft

law” approach, as well as the combination “hybrid” approach. For coherent corporate governance to thrive, sound legal instruments, effective regulatory mechanisms, and institutional governance arrangements are critical. There should be strict adherence to these legislative and regulatory requirements, voluntary and self-regulatory arrangements and commitments, and good organisational practices (OECD, 2001). The environment within which organisations operate should provide enablers in the form of laws, policies, and codes for the setting-up of governance structures and ethical culture and create avenues for accountability and transparency requirements, as well as other channels of communication within the organisation. As an effective control mechanism, the regulatory framework is expected to explain the roles and responsibilities of all relevant stakeholders for the balancing of power and authority (Matei & Drumasu, 2015). The regulatory framework should promote fairness and impartiality when enforced and safeguard the legal protection and offer redress to those harmed. Additionally, they should contain preventative and deterrent measures for the elimination of corruption and all forms of malpractices within organisations. Stringent regulatory requirements assist in the monitoring of appropriate organisational behaviour.

During the late 1970s, the soft law approach as contained in voluntary codes of corporate governance gained popularity within organisations. At the national level, the USA in 1978 and the UK in 1992, were the first two major economies to develop codes of corporate governance to guide corporations in their countries. Organisations like the World Bank, IMF, and OECD have from regularly developed international good governance instruments and serve as benchmarks for other countries (Krenn, 2014). To date, over a hundred countries globally have created their domestic codes of corporate governance. Most of the codes deal with various traditional Anglo-American best practice guidelines for board composition, treatment of shareholders, transparency and accountability when implementing prudent financial reporting (Aguilera *et al.*, 2008; Jones & Pierce, 2013).

“Recent corporate governance failures and scandals of both developed and developing countries fuelled the development of corporate governance codes for regulating corporate behaviour and to monitor responsibility, integrity, transparency, and accountability in the management and control of organisations towards maximising the interests of all stakeholders” (Cuomo *et al.*, 2016; Pargendler, 2016). Corporate governance codes are now part and parcel of the institutionalisation process of governance framework and arrangements (Aguilera & Cuervo-Cazurra, 2009; Seidl *et al.*, 2013). Agency theory perspective demands the existence of sufficient monitoring and control mechanisms for the protection of the shareholders’ interests (Shleifer & Vishny, 1997). Moreover,

Parum (2005) and Stiglbauer *et al.*, (2012) state that from an agency perspective, adoption of rules of specific corporate governance codes and the monitoring thereof can assist in reducing the disconnections between external and internal governance. Davis *et al.*, (1997) challenge the agency theory on its narrow focus on shareholder value maximisation, and thus instead advocate for the stakeholder theory in which different stakeholder groupings are considered. Greenwood *et al.*, (2002), state that developing codes of corporate governance is dependent on the translation of ideas into theories, the generalisation of abstract concepts and explanation of causalities of the generalised idea as a means of problem-solving.

Centrally, the codification of corporate governance codes was stimulated by the drive to enhance shareholder maximisation rooted from the agency theory and the need to adopt an all-inclusive approach to stakeholder needs satisfaction underpinned by sustainable development requirements. Concerning regulatory agencies, in the main, this involves having optimally functioning organisational systems and processes that consider internal organisational operating systems and processes and their impact on the wider stakeholder interests. Therefore, SARAs should comply with all governance codes and regulations to demonstrate their commitment to the rule of law. They should use their legal mandates towards the protection of the public and the interests of the stakeholders at large. Their legislative mandates are instrumental in ensuring that they operate transparently and are held accountable. Adhering to the rule of law demands strict implementation tools for addressing non-compliance and imposing appropriate sanctions. Zhang (2007) argues that over-reliance on market forces alone is insufficient to maintain good corporate governance. Instead, as Gao and Kling (2012) suggest, imposition and proper enforcement of sanctions should be strengthened to complement the prevailing market forces.

The regulatory framework component of the compliance and implementation framework is composed of the following key elements:

- Soft law approach underpinned by national codes of good governance;
- Hard law approach consisted of regulatory and legal instructions;
- Hybrid approach consisting of a mixture of soft and hard law approaches; and
- Organisational and sectoral codes of ethics.

6.3.1.1 Soft Law Approach

By their very nature, corporate governance codes are voluntary instruments and organisations are under no obligation to enforce them. Organisations may opt to comply with them and

determine the extent of their adherence. They are called soft law since they are voluntary and they are not legally cohesive instruments (Cuomo *et al.*, 2016). However, organisations often comply with them because of externalities imposed by external pressures from civil society organisations, pressure groups, stakeholder needs, and industry rules, as well as other mandatory market forces. Additionally, international organisations, including the IMF, World Bank, and OECD all invoke mandatory compliance with their corporate governance instruments when engaging countries and national corporations. More specifically as Eijsbouts (2017) maintains that when organisations engage in CSR initiatives, more often, they reflect some form of hard law regulation as opposed to soft law voluntarism. Due to the sustained pressure to uphold corporate governance practices and underlying beneficial effects thereof, voluntarism has over the years become a malicious compliance matter and not adding value (Eijsbouts, 2017).

Comparatively speaking, proponents of the soft law approach, such as Abbot and Snidal (2000) maintain that compliance to voluntary regulation works better than enforcing statutory regulation. Organisations are more inclined to engage openly and transparently in their operational affairs as opposed to when they are compelled to do so. Research suggests that combining voluntary code with disclosure requirements tend to be beneficial than solely depending on the enforcement of a statutory code (Abbot & Snidal, 2000; Cadbury, 1992). Eijsbouts (2017) suggests that even though soft law is not legally binding, it may have the legal effect due to the following reasons: firstly, given the beneficial consequences to be derived from embracing a corporate governance code has in any way become a legal requirement for many organisations; secondly, there is a strong influence towards corporate governance convergence on both global and local levels. Consequently, to command legitimacy and credibility, non-compliance to a voluntary corporate governance code is no longer an option but a matter of practice.

Largely, the soft law approach has its foundation on international organisations like the World Bank, IMF, and the OECD, among others. In particular, the OECD Corporate Governance Principles of 2001 are intended to guide governments and corporations in their quest to “evaluate and improve legal, institutional and regulatory frameworks of corporate governance”. Specifically, paragraph 1 of Chapter 1 of the Principles states that “observance of the guidelines by organisations is voluntary and not legally enforceable”. The UK’s Cadbury principles of 1992 laid the foundation for the need for corporate governance codes through soft law approach and have become an invaluable reference source for best practice in the European Union (EU) and the entire world (Jordan, 2013; Keay, 2014).

Madhani (2014) points out that research on corporate governance intended for the public sector has grown exponentially worldwide in the last decade. Countries including India, UK, and Australia have respectively published corporate governance frameworks tailor-made for the public sector (Madhani, 2014). In South Africa, the publishing of the King Code on Corporate Governance in 1994 has been followed a series of developments towards fostering coherent public sector corporate governance. Three separate developments are notable: firstly, the implementation of the PFMA (1999) to enhance public sector transparent and accountable financial system; secondly, the adoption of the Protocol on Corporate Governance in State-owned Enterprises (2006) along similar lines with King Code (1998, 2002) principles; thirdly, the implementation of the Companies Act (2008) as guidelines for the implementation of corporate governance matters within organisations of all forms.

The King Code (2016) has adopted a simplified approach by narrowing the 75 principles contained in its predecessor to 17 principles. It applies to all entities irrespective of their corporate form, that is, public, private or non-profit. The King Code (2016) operates on “apply and explain” approach rather than the “apply or explain” approach provided by King Code (2009), or “comply or explain” approach that King Code (2002) operated on. The “apply and explain” approach means that the board can no longer pick and choose to apply corporate governance principles and practices. Even if they follow alternative practices, they are compelled to provide the reasoning for such an approach. Explaining why a different set of rules or practices were followed for specific issues. King Code (2016) lays down general principles regarding the provisioning of effective ethical organisational leadership; cardinal practices and principles of good governance pertaining to board structures; institutional arrangements for internal and external organisational auditing, risk management, information technology, management of financial and human resources, compliance with statutes, rules and standards; governing stakeholder relationships; and, integrated reporting and disclosure. Additionally, King Code (2016) provides a set of guidelines to SOEs in practising good corporate governance.

Due to the growing number of corporate governance scandals, there should be a regular and continuous review of the effectiveness of corporate governance codes in adapting to the changing corporate governance landscape. Advancements in conducting business and services rendering backed by technological advancements will assist a great deal in improving the corporate governance phenomenon as a favoured approach (Spira & Slinn, 2013; Veldman & Willmott, 2013). By doing so, this will enhance the integration of organisational learning and change and contribute to the reduction of rigid adherence to rules. Generally, it is arguable whether malicious

compliance (the box-ticking approach) to a corporate governance code can assess real action and managerial behaviour in organisations (Thomas, 2012). On the other hand, Stiglbauer (2013) and Stiglbauer *et al.*, (2012) assert that effective implementation of corporate governance codes should translate into better organisational decision-making and planning. Additionally, substantive compliance should be prioritised as it goes to the root of real compliance. Reporting on formal compliance rates without substance does not amount to real compliance but over-simplification and tick-box approach. Impact assessment and monitoring and evaluation measures in the form of regulatory impact assessment (RIA) and socio-economic impact assessment (SEIA) or a combination of the assessment tools should assist governments and regulators in assessing compliance and the impact of regulation. RIA's and SEIA's are also useful instruments in undertaking a cost-benefit analysis. When utilised properly, these tools can assist in improving the quality of organisational decision-making processes and facilitate transparency, stakeholder engagement, and accountability. Organisational decision-making processes should be anchored on clear and accurate data as well as a detailed organisational context analysis. SARA's and SOE's assessments can considerably minimise the risk of making decisions that may fail the organisations in achieving their set objectives.

It is therefore of vital importance for SARAs to implement a robust approach to the assessment of compliance to the practice of good corporate governance principles as contained in King Code (2016). SARAs should not view these principles and practices as merely “cohesive” as opposed to “instructive”, but rather as an integral part of achieving good governance. Specifically, King Code (2016) has been simplified and customised to apply to a variety of organisational environments making it easy to apply and comply. Notwithstanding, the need to comply with the governance principles and practices, this should not be adhered to in the form of a tick-box approach, but rather in a substance form by aggressively addressing compliance to the letter.

6.3.1.2 Hard Law Approach

Across the globe, one of the significant roles of governments is that of law-making for enhancing good corporate governance. Often, the law-making process is complex and has numerous facets that bring together human beings, technology, thoughts and other things into meaningful reality (Tremblay, 2012). Eijsbouts (2017) suggests that overtime, corporate governance codes have become hard law as they manifested in legally binding rules. Moreover, international soft law codes issued from time to time by organisations like the World Bank, IMF and the OECD placed preconditions in the adoption of their codes by stipulating legally binding rules. Consequently, this has rendered the voluntary overtone irrelevant overtime (Eijsbouts, 2017).

Hard law approach that is in the form of statutory regulation is designed to achieve two main reasons: firstly, to regulate the efficient working of the market economy since market forces cannot on their own do so; and, secondly, to create binding rules to foster formal and visible compliance (Roberts, 2012). Recently, corporate governance scandals prompted a paradigm shift from over-reliance on soft Law to a hard law approach through statutory regulation to ensure that boards and management can be held accountable for their actions. These legally binding rules are useful for disciplining boards and management when conducting corporate governance affairs. The USA chose the legislated route with legal sanctions for non-compliance (Sarbanes-Oxley, 2002). Commonwealth and European Union countries prefer the hybrid approach. In South Africa, the PFMA (1999) provides a solid grounding for managing good governance practices in the efficient and effective use of government resources. Additionally, the Companies Act (2008) provides statutory provisions regarding the establishment of good corporate governance within companies of all corporate forms, the CSR issues, in particular, enjoy more prominence. Section 7(d) stipulates that “one of the purposes of the Companies Act is to reaffirm the concept of the company as a means of achieving socioeconomic outcomes”. Section 76(3)(b) directly pronounce on how stakeholder protection should be practised. In Chapter 2, Part C, general transparency and accountability requirements are highlighted, while Part 7 is dedicated to the “general governance of companies”, including duties of boards. It should be noted that corporate governance requirements are no longer just dealt with in the various King Codes (1994, 1998, 2002, 2009, 2016) which are self-regulatory in approach but are now part and parcel of the South African statute books.

The hard law approach is being criticised for its failure to provide effective and substantive compliance. There is always the potential threat for it to lead to ritualistic and box-ticking approach at the expense of substantive compliance. The preoccupation to a statutory regulation approach has become the substitute for doing right and has prevailed over ethics when they become the ceiling rather than the floor for desired ethical conduct (Michael, 2006; Michaelson, 2006). As Michaelson (2006) points-out, statutory compliance only creates the illusion of ethical compliance that can be deduced at face-value. To ensure substantive compliance all-round, corporate governance codes should have a legally binding effect, their enforcement mechanisms need to be strengthened, and the development of effective compliance review and evaluation mechanisms should be reinforced (Inyang, 2017). In practice, the voluntary nature of corporate governance codes is not visible in a true sense; currently, good corporate governance is general in the form of hard law which requires organisations to develop and implement corporate governance practices and principles as part and parcel of their daily operations. In the past,

organisations had the flexibility of developing their customised codes, but this flexibility is eroded by external developments which include soft law imposed by international organisations on the one hand and national hard law on the other. Emphasising on the growing trend towards hard law approach, Adler (1995) points-out that absence of existence or enforcement of legally binding rules, norms, and standards often creates an adversarial relationship between governments, organisations, and stakeholders. It is in the best interest of all role-players involved to operate within a strong legal environment to avoid potential conflicts amongst the various stakeholders.

The corporate governance arrangements of SARAs are somewhat complex as they involve complicated compliance requirements arising from the plethora of soft law and hard law requirements. Centrally, they are expected to comply substantially with their statutory requirements which often reflect corporate governance requirements. Over and above their statutory requirements, they ought to comply with other government regulation, such as the PFMA (1999) and Companies Act (2008). Of essence is to implement a strategic approach towards compliance with these overlapping regulatory requirements to enhance good corporate governance.

6.3.1.3 Hybrid Approach

The hybrid approach illustrates a convergence of the soft and hard law approaches or rather the two laws co-existing side by side. Recent years have witnessed more concerns around the public and private organisations' involvement in corporate governance scandals and crisis. In response to these corporate governance failures associated with inadequate forms of governance, the enforcement measures of hard law as guided by statutory regulation has received popularity; however, they are sometimes displaced in some soft law governance mechanisms driven by private initiatives (Abbot, & Snidal, 2000; Aguilera, *et al.*, 2008; Cuomo *et al.*, 2016), and Eijsbouts (2017) hold that corporate governance codes require a more serious consideration of soft and hard law compliance necessities and not as mere recommendations as it appears to be the case in practice. Countries laws, as well as regulations governing corporate governance within organisations, constitute a fundamental part of the national laws, thus more and more countries seek to align them with international codes and regulations. Many countries make the existence of corporate governance codes as a strict requirement for establishing businesses and to expand voluntary and self-regulating standards of conduct beyond the minimum legal requirements.

Most of the current corporate governance codes do not clearly regulate the relationship of stakeholders who are not direct shareholders (Parsa *et al.*, 2007) thus creating a need for reforms

in corporate governance to ensure better protection of non-shareholding stakeholders' interests (Heath *et al.*, 2010). Even though the stakeholder model and its concomitant stakeholder perspective, recognises strong employee participation in supervisory boards, various corporate governance codes hardly mention their critical role (Stiglbauer *et al.*, 2012). Perhaps, this gap is being bridged by legal enforcement requirements which include disclosure requirements and independent reviews meant for the minimisation of impropriety and malpractices by shareholding stakeholders.

Inyang (2017) found that the existence of fragmented corporate governance codes induces conflict of interpretation and application and weak and unenforceable regulatory instruments that ultimately undermine efficient and effective compliance. But for their part, Soltani and Maupetit (2013) contend that improving the optimum functioning of corporate governance requires a combination of high-quality regulations “hard law” and codes of best practices “soft law”, anchored by the underlying principles of transparency, fairness, integrity and accountability. This should be backed by the active participation of all organisational stakeholders and role-players. Increasingly, there appears to be a convergence towards the hybrid approach where governance and compliance-oriented soft and hard laws have a combined effect to stimulate improvement towards compliance to good corporate governance (Eijsbouts, 2017).

6.3.1.4 Organisational and Sectoral Code of Ethics

An organisational code of ethic is an instrument designed specifically for an organisation to regulate the behaviour and conduct of the various internal stakeholders, such as board, management, and employees generally. Codes of ethics are considered primary forms of self-regulation and vary from organisation to organisation. They often tackle a wide range of issues affecting organisational behaviour and conduct. A code of ethics can be in the form of a voluntary instrument containing commitments and aspirations made by an organisation, prescribing standards and principles to regulate the conduct of organisational activities (OECD, 2001). On the other hand, a code of ethics can be a binding instrument containing norms, beliefs and values specific to an organisation that is considered important for promoting good corporate conduct (Eijsbouts, 2017). The main objective of an organisational code of ethics is to promote compliance to ethical norms and culture that has been built within an organisation through defining acceptable standards of behaviour or the way an organisation conducts its business.

Sectorial codes of ethics are normally issued by regulatory agencies to regulate a particular sector. For examples, the EAA Act makes provision for the drafting of a code of conduct applicable

to all estate agents legally recognised. Also, the HP Act empowers the Minister to issue regulation towards the creation of ethically compliant health practitioners. Sectorial codes of ethics set standards of conduct to promote professional conduct and the highest standard of ethics. Any violation of the standard of ethical conduct will invoke investigation and subsequent imposition of appropriate sanction in terms of the code.

Codes of ethics can be divided into two categories: aspirational and directional, or a mixed of the two, hybrid. They can take a form of a highly prescriptive and controlled rule-based process that outlines what is considered acceptable or unacceptable behaviour, or a value-based process informed by intuition thus promulgating values and principles that characterise an organisation's or sectorial ethical culture. The focus of codes of ethics includes the work environment, employee-management relationships, professionalism, corruption, gender relations, discrimination, conflict of interest, financial misconduct, and communications and reporting.

A code of ethics generally represents the organisation's identity and associated acceptable norms and standards for managing behaviour within the organisation. There are two major functions of Codes of ethics, that is, an internally focused governance function and compliance with external or societal rules. The two functions yield varying legal consequences. To obtain both the external and internal legitimacy, the organisation should live up and publish the code of ethics (Eijsbouts, 2017). Publication of the code of ethics alone is not sufficient and should be supplemented by the actual living-up of the guiding principles and values. In their study, Avcin and Balcioglu (2017) found that a high standard of corporate behaviour is attributable to value-based corporate culture than practising corporate governance principles. Nowadays, organisational codes of ethics have now become a norm rather than an exception by organisations. At the minimum, a code of ethics should state its overall purpose, outline the process undertaken and reflect on its content and should set the tone for ethical behaviour. For it to be practised, the code should be properly implemented. Suitable monitoring and evaluation measures are required to assess the achievement of intended results.

To maintain high ethical behaviour, SARAs should develop organisational codes of ethics that are supported by ongoing training for the boards, management, and employees generally. Organisational ethics and principles as contained in the code of ethics should be supplemented by individual performance appraisals and enhanced by a rewards and sanctions mechanism. To be effective, employees should be well-versed with the consequences of non-compliance to the

code of ethics. Best practice requires that annual report be accompanied by “a statement of commitment to high ethical standards” signed by the chairperson of the board. The organisational code of ethics should contain values expected to be demonstrated by employees in their conduct. Codes of ethics should be made available to every employee using all channels of communication within the organisation.

A code of ethics represents a yardstick for measuring the ethical conduct within the organisation. It should set long-term goals, project organisational values to external stakeholders, and motivate employees for working for the organisation, and highlight clearly stated and unambiguous values of conduct and operation processes. To have fair and competitive procurement processes, it should be practice within SARAs to address ethical issues beforehand. These ethical values should guide the procurement decision-making processes. Of importance, the board and management should conduct themselves in accordance with the code of ethics, thus setting the right tone for the organisation. In particular, the CEO should take personal responsibility for high ethical standard and accordingly implement fraud prevention and anti-corruption measures within the organisation which clearly indicate steps to be taken when employees report incidents of misconduct, which include fraud and corruption, among others.

For effective implementation and compliance with an organisational code of ethics, credible control and monitoring mechanisms such as procedures and anonymous reporting platforms need to be institutionalised. Whistleblowing and hotlines for reporting violations are but examples of tools used to identify and close loopholes. Furthermore, introducing preventative measures, accompanied by sanctions for non-compliance may serve as some means for motivating employees to comply with ethical standards. Procedural mechanisms may include assignment of responsibility to implement and monitor code of ethics to an ethics chief officer and ensuring that ethics is mainstreamed in within critical organisational processes, policies and practices, and across all divisions and departments.

SARAs’ dual responsibility consists of ensuring and promoting high ethical standards. Whilst they are expected to develop and implement organisational codes of ethics, they are also expected to conduct their affairs fairly and responsibly and monitor compliance with professional and ethical conduct by the sector they are responsible to regulate. Therefore, it is important that organisationally (both on individual and organisational levels), they become the embodiment of high ethical standards. Undoubtedly, this would ultimately translate into positive influence for the

achievement of highest professional and ethical conduct through attitude and behaviour within the sector.

6.3.2 Organisational Ethics and Value-Based System

The significance of corporate ethics or values within the organisational system is a topical issue dating back from the early enlightenment period, amongst public authorities, philosophers, academics, and corporate leaders. The term “ethics” emanates from the ancient Greek term “ethos” or what Aristotle termed “phronesis”, loosely translated means “practical wisdom, practical judgment, common sense, or prudence” (Flyvbjerg, 2006a). Several descriptions can be ascribed to the term: firstly, what Sims (1992) refers to as the ability to judge what is good or bad and imposing a moral obligation to act in a certain way. Secondly, Trevino (1986) views ethics as “a set of moral principles or values” setting the standard of morality or behaviour. Thirdly, DeGeorge (1986) views ethics as overall principles that govern the behaviour of individuals or a group to conduct themselves in a particular way. Fourthly, Minkes, Small, and Chatterjee (1999) view ethics as a form of philosophy that informs the development of trade ideas in the market economy.

Ethics debates have been influenced by three main philosophical underpinnings. The Aristotelian theory is otherwise known as the “virtue theory” which emphasises the integrity of an individual’s character that “people love themselves first – self-love” as being of greater importance. The theory is anchored on the belief that the achievement of goals is precipitated by people loving themselves first. That self-love is a predetermination of a person’s ability to acquire the absolute potential of greater well-being and happiness, is a matter of debate. The moral character of the individual drives that person’s morality (Minkes, Small, & Chatterjee, 1999; Rossouw, 2009). Secondly, the Kant’s deontological theory, otherwise known as Kantism propagates the existence of objective standards of behaviour applicable to every individual, which is derived from the Latin concept of “boni mores” or good societal morals. Our moral actions in some areas are neither informed by an individual’s life experiences nor by natural feelings of being in need, instead are influenced by what is generally acceptable in one’s society. For example, it cannot be expected of people who are viewed as corrupt to be champions of moral guidance. Thus, the ethical concentration should not be based on the person’s inclinations, present and past experiences. It should rather be informed by what is viewed as acceptable behaviour realised through pure rational reflection. Thus, the key to moral behaviour is feeling duty-bound to keeping to objective standards of behaviour (Rossouw, 2009; Trevino, 1986). The third one is the John Stuart Mill’s utilitarian theory also known as “utilitarianism” which is concerned with the quality of actions in relation to the deontological theory.

The difference between Kantism and utilitarianism is that the latter's focus is the consequences of an action to determine if that action was morally right or wrong. Action is viewed as good if it complies with the "boni mores" understanding and approval of the majority of members of that specific community. Utilitarianism, on the other hand, posits that individuals should not only pursue their personal happiness but also that of the entire society, as the completeness of human beings surpasses that of the nature of social beings. The theory recognises the importance of external support accorded to individuals since all human beings depend on the support of others throughout their lives. Without the support of others, a person faces the likelihood of threat, rejection or expulsion from society. It is from this perspective that utilitarianism is in support of the existence of natural inclinations sympathy and a moral conscience discouraging a person to harm to others (Rossouw, 2009).

Many centuries ago, academics, scholars and corporate leaders tried to develop general guidelines for organisational codes of ethics. Given the divergent socio-cultural differences and backgrounds within which organisations operate, they were careful in establishing some independence or objectivity in the development of these codes. Sustaining public confidence on organisational behaviour strongly depends upon whether organisationally, the board, management and employees across all levels uphold integrity, whether they adhere to ethical values, and effectiveness of corporate governance arrangements that are embedded in fundamental principles of transparency and accountability (Soltani & Maupetit, 2013). These corporate governance codes are useful for directing and guiding the core organisational processes to reflect formalised values and procedures to be implemented by organisational leadership, especially at the board and management levels. Firstly, this should be reflected in how organisational activities and stakeholder engagement processes are executed (Bandsuch *et al.*, 2008).

Archer (2008) maintains that the board as the main custodian of organisational ethics should implement monitoring and review measures to assess the impact of the ethics programme regularly. Where deviations are revealed, remedial measures should be taken to address them. Corporate governance practices are founded on the understanding that organisational leadership has an obligation to show exemplary leadership by acting with integrity and fairness, upholding transparency and accountability, and acting responsibly when engaging shareholders and stakeholders generally (Johnson, 2010). Moreover, while it is necessary to reinforce regulatory compliance to principles of transparency, accountability, and fairness, there is a concomitant duty to act positively by displaying high ethical standards. Having an organisational ethics-based

culture refers to the setting and practising of standard rules to define what is considered right or wrong action. Organisation ethics help employees to differentiate between fact and belief and to what moral principles apply to take conscious decisions on applicable moral principles (Hellriegel *et al.*, 1992).

Establishing organisational ethics or value-based framework involves taking deliberate steps to inculcate an organisational culture that values ethical conduct. This should fundamentally be driven by an effective ethical system underpinned by fundamental corporate governance principles, such as accountability, transparency, fairness, and Ubuntu. To achieve its intended outcomes, continuous and regular assessment and monitoring of the effectiveness of ethical culture is necessary.

6.3.2.1 Establishing Ethics-Based Organisation

Naturally, societies are founded on the fundamental principles of honesty and integrity. Since the corporate world belongs to the society and as an integral part of the society, the corporate world should practice and conduct organisational affairs with integrity and upon a set of honest standards (Hambrick, 2007). The theory of bounded rationality or upper echelons stresses the significance of mental models of organisational decision-makers' capacity to consciously understand their choices in the performance of their duties (Rost & Osterloh, 2010). Soltani and Maupetit (2013) argue that within public organisations, corporate governance matters, such as organisational culture, organisational ethics and behaviour, transparency and accountability arrangements, the fair and equitable treatment of stakeholders, risk management, independent and effective board management, and governance structures, are often being undermined. The implementers of corporate governance in the organisations merely pay lip service towards good corporate governance imperatives. Organisational leaders have two key responsibilities: to inculcate an organisational ethical culture across all the organisational categories and levels; and to see to it that organisational decision making complies with high ethical standards (Hitt *et al.*, 2001). Normally, ethical issues are discussed when dealing with corporate governance, environmental issues, and stakeholder relations (Kleine & Von Hauff, 2009; Nakano, 2007). Ethical issues should instead be part and parcel of every organisational activity and become a way of life organisationally. Weaknesses in organisational ethics that support socio-economic activities may deter organisational leaders from making organisational decisions that are of the benefit of all stakeholders (Kleine & Von Hauff, 2009).

Corporate leaders' underlying beliefs, values, visions, and actions are important in setting the tone for acceptable standards of conduct for good governance within organisations (Banerji & Krishnan, 2000). They are influential towards the setting of organisational ethical choices and ethical decision-making processes. Organisations that value ethics and principles more highly are normally those who have corporate leaders who regard values and moral principles very highly (Banerji & Krishnan, 2000; Ferrell *et al.*, 2000). According to Othman and Rahman (2014), passion is fundamental in ethical leadership for good corporate governance practices and corporate leaders should possess the quality of passion when interacting with their subordinates. A leader with passion would deliver better results and be accepted by the employees (Othman & Rahman, 2014).

Having a positive perception of the corporate leader by employees is very important as they will give respect to a corporate leader who commands respect and loyalty through his/her actions. If they have a positive perception of the corporate leader, they will, in turn, emulate his/her actions and practices. Good governance depends on leaders who are exemplary and have a positive perception of their employees and who are accountable and transparent (Nnablife, 2010). Organisations that promote reputation as one of their core values directly influence their corporate leaders to act in an ethical and reputable manner (Othman & Rahman, 2014). Being an ethical leader requires adherence to a universally accepted standard of moral behaviour and is a process of enquiry involving questioning wrong or right actions, as well as being exemplary to employees regarding right or wrong actions (Guy, 1990; Thomas, 2001).

Emphasising on the need to foster ethical leadership in good corporate governance practice, Fulmer, (2005) urges corporate leaders to be role models for their employees within the behavioural boundaries set in the organisation. Leaders should demonstrate honesty, trustworthiness, courage and integrity in their actions and behaviour. Such corporate leaders should be conscious of the long-term effects and benefits of organisational decisions they take. They should be concerned with the greater organisational good, strive for fairness and social justice, and always act responsibly. To enhance ethical organisational value-system corporate leaders should set and practice high standards of morality through their behaviour. Ethical leadership is central to the provisioning of direction that enables organisations to achieve their mission, vision, and strategic goals and objectives (Kanungo & Mendonca, 1996). Instead of viewing ethical leadership as stopping employees from engaging in wrong things, it should be viewed as an enabler for employees to act in an acceptable manner (Freeman & Stewart, 2006). Bass and Stogdill (1990) point out that characteristics like integrity, credibility, and honesty are

perceived as attributes of an effective leader. Marcic (1997) considers trustworthiness, unity, respect, dignity, justice, service and humility as fundamental virtues of effective leadership. Effective leadership should be an essential resource of ethical guidance and moral development of employees within the organisation (Fulmer, 2005).

Ethical or value-based leadership is an important enabler of an organisational culture that nurtures positive values. It is a developmental leadership style which is driven by values and change management. Its bottom-line is to assist organisations in their change management processes and the achievement of develop-oriented goals (Ciulla, 2005; Pooven *et al.*, 2006). An organisational culture underpinned by ethical value-system entails the involvement of all stakeholders in decision-making and risk management; effective management of change and transformation; cultivating team-work and amongst team members; being empathetic, demonstrating passion and strong emotional conviction; and, developing a sense of solidarity to achieve strategic goals (Pooven *et al.*, 2006). There is an underlying conviction for ethical leaders to feel morally obligated to develop the capacity of others to act morally (Ciulla, 2005).

Soltani and Maupetit (2013) emphasise the importance of corporate behaviour complemented by an atmosphere of ethical leadership and effective internal control systems. Among others, the major focus of strategic human resource management is the creation of an enabling working environment through building a cohesive workforce by inculcating an organisational culture embedded on ethical values and principles. Within SARAs, an ethical value-based system of governance which creates a culture of always acting in the public interest should be the way to go rather than an instruction. These organisational ethics and values should be easy to comprehend and be based on objectivity, Ubuntu, selflessness, integrity, and honesty. The overall ethical performance of the organisation should be monitored and reported to stakeholders if it is to be credible to a wide audience of stakeholders, customers, and the general public. Both internal and independent external verification of the organisation's ethical culture is necessary to verify, detect, and make appropriate corrections where necessary. If ethical standards are not met, reports should disclose steps being taken to remedy the situation. The effective ethics-based system may be employed both vertically and horizontally. Organisationally, it should cut across the entire spectrum of the organisation. Beyond the organisation, regulatory agencies are compelled in line with the utilitarian principle to act in the public interest. Acting in the public interest translates into taking appropriate action when regulatees violate the very fabric of ethical behaviour.

6.3.2.2 Context of Ethics-Based Organisation

To promote ethical behaviour amongst public officials, during 2012, the UK released the Nolan Principles that encourage “selflessness, integrity, objectivity, accountability, openness, honesty, and leadership”. UN Global Compact (2000) consists of “ten principles covering human rights, labour, environment, and anti-corruption” and requires states, international and national organisations to respect human rights, uphold freedom of association in employment and occupation, care for the environment, integrity and eliminate corruption. Othman and Rahman (2014) highlight accountability, integrity, fairness, responsibility, responsiveness, and transparency as key principles of good governance, and King Code (2016) considers integrity, fairness, accountability, and transparency as the key principles to foster good governance. In the implementation of good governance practices and principles, SARAs should consider the following key principles:

6.3.2.2.1 Accountability

According to Ali Mazrui (2002), a Kenyan political scientist, the main objective of a democratic order is to make governors accountable and answerable for their actions. This, in turn, makes democratic societies to interact more openly and run their economies more transparently. Indeed, the notion of government of the people, for the people and by the people underlie that democratic governments should run their affairs in an accountable and transparent manner. The very existence of good corporate governance is justified by accountability and transparency. Public accountability entails the obligation to act in the best interest of the public to achieve greater societal interests. Being accountable involves taking organisational decisions consciously appreciative of their consequences and being able to explain and justify them publicly. In their daily operations, SARAs should be accountable and remain answerable to a variety of stakeholders for the decisions and actions taken. In turn, they should be able to provide cogent reasons to justify the decisions taken. To maintain openness, transparency, and accountability, appropriate measures should be developed to facilitate for the review and scrutiny of their activities on an ongoing basis.

6.3.2.2.2 Transparency and Disclosure

The level of transparency is important for measuring the effectiveness of corporate governance practices. Where transparency and disclosure exist, stakeholders can monitor organisational decisions and activities more effectively (Finkelstein & Peteraf, 2007). Implementing effective organisational communication channels play a pivotal role in increasing transparency and disclosure levels and stakeholder satisfaction with organisational decisions and activities. Having transparent processes as well as regular and honest disclosure regarding organisational practices

assures stakeholders on the credibility of organisational decisions and activities. Ultimately, this reduces the potential of stakeholder conflict (Harjoto & Jo, 2011). Soltani and Maupetit (2013) mention three critical objectives for the maintenance of a culture of transparency: assisting in the formulation of effective policymaking; establishment of ethical organisational culture; and improvement of public trust in the corporate world.

Determining an organisation's level of transparency and disclosure highly relies on the evaluation of information submitted and is strongly influenced by perception. Therefore, how useful and trustworthy the information is perceived are important factors taken into consideration in determining whether or how information is integrated into decision-making (Anderson, 1981). Often, information integration processing involves interpretation and analysis of situations, application of beliefs, knowledge, assumptions, and values associated with an organisation (Finkelstein *et al.*, 2009).

Effective corporate governance system requires high levels of transparency and disclosure backed by relevant and adequate information to reduce or eradicate information asymmetries amongst all stakeholders. Disclosure of relevant and adequate information should enable stakeholders to hold corporate governors accountable for their actions (Madhani, 2014). Bushman and Smith (2001) state that disclosure of information plays two important roles: firstly, to allow shareholders and other stakeholders in monitoring organisational performance according to the information provided; and, secondly, an efficient disclosure system brings clarity on organisational strategy and risk appetite. To have an effective and efficient disclosure system, all relevant and material corporate governance issues associated with the organisation should be disclosed accurately and promptly (OECD, 2005b). A transparent and disclosure system would expose the effectiveness of the organisational model, its socio-economic development strategy, growth strategy, and the risks being faced (Bushman & Smith, 2001; Filatotchev, 2006). An effective disclosure system helps shareholders to assess overall organisational performance and enhances better social capital investment decisions (Ho, Tower & Barako, 2008). Decision-makers within the organisation should be provided with the necessary objectives and reliable information on the financial position to be able to make informed decisions. Gao and Kling (2012) found that effective internal governance enhances internal governance and increased compliance with the requirements of disclosure. Lack of accurate and timely information contribute to inadequate decisions by shareholders and other stakeholders. Thus, disclosure requirements need to be supported by independent review and retribution for non-compliance (Baber *et al.*, 2012). It is important for disclosure requirements to be embedded in policy-making processes and

for increased fiscal transparency to reduce public deficits and debt accumulation (Baber *et al.*, 2012; Bushman & Smith, 2001). Open and transparent organisational activities strengthen reputation by eliciting respect for the organisation reputation among different stakeholders (Clarkson, 1995).

To demonstrate that they act in the public interest, and to maintain public trust and confidence, SARAs should be transparent and as open as possible about all the decisions, actions, plans, resource use, forecasts, outputs, and outcomes envisaged. To be effective, these commitments should be reflected in their transparency and communication policies. Since they are exercising public power, they should provide a rationale for their decision taken. Additionally, they should develop formal policies on consultation and engagement with stakeholders to ensure that public services contribute to the achievement of intended outcomes. They should be highly transparent and provide high-quality information about all aspects of their performance.

6.3.2.2.3 Integrity

To achieve organisational goals requires integrity and moral commitment at the subjective (individual) level and collective (organisational) level (Kleine & Von Hauff, 2009; Nakano, 2007). Organisational decisions and actions taken should be solely in the public interest and organisational choices should be taken on merit. A conducive organisational culture should be fostered to facilitate upholding of integrity by corporate leaders and their subordinates. Acting with integrity means that corporate leaders display the highest level of ethical conduct in carrying out their activities. Board members, managers, and employees should carry out their duties with honesty and probity.

6.3.2.2.4 Responsiveness

Regulatory agencies are established with the primary motive of responding to a societal need. Consequently, their actions should be geared to be responsive to this particular societal need. They have a responsibility to ensure that they pursue and achieve organisational goals ethically and sustainably. To be responsive, their stakeholder management mechanisms should detail-out the methodology applicable to respond to stakeholder needs. Monitoring and review mechanisms should be build-in to ensure that they are effectively implemented.

6.3.2.2.5 Fairness

All stakeholders that SARAs serve should receive equal consideration and be treated justly and impartially.

6.3.2.2.6 Consultation and Engagement

SARAs should develop formal policies on consultation and engagement with stakeholders to ensure that public services contribute to the achievement of intended outcomes. Such policies should contain processes and procedures for the collection and evaluation of stakeholders' views and experiences. Closely connected to the need for comprehensive stakeholder involvement, is the need to foster formal and informal partnerships with alike organisations.

6.3.2.2.7 Ubuntu

As we have already seen in Chapter 5, African organisations need to follow and incorporate African ontological and philosophical perspectives firmly rooted in Ubuntu perspective in their daily organisational activities. By so doing, organisational activities will positively influence the achievement of solidarity, social cohesion, humanity, respect and dignity, and sustainable development.

6.3.2.3 Mainstreaming Organisational Ethics and Values

The “moral and ethical framework for the governance of organisations” is provided by corporate governance. Therefore, organisational morality and ethical behaviour should permeate an organisation from top to bottom and embrace all stakeholders (Kleine & Von Hauff, 2009; Nakano, 2007). There is persistent pressure to develop and mainstream well-developed codes of ethics that guide the conduct of board members, managers and employees in organisations. In this sense, employees must know and understand the conduct they are to project in terms of their organisational ethics codes. Organisational ethics are enablers for encouraging board members, managers, and employees in decision making within the shared-values prism. West (2009) asserts that the African view on the ethics of corporate governance is embedded on “inclusive” ethic of governance, whilst the Asian view is premised on the “expansive” ethic of governance. The inclusive approach signifies that an organisation is there for the benefit of all stakeholders which are influenced by Ubuntu values emphasising the importance of community solidarity and co-existence (Broodryk, 2010; Mangaliso, 2001; Mbigi & Maree, 2005).

One of the important elements of mainstreaming ethical behaviour within an organisation is reflecting organisational ethics and values regularly on the agenda of board meetings, management meetings and other meetings within the organisation, such as procurement meetings. A system of risk management is required for monitoring and assessing of risks associated with implementing the code of ethics. Ultimately, building an ethical organisation strongly involves individual leadership and organisational commitment than malicious compliance

with formal processes and systems. Building a corporate ethical culture takes time, requires efforts and consistent investment. The ethical culture of an organisation is best sustained through actively promoting, practising, training, updating, and making it real and visible to external and internal stakeholders. This can be achieved through a continuous corporate commitment to integrating and enabling organisational ethical standards together with organisational strategy and operations. A process of this nature should be institutionalised by means of implementing an elaborated ethics programme. All employees, irrespective of all levels must exemplify the values and standards defined in the ethics programme through their conduct and decision making. Additionally, SARAs are responsible to maintain orderliness and professionalism within their respective regulated sectors. It is therefore incumbent of them not only to set organisational standards of conduct but also to create acceptable ethical behaviour in the sectors and to monitor and enforce compliance to protect consumer interests.

6.3.2.4 Benefits of Organisational Ethics and Value System

The significance and underlying benefits of organisational ethical behaviour as the cornerstone of good corporate governance were for a long time undermined (Zaharia, 2015). Given the increasing demand for organisations to treat their stakeholders fairly and equitably and the sustained pressure to consider sustainable development more prudently, the ethics debates have preoccupied many board-room discussions. Having an organisational ethical posture helps corporate leaders with their daily management decision making in compliance with stated organisational ethics. In this regard, corporate leaders can predetermine the moral concerns to consider in management decision making to facilitate the achievement of organisational goals (Rossouw, 2009; Zaharia, 2015). It is no longer an option for organisations not to take ethical behaviour seriously, as organisational “ethics, anti-corruption and corporate governance practices are mainstream considerations” in organisational decision making processes regarding social capital development, stakeholder needs satisfaction, and overall service delivery and performance (Rossouw, 2009; Zaharia, 2015).

From a stakeholder perspective, organisations are established to serve diverse stakeholders’ interests. In keeping with the requirement to uphold integrity, organisations should involve all internal and external stakeholders in determining its reputation amongst the stakeholders, and what their ethical expectations of that organisation are (Rossouw, 2009; Arjoon, 2013) distinguishes between legal compliance and ethical mechanisms for ensuring good governance. According to the author, on the one hand, when legal mechanisms are introduced for the discipline purposes, this can only promote freedom of indifference, which in the letter of the law may not promote or instil excellence. On the other hand, ethical mechanisms are viewed as promoting

freedom for excellence which resonates with the law. Arguably, legal compliance mechanisms may not necessarily deal with real and important matters that promote ethical behaviour. Ethics are critical to the makeup of every organisation, as such, many organisations demonstrate their commitment to them through clearly defined core values, organisational codes of ethics, board charters, industry codes of ethics, and CSR Charters.

Surveys by McKinsey, Global Investor Opinion in 2002 and Business and Society in 2006 show considerable evidence that good corporate governance and organisational ethics codes enhance business success. An ethically organisational environment has a considerable effect on enhancing moral cognisance of an organisation. Conversely, unscrupulous organisational malpractices may have a detrimental effect on the wellbeing of individual and organisational moral campus (Zaharia, 2015). Indeed, research studies suggest that ethical leadership leads to greater organisational success and favourable organisational outcomes illustrated by how people perceived leaders' effectiveness, job satisfaction, increased dedication, and problem-solving (Brown *et al.*, 2005).

6.3.3 Governance Framework

On the one hand, the concern of corporate governance is about bringing harmony between economic and social goals in the affairs of the organisation, and between the goals of individual employees and that of society on the other hand. To find a balance between these competing interests, that is, maintaining socio-economic efficiency in the utilisation of resources and promote effective accountability at all levels, the governance framework is meant to serve as an enabler (Cadbury, 1992). Scholars such as Baber *et al.*, (2012) and Pargendler (2016) hold that the corporate governance framework can be categorised into two main areas of internal and external governance systems. Internal governance system directly affects organisational tools and procedures for exercising oversight of the organisation's management by the board. The internal governance system governs the relationship and conduct between the board and management. The board has the prerogative over the implementation of most internal mechanisms and procedures and can easily alter them whenever they wish to (Weir *et al.*, 2002). External governance system involves the oversight of the overall organisation by the shareholder over the board. For the effective governance of the relationship between the shareholders of the organisation and the board, mechanisms and procedures involves statutory regulations to be complied with by stakeholders. Unlike the internal mechanisms and procedures, external mechanisms and procedures are often difficult to alter as they involve parliamentary processes. In the final analysis, organisations themselves have a bigger responsibility in influencing the internal governance of the organisation (O'Sullivan & Diacon, 1994; Weir *et al.*, 2002). The following discussion deals with the key components of the governance framework.

6.3.3.1 Internal Governance System

Most of United Kingdom (UK) organisations have over the years laboured on the significance of internal governance mechanisms by emphasizing board structure and board committee system (Cadbury, 1992; Weir *et al.*, 2002). Conversely, United States (US) organisations have chosen an alternative path of granting individual organisations more freedom to select mechanisms that are suitable for their situations (Agrawal & Knoeber, 1996). South African organisations reflect convergence towards the Anglo-Saxon approach of setting-up board structures and board committee system (King Code on Corporate Governance, 1994, 1998, 2002, 2009, 2016). The existence of robust internal governance mechanisms, whether internally imposed or externally imposed, enable managers to actively balance both shareholders and stakeholders' interests fairly and equitably (Shahzad *et al.*, 2015).

Fundamentally, the internal governance system is considered the lifeblood of good corporate governance. Through a formidable internal governance system, SARAs will be capable to deliver on their objectives effectively and efficiently. Strengthening the internal governance system, capable leadership at the board level, competent management, robust organisational service delivery and performance management system, effective internal control system, responsive change management processes, and human capital development are required. The two major issues to consider are: firstly, appropriate board structures and collective leadership and secondly, the strategic human resources management system consisting of officials with the appropriate knowledge, abilities, and skills, are essential prerequisites for SARAs to conduct their business efficiently and effectively to achieve the outcomes in the specified time-frames. SARAs should ensure that appropriate and effective mechanisms are implemented to monitor service delivery and achievement of socio-economic goals. For this to happen, proper planning, specification, execution, and post-implementation review should be regularly performed in a sustainable, transparent and accountable way. If the threat of shareholder intervention is low, organisations may lead to paralysis. If the threat of shareholder intervention is high, managers and boards are forced to implement control procedures that reduce under-performance. Organisations with weak corporate governance reflect internal control weaknesses (Doyle *et al.*, 2007). The following discussion considers the key components of an effective and efficient internal governance system.

6.3.3.1.1 Role of Board

Cadbury (1992) and King Code (2016) stress the importance of the independence and calibre of members of the board. The board takes charge of the overall responsibility to create a conducive

environment of productivity and secure the interests of all stakeholders. The board is authorised to exercise oversight over managers' performance. Thus, managers are responsible for the daily operations of the organisation. To enable the board to take meaningful and effective decisions, managers should provide accurate and reliable information on organisational activities and operations. The board is expected to act independently and evaluate objectively management decisions (O'Sullivan & Diacon, 1994). The board should formulate delegation of authority framework indicating decision-making authority and types of decisions delegated to the management. Non-executive board members should possess the following distinct characteristics to enable the fulfilment of their oversight and monitoring function: firstly, they should act independently without fear or prejudice (Cadbury, 1992, King Code, 2016); secondly, they should promote the maintenance of the organisational reputation in the external environment (Fama & Jensen, 1983); thirdly, it is required of them to work thoroughly to the benefit of the organisation (King Code, 2016; Protocol, 2006). Normally, a good mix of skills amongst board members who can constructively challenge each other in the boardroom can help organisations to make meaningful decisions. The following underlying principles are key to the facilitation of effective and efficient decision-making by the board: providing effective leadership to steer the organisation to achieve its organisational activities on a short and long-term basis; having an appropriate mixture of skills experience, and independence, to enable board members to exercise their duties and responsibilities effectively and efficiently; having formal communication arrangements and channels across the shareholders, board, management, and the stakeholders; implementing sustainable development strategies to create value within the organisation; fostering integrity and accountability to do business fairly and transparently, as well as, laying out the organisational ethical tone by creating a value-based system of governance.

The effectiveness and composition of the board should be regularly reviewed for ensuring continuous and correct balancing of skills and knowledge required. Where capacity gaps are identified, the board should consider how the gaps can be filled. Ultimately, the professionalism of board members in their capacity as leader's helps to make governance practices easier (Othman & Rahman, 2014).

Scholars supportive of the stakeholder point of view have consistently propagated the importance of adequate representation of stakeholders in the boards (Jones & Goldberg, 1982). In Chapter 2, it was highlighted that the continental model is popularly known as the stakeholder model, advocates for a two-tier board system one consisting of representatives of stakeholders to enhance legitimacy (Luoma & Goodstein, 1999). Coffey and Wang (1998) and Wang and

Dewhirst (1992) argue that outside board members normally recognise the organisation's responsibility to cater to the needs and expectations of various constituencies of the organisation. These authors argue that having more outside board members has the potential of enhancing CSR. Board members should have requisite skills and knowledge compatible with their roles and responsibilities. They should also be exposed to continuous professional development to enhance their skills and update their knowledge. However, studies found that the conduct of independent non-executive board members hinders internal and external systems thereby creating tensions between them and organisational performance (Agrawal & Knoeber, 1996; Bhagat & Black, 1998; Weir, 1997; Weir *et al.*, 2002; Yermack, 1996).

King Code on Corporate Governance (1994, 1998, 2002, 2009, 2016) empower boards to develop the overarching organisational strategy which should reflect short, medium, and long-term organisational goals and organisational values, and provide effective and ethical leadership required to implement the strategy. The board should allocate enough resources and put in place effective management arrangements to implement the strategy and hold management accountable for organisational performance. Boards should avoid interfering in the overall management of the organisation as this would tantamount to encroaching within the purview of management and has the potential of creating unnecessary conflict between the board and management. Board members are collectively accountable for the success of the organisation in the long run and are expected to act in a socio-economically responsible manner. There has been a widespread acceptance of the Cadbury (1992) and King Code (2016) recommendations in relation to the appointment of committees to support the board to efficiently and effectively achieve its oversight role (Conyon & Mallin, 1997; Weir *et al.*, 2002). Studies suggest that the board primarily executes its work through committees (Lorsch & McIver, 1989) and it was found that board committees' quality provides insight to the board in the undertaking of the monitoring role (Vafeas, 1999). Additionally, Amran *et al.* (2014) concur that "the structure of the board committee can influence the outcomes which include the quality of reporting on the organisation's sustainability efforts". However, a study by Vafeas (1999) did not find any evidence supporting the view that board committees considerably affects organisational performance. It is the researcher's viewpoint that the effectiveness or lack thereof of board committees is to a greater extent influenced by the board structure. There is a real likelihood that the collective competencies of board members at the board level, will cascade into the various board committees. Conversely, a weaker board structure will negatively influence the quality of board committees. It is arguable, in this instance, that the middle-of-the-road scenario is almost impossible given the fact that by and large board committees' membership is composed of the very same board members.

Given the ever-increasing pressure to address CSR and stakeholder-related issues, boards are establishing corporate responsibility committees to ensure that organisations comply with CSR issues and objectives (Cochran & Wartick, 2008; Evan & Freeman, 1993; Spitzeck, 2009). Moreover, to maintain an effective quality assurance system, organisations are expected to set-up audit committees. Cadbury (1992) states that the effectiveness of an audit committee is partially dependent on the quality of non-executive board members. Therefore, ensuring that non-executive board members are highly resourceful to validate their opinions is very important. Audit committees serve as an additional control mechanism for ensuring the protection of the shareholders' interests (Cadbury, 1992). An effective audit committee is important for various reasons. It provides a link between the board, external and internal auditors, thereby helping the board realise its fiduciary and statutory responsibilities. Audit committee helps improve the validity and quality of financial statements (Collier, 2007). A study by Soltani (2005) highlights the role played by an independent audit committee in enhancing audit effectiveness and performance through minimising risks broad about by limited understanding of and objectivity in financial reporting, control and auditing processes. The audit committee provides quality assurance for risk management, sustaining effective control mechanisms, as well as reporting on financial and non-financial performance. Thus, an effective audit committee contributes towards improving objectivity and the credibility of internal and external audits. To deal with remuneration matters, good practice advocates for the establishment of human resources and remuneration committees composed of board members who are free of vested interests to guard against corruption and can make merit-based recommendations to the board. These processes must be transparent.

SARAs often has a similar board's composition to those seen in the private sector, with a mixture of executive members and non-executive members. Non-executive members are normally appointed by Ministers or Executive Authority through the statutory mechanism establishing a particular SARA. Corporate governance arrangements of SARAs are often codified within their empowering statutory regulation. Legislative and regulatory amendments normally involve lengthy parliamentary processes. As a result, SARAs often lack behind new corporate governance developments as they fall outside the purview of their regulatory mandate.

6.3.3.1.2 Role of Management

Good corporate governance results in greater organisational efficiency and responsible management of organisational operations in a transparent and accountable manner. Effective management leads the organisation transparently and exemplifies good morality at all levels of governance (Nnablife, 2010). Davies (2006) is of the view that the nature and character of organisational leadership occupies an important role in improving the effectiveness of the

envisaged corporate governance ethos. As we have already observed, corporate leaders must behave ethically as role-models in the organisation. Therefore, they should demonstrate good conduct in their personal activities as well as interpersonal relationships in formal and informal communication channels and decision-making processes (Pooven *et al.*, 2006). Specifically, the CEO should play a leading role in displaying personality traits which include honesty, trustworthiness and integrity, as they constitute the hallmark of an ethical leader. The CEO is expected to treat employees and all organisational stakeholders (internally and externally) fairly and equally (Trevino *et al.*, 2000). Blanchard & Peale, 1996 suggest that the following ethical values are crucial for CEO's: pride, patience, prudence, persistence, perspective, and integrity. To be able to create a corrupt-free organisation, the CEO should possess a high personal commitment, courage and perseverance.

Arguably, human resources are the most important capital in organisations. Consequently, human resources practices relating to recruitment, motivation, and retention of staff are vital issues to be considered if organisations are to succeed in delivering public services. Management needs to create a conducive environment in which employees are motivated to execute their daily tasks and rendering of services. A positive organisational culture that appreciates alternative ideas, encourages creativity and innovation, and open channels of communication on decisions taken should be cultivated. Employees should have realistic job profiles which enable effective performance of their core responsibilities. Managers responsible for performance should have the authority to make necessary decisions, delegate tasks appropriately, and have an adequate team to support them for the delivery of the organisational mandate.

Human capital training and development needs should be driven by matching organisational and individual development requirements. The World Bank (2002) encourages the use of actionable governance indicators in the design, implementation, and assessment of governance systems. The human resources management actionable indicators are designed to enable assessment of institutional capabilities in relation to six human resources management objectives, which include: recruitment and retention of qualified and competent human capital; cost-effectively delivering services through ensuring fiscally sustainable wage bill; establishment and maintenance of depoliticized meritocratic management of human capital; implementing effective performance management and reward system; designing an organisational culture that values ethical behaviour and integrity; and implementing effective strategic collaboration with all relevant stakeholders across all levels of the organisation.

6.3.3.1.3 Organisational Internal Control System

Establishing an organisational internal control system (OICS) is an integral part of a governance framework. Amongst others, such a system would enable organisations to manage risk and ensure compliance with rules, regulations, and organisational policies to avoid financial loss, fraud, and financial misuse. Availability of internal control system in the form of appropriate systems and controls facilitates the holding of the board and management accountable to the organisational activities. The internal control mechanisms should not be overly bureaucratic and should facilitate the achievement of organisational objectives.

6.3.3.1.4 Public Finance Management System

The PFMA (1999) has been drafted as public finance management (PFM) model to apply within the public service and all public entities. The PFMA provides a PFM for the planning, directing, and controlling of financial resources, to facilitate the delivery of public services goals through effective and efficient use of public money. One of the primary objectives of the PFM system is to enable the government and the public to understand better and scrutinise how taxpayer's money is spent, increasing the transparency and accountability of public finances. To strengthen good governance, there should be a sound and transparent financial system which reflects decision-making processes and procedures for effective governance and performance management. A strong PFM system serves to ensure that public money is always used appropriately economically, efficiently, effectively and for intended purposes. A robust PFM system facilitates sustainable decision-making, effective and efficient delivery of public services, and achievement of outcomes within SARAs. To be sustainable, SARAs should ensure that their PFM system supports both long-term achievements of outcomes and short-term financial and operational performance. An integrated approach should be mainstreamed into the PFM system at all levels of planning and risk management processes of the organisation. A strong PFM system should enhance provisioning, analysis, and interpretation of financial and non-financial information required to set organisational objectives, development of strategy, as well as funding allocation for the delivery of services to the public.

Quality PFM system requires reporting of fiscal forecasts accurately, transparently, and timely for public accountability and decision-making. The credibility of the budget, transparency, policy-based budgeting, budget control and execution, budget accounting and reporting are effective tools to measure public expenditure and finance accountability (World Bank, 2002).

6.3.3.1.5 Integrated Performance Management System

An integrated performance management system (IPMS) should be developed within SARAs both at the organisational and individual levels to monitor and measure overall organisational performance. At the individual level, the IPMS should include human resources audits, performance evaluations, administrative reviews, and leadership self-assessment. At the organisational level should involve scorecard appraisal, financial performance versus non-financial performance, and organisational audits. Performance management reporting and continuous monitoring usually occur quarterly aggregating to annual reporting. Constructive stakeholder engagement plays a significant role in feedback on the performance of SARAs at the leadership, ethical, and cultural levels.

6.3.3.1.6 Organisational Audit System

The two types of audits, that is, internal and external audits together constitute the cornerstone of an effective and efficient organisational auditing system (OAS) to provide quality assurances regarding internal and external controls. It is good practice to conduct an organisational audit internally within the organisation and externally by independent and qualified external auditors to enhance public accountability. An external audit comprises of evaluation, analysis, and reviewing of systems, assessment of compliance, as well as comprehensive testing of organisational performance. External auditors then produce and the audit report on the financial position of the organisation, including how well financial statements have been presented in compliance with the law and approved reporting framework. In turn, external auditors should upon achieving their audit outcomes develop and present suitable recommendations for corrective action and improvement to compliance with legal prescripts. External audits empower the public to hold government and SARAs to account. Audit reports contribute towards assisting organisations to comply with compulsory disclosure requisites (Gao & Kling, 2012). External auditors should be competent as well as independent from the organisation to objectively review financial statements and accurately evaluate the information provided, for the benefit of internal and external stakeholders of the organisation (Schelker, 2013).

Mandatory auditor rotation has been a subject-matter of fierce debates in the audit field, academia, and policy environment. On the one hand, supporters of mandatory auditor rotation posit that longer auditing contracts the organisation have with auditors may negatively influence the auditor's objectivity and independence. Therefore, auditors' mandates should be limited (Baber *et al.*, 2015; King Code, 2016; PFMA, 1999). On the other hand, opponents of rotation argue that rotation is time-consuming and makes things difficult since auditors require to be familiar with processes of the organisation being audited and to get sufficient information to

accurately audit the organisation (Schelker, 2013). For purposes of providing an objective view on the financial reports and compliance with the legal provisions, financial reports must be audited by independent external auditors with no direct links to the organisation. However, threats to auditor independence which include engaging the auditor to execute parallel services to the organisation; having a fair and transparent way of appointing and removal of auditors; and creating psychological ties with the appointing organisation, have been experienced (Acemoglu & Gietzmann, 1997; Levitt, 2000).

6.3.3.1.7 Integrated Risk Management System

Good governance requires an integrated risk management system (IRMS) embedded in the overall organisational culture. To be effective, the board and management should recognise the importance of risk management in all organisational activities and operations. An IRMS should include, implementation of a risk management framework, detailing a risk management strategy which determines criteria for internal control, mainstreaming risk managing risk in the organisation's overall governance, strategy and planning, management reporting processes, values, policies, and culture, regularly reviewing key strategic operational, financial and fraud risks, and devising responses towards achieving organisational objectives and intended outcomes, engaging staff in all aspects of the risk management process, regularly monitoring and reviewing the risk management framework and processes, publicly reporting on the effectiveness of the risk management system.

SARAs should be encouraged to be involved and understand the importance of investing resources towards risk management, to help deliver intended outcomes. Establishing dedicated risk management function, enhancing risk management processes, will help respond to the changing nature of risks. Proper risk assessment and control will assist SARAs to make informed decisions about the level of risk to be taken, implementation of necessary control mechanisms, and to pursue their objectives. It is incumbent upon SARAs to continuously scan the external and internal environments to identify key trends and driving forces to predict the likely unintended consequences and problems. The scanning should involve identifying key political, economic, technological, social, and environmental actual and potential risks to inform future policy considerations.

6.3.3.2 External Governance System

The key role of the external governance system is to create a buffer for reinforcing good governance externally to enable SARAs to execute their mandates in an accountable and transparent manner. This vital role is played by various governance structures, such as

government and various stakeholders. According to Gao and Kling (2012), the external governance environment together with institutional development has a good effect on the organisation's compliance to disclosure requirements and the external governance as a determinant of quality financial reporting continue to be of interest (Baber *et al.*, 2015). As complementary to their external oversight role, shareholders may demand the use of specific internal oversight procedures to enforce management actions to benefit shareholders and ensure financial reports reflect a true picture of measures put in place for not complying with such demands (Baber *et al.*, 2015). The ultimate authority for external oversight rests with shareholders as they are solely responsible for the appointment of boards (Gompers *et al.*, 2003). In turn, these boards delegate management decisions to management through a delegation of authority system which reflects the actual power-sharing relationship amongst the various role-players. The delegation of authority system may either tilt towards a democratic approach or dictatorial approach. Tilting towards a democratic approach, reserves little power for management and allow shareholders to replace board members with relative ease and a dictatorial approach, reserves extensive power for management and places strong restrictions on shareholders' ability to replace board members (Gompers *et al.*, 2003).

6.3.3.2.1 Role of Government

The modern state system reflects a tripartite relationship between the legislature (law-making), the executive (implementing laws and policies), and the judiciary (administration of justice). Separating powers between the legislature, the executive and the judiciary is crucial and secured through checks and balances in the form of laws and policies. In the administration of its political mandate, the government is aided by EA's who represent its interests and are under obligation to ensure that these interests are safeguarded to achieve socio-economic developmental goals. This is done through a public sector corporate governance system which is somewhat complicated as it involves complex relationships between those with primary accountability, and those having secondary responsibility to oversee achievement of societal interests. To be effective, the public corporate governance system should objectively be co-ordinated to be responsive to stakeholders' needs and have appropriate systems and controls for the effective management of public resources. Government as shareholder exercises external oversight role through law-making and policymaking and offering stewardship role of ensuring that public entities are well-managed and achieve their intended mandates. However, Madhani (2014) contends that there is less incentive for public entities generally and SARAs particularly to enhance good corporate governance since they are not under persistent threat of take-over and consequently, this affects how and the extent to which these interests are met.

As already indicated, government achieves socio-economic and developmental goals and outcomes within regulatory agencies through a combination of laws, regulations, and internal policy requirement. It is critical to determine the right mix of interventions in making strategic choices to ensure the achievement of intended outcomes. Within the emerging economies, the government assumes a leading role in stimulating the economy, enhancing the creation of jobs, as well as introducing changes in the governance structure and financial reporting. As with any intervention, intervention by the government equally has advantages and disadvantages. A clear disadvantage is that concentration on national interests tends to overlook market imperatives, limit competition, and stifle global cooperation. Opportunistically, stronger government intervention may increase and support initiatives emanating from the private sector through voluntary programmes, especially in promoting incentives and rewards for ethical corporate behaviour and excellence in governance. Thus, the private sector is an important stakeholder in building and sustaining an effective, transparent and accountability framework that prevents corruption and promotes good corporate governance. While public corporate governance codes encourage distance between government and the governed, in reality, this is not practised since the government is mainly accountable for the conduct of SARAs. Government is truly not fully equipped to implement the regulatory and legal requirements. The government normally reserves the right to intervene and impose its wishes and desires on the SARAs, thereby clipping down the role of their boards. Centrally, fighting against corruption and misgovernance starts with government officials. The rule of law and effective social, political, and economic institutions are there to support this resolution.

6.3.3.2.2 Active Citizenry

At the receiving end of public services, is the general public who constitutes an important stakeholder within the external governance relationship trajectory. Effective stakeholder management is required to sustain the activities of the organisation in the long run. The stakeholder-centric perspective presupposes the proper management of organisational stakeholders to serve their interest equitably. As we have observed in chapter 5, adopting the Ubuntu theoretical perspective may assist SARAs further in their sustainable development initiatives as well as creating caring organisations.

Thomas (2012), posits that stakeholders represent a broader portion of people who have an interest in the organisation than shareholders, and thus must be treated as legitimately interested in the business of the organisation. Ferrell (2004) considers stakeholders as any identifiable group of persons on which the organisations depend for their survival which includes investors, employees, shareholders, consumers, the general public, government, and service providers generally categorised as primary stakeholders. Government as a stakeholder provides the infrastructure, creates markets, and makes laws and regulations to be complied with (Clarkson,

1995). Werther and Chandler (2004), cautions that a strong interdependence of an organisation and its stakeholders may have negative impacts on their relationship and the reputation of the organisation. Therefore, SARAs should regularly check and report the status of their stakeholder relationships against their internal code of ethics.

Clarkson Centre for Business Ethics (1995) has developed 'principles of stakeholder management' to serve as a guiding instrument to organisations when implementing stakeholder management processes and procedures. The underlying principles of stakeholder management as developed have been adapted to reinforce the 'corporate governance compliance and implementation framework'. The principles are summarised as follows:

- Principle 1: stakeholder interests' recognition and monitoring

For effective stakeholder management and monitoring, SARAs needs to recognise the legitimate interests of all stakeholders. Organisational decision-making processes and procedures should integrate all stakeholders' interests. Since multiple stakeholders' interests may be wide-ranging and diverse, it is incumbent upon SARAs to determine the level of their involvement and interests. There must be a formalised stakeholder input process to address their concerns or suggestions effectively and efficiently. The mechanisms for stakeholder engagement should involve ongoing monitoring and review of the efficacy of stakeholder management system.

- Principle 2: develop effective stakeholder communication system

Formal communication channels, both internally and externally, should be developed as an integral part of the organisational system. The communication channels should serve as an important instrument to disseminate and communicate information relevant to the stakeholders considering their divergent interests. The communication channels should grant the stakeholders opportunity to openly raise concerns and offer contributions. Open and transparent channels of stakeholder communication demand compliance to higher levels of transparency and information disclosure requirements.

- Principle 3: engage in adaptive processes and behaviour towards stakeholders

Communicating with multiple stakeholders holding diverse interests requires some level of sensitivity to the concerns and capabilities of each of the stakeholders. To achieve this objective, SARAs should implement processes and practices that promote a culture of inclusivity of all stakeholders depending on their size, complexity, and level of involvement.

- Principle 4: ensure interdependence of efforts and rewards among stakeholders

SARAs need to ensure all stakeholders receive adequate benefits to sustain their relationship. The benefits to be derived should outweigh potential burdens and risks. In recognising the interdependent nature of the efforts and rewards, SARAs should strike a balance and achieve fairness in the distribution of benefits and burdens in a non-discriminatory manner to promote co-existence and mutual benefit.

- Principle 5: Establish Organisational collaborative partnerships

SARAs should work collaboratively and establish strategic alliances with other private and public sector agencies to minimise possible harmful impacts and accordingly compensate the affected stakeholders.

- Principle 6: Avoid unacceptable activities

SARAs should always promote adherence to fundamental human rights when dealing with stakeholders. Unacceptable activities with the potential of harming fundamental human rights of equality, freedom, and human dignity enshrined in the Constitution (1996) should be avoided at all cost.

- Principle 7: Recognise stakeholder conflicts

SARAs should be aware of potential conflicts between their roles, legal mandates and moral responsibilities towards serving the interests of stakeholders. Stakeholders' conflicts should be addressed through open communication, appropriate feedback and incentive systems.

6.4 Conclusion

Adu Amoah (2012) asserts that it is desirable to establish a meritocratic public service upholding values and principles of democracy, good governance and Ubuntu. There is considerable interaction between politicians, administrators, and the private sector when government intervenes in economic development activities. Unfortunately, such interactions sometimes yield unintended consequences like collusion and corruption. The Ubuntu perspective emphasises the moral high ground and ethical behaviour unifying the society towards a common good. This will contribute significantly to addressing corruption, which is a problem in society since only a few individuals get rich at the expense of community development. For the corporate governance compliance and implementation framework to be effective within SARAs, they should treat their organisations like the community and not simply as an assembly of individuals (Lutz, 2009). In this way, boards and management should be preoccupied with the advancement of the interest

of all stakeholders contributing to organisational success. As stated by King Code (2016), financial performance is no longer serving as the only representation of value-adding. Therefore, inclusive capitalism considers the usage, development, enhancement of various resources and maximising capital for repositioning capitalism as the driver of shared prosperity. The focus of the board should be on extended value creation. Secondly, the board should realise that serving the interests of stakeholders does not have negative effects on the maximisation of corporate value. Boards of SARAs should govern their organisations like owners (King Code, 2016). Having such a mind shift will benefit these organisations in the long run.

Government has the authority to use a bigger proportion of national resources generated by means of taxation for rendering services to the public. The primary aim is to satisfy citizens' needs for the public benefit (Matei & Drumasu, 2015). In this regard, public interests should supersede those of people responsible for managing SARAs. Since the rendering of public services is financed through taxes, the citizens, therefore, deserve prompt and quality services. Broadly speaking, public interests are all things that are considered of being valuable by a community; they include human rights, freedom of speech, access to public services, economic freedom, freedom of association, and political power. To improve efficiency in the rendering of public services, SARAs should share best practice, for example, through learning from one another, benchmarking and sharing of experiences. Corporate governance can contribute to the responsible use of public funds, minimise expenses and budget deficits, curbing corruption, regaining public trust, and improvement of performance (Matei & Drumasu, 2015). The next chapter critically evaluates levels of non-compliance to good corporate governance practices within SARAs. It is conceivable that the analysis will provide a good grounding for offering a plausible and appropriate set of recommendations towards improvement of compliance with good corporate governance by SARAs.

CHAPTER 7

CAUSES AND EFFECT OF CORPORATE GOVERNANCE FAILURES WITHIN REGULATORY AGENCIES

7.1 Introduction

In the preceding chapters, we have dealt with and fully discussed the key aspects of the research study, which are: an introductory overview of the research study; extensive scrutiny of the overarching theoretical lenses and applicable models within the corporate governance field; explanation of the methodological perspectives surrounding the research study; explanation of the corporate governance landscape of regulatory agencies; generation of a new theoretical construct called “the Ubuntu theoretical perspective”; development of a compliance and implementation framework. This chapter interrogates and analyses the causes and effect of corporate governance failures within regulatory agencies by tackling the following aspects:

- Identifying the nature, forms, and manifestations of corporate governance failures within regulatory agencies;
- Examining root-causes of non-compliance with acceptable standards of corporate governance;
- Evaluating significant factors leading to the collapse of corporate governance; and
- Determining effects and the impact that corporate governance failures might have on the wellbeing of regulatory agencies.

To understand more fully the causes and effect of corporate governance failures, the study uses the explorative paradigm to examine corporate governance phenomenon within regulatory agencies to determine its application and the levels of non-compliance and to obtain new insight into the phenomenon. The explorative paradigmatic perspective would assist in formulating and obtaining cumulative and predictive knowledge in social sciences generally and corporate governance in particular. Ultimately, this exercise will gravitate towards the generation of recommendations of appropriate tangible measures to be employed by regulatory agencies to improve their levels of compliance with corporate governance prescripts and regulations. Employing the in-depth interview method, research participants serves to highlight their personal feelings and experiences in the application of corporate governance within their respective regulatory agencies.

7.2 Qualitative Review Process

Ritchie *et al.*, (2003) describe “qualitative research” as a mixture of an empirical investigation involving an innovative documenting of experiences and interpretations of a phenomenon by

research participants. Denzin and Lincoln (2000:3) suggest a more practically oriented approach to qualitative research by confining the concept of qualitative research to the situation or context. The authors describe qualitative research as “a situated activity that locates the researcher in the social world”. They hold that “qualitative research consists of a set of interpretive activities that make the social world visible”. The interpretive activities transform the social world into a continuous representation consisting of “field notes, interviews, conversations, photographs, recordings, and memos” (Denzin & Lincoln, 2000). “Qualitative research” encompasses an interpretive and a natural view of the social world. In other words, qualitative researchers study things in their personal environments, with a quest of understanding or interpreting phenomena according to how the people view them (Denzin & Lincoln, 2000; Ritchie *et al.*, 2003).

As discussed in detail in Chapter 3, the study employed qualitative review perspectives to comprehend the level of compliance with corporate governance as experienced in regulatory agencies. This qualitative review exercise involved several stages:

Stage 1: consisted of primary data collection through in-depth interviews with members of boards and managers at the EAAB and HPCSA to obtain insight into their feelings and experiences on the implementation of the corporate governance in their respective organisations. For this purpose, the topic guide was developed and used as a guiding instrument for primary data gathering (Annexure A). The purpose of a topic guide is to guide the interview agenda by providing documentation of subjects for investigation (Burgess, 1984). The guide serves as a tool for maintaining the consistency in the data collection process, especially where several research participants are involved. It assists in the systematic coverage of pertinent issues and promotes uniformity, while in the same breath affording the researcher the flexibility of probing each individual participant for a point that might not have been clear to the researcher (Burgess, 1984; Ritchie *et al.*, 2003).

Stage 2: involved the actual in-depth interviews with research participants. An electronic invitation was sent out to participants for them to be part of the research study and to obtain their informed consent (Refer to Annexure B). Some of the research participants preferred a face-to-face interview with the researcher and others opted for the telephonic conversation. A total of sixteen research participants representative of board members and managers from the targeted regulatory agencies participated in the research study. The interview process with research participants was undertaken for two months. An introductory letter was sent to the respective CEO's of the targeted regulatory agencies to obtain consent to conduct the research study (Annexure C). Where necessary, follow-ups were made telephonically to obtain consent and for

commitment to the research study had explained more fully its rationale and beneficial outcomes to the organisation.

Stage 3: involved systematically analysing data gathered through in-depth interviews as well as secondary data reviewed. Miles and Huberman (1994:224) describe “qualitative analysis as a process of moving up a step on the abstraction ladder”. According to Ritchie *et al.*, (2003), qualitative analysis can be effectively undertaken through an analytic hierarchy involving the process of building qualitative findings per original data collected. The authors describe it as “a form of conceptual scaffolding within which the structure of the analysis is formed”. They hold that “the process is iterative and thus constant movement up and down the hierarchy is needed. The analytic process involves three key activities: data management in which the raw data are reviewed, labelled, sorted, and synthesised; descriptive accounts in which the analyst makes use of the ordered data to identify key dimensions maps the range and diversity of each phenomenon, and develops classifications and typologies; and explanatory accounts in which the analyst builds explanations about why the data take the forms that are found and presented” (Ritchie *et al.*, 2003).

Broadly speaking, data analysis involved three steps: Step 1: using open coding to identify descriptive concepts and categories; Step 2: applying selective coding to interpret categories, concepts, and constructs; Step 3: constant comparison analysis (Glaser & Strauss, 1967). Specifically, as shown in Annexure D containing the analytic hierarchy, the analytic approach relied on “methods of analysis and explanation building” provided by Ritchie *et al.*, (2003). The analytic approach recognised the complexity, detail and context of the corporate governance phenomenon. The exercise involved identifying emergent categories and theories from the data, rather than imposing the researcher’s predetermined categories and thoughts. The uniqueness of each case was maintained including conducting of cross-case analysis. Explanations at the level of meaning rather than cause were formulated. Ultimately, this led to the production of detailed descriptions and understanding of the perspectives of the research participants in the social world. This also involved answering what is, how and why questions and ultimately considering the influence of the researcher’s perspectives.

Kvale (1996:3) metaphorically equates the interviewer as “a traveller who journeys with the interviewee. The meanings of the interviewee’s stories are developed as the traveller interprets them. Through conversations, the interviewer leads the subject to new insights”. Kvale (1996:4) elaborates that “there is a transformative element to the journey. The traveller asks questions that lead the subjects to tell their own stories of their lived world and converses with them in the original meaning of conversation as wandering together with”.

The in-depth interviews conducted with research participants provided access to the meanings and interpretations of research participants attach to their experiences and social environments (Denzin & Lincoln, 2000; Ritchie et al., 2003). Having interviewed up to sixteen research participants, it is conceivable that data collected and analysed during the process has reached some level of saturation. Additionally, secondary data reviewed and analysed contributed to the enhancement of data saturation level. The systematic subsequent data analysis process led to the discovery of major causes and effect of corporate governance failures within SARAs. These failures can be broadly categorised into two main categories: structural or institutional and attitudinal or behavioural. Structural failures are illustrative of aspects stemming from corporate governance structures necessary to facilitate achievement of good corporate institutionally. Attitudinal and behavioural failures point to aspects that are attributive to human behaviour and attitude. Moreover, the data analysis process has been plausible to the formulation of recommendations comprising of strategies and measures that may be employed by SARAs to increase their compliance level to corporate governance practices and principles.

7.3 Major Root-Causes of Corporate Governance Failures

The corporate governance arrangements of regulatory agencies are somewhat complex as they consist of “uncertainty, ambiguity and stakeholder management issues that are multi-faceted” (Crawford *et al.*, 2003:443). Rondinelli (2007:21) states that given these complexities, “there is increasing evidence that most of them either do not contribute strongly to socio-economic development or perform their functions ineffectively and inefficiently”. Skae (2017) holds that there is a common denominator within them to undermine good corporate governance principles and practices. The following discussion illustrates the discovery of the significant causes and effect of corporate governance failures within SARAs, as revealed by a comprehensive review and analysis of primary and secondary data by the research study.

Menon *et al.*, (2016) argues that the current widening corporate governance failures can have a profound impact on an organisation’s performance. For organisations to succeed, they should focus on how to prevent corporate governance failures in their processes and operations. To eliminate existing and future perceived and actual operational, reputational, and financial losses, the only option is to understand their root-cause and prevent them from reoccurrence (Menon *et al.*, 2016). A method that is mostly employed to systematically investigate cause and effect is the “Root Cause Analysis” (RCA) which is a structured and systematic methodological approach employed to evaluate the occurrence or likely occurrence of adverse consequential events within

an organisation. Initially, RCA was developed to evaluate occupational accidents (Menon *et al.*, 2016). It is now widely applied as an evaluation tool in social and business sciences (Charles, *et al.*, 2016; Menon *et al.*, 2016). The objective of RCA is to respond to a threefold question: “what happened, why, and what can be done to prevent it from happening again?” RCA evaluation process involves a comprehensive review of relevant documentation and in-depth interviews with the parties involved in the social setting to determine the causal effect of an event. Given the underlying root causes and associated factors as revealed by the RCA evaluation process, actionable steps are taken to prevent the errors from happening again. Measuring the outcome of an intervention is also planned to determine the success of the RCA exercise. Effectiveness of RCA evaluation process depends mainly on the extent of triggering questions, application of the five rules of causation, and implementation of hierarchical actionable steps (Charles *et al.*, 2016; Menon *et al.*, 2016). RCA is an effective methodological approach to address non-conformance or problem to find out the real cause of a particular problem (Menon *et al.*, 2016). Having discovered the actual cause of an observed problem or failure, appropriate preventative measures can be designed and implemented for corrective action (Menon *et al.*, 2016).

The underlying principles of RCA have been employed to identify the major causes of corporate governance shortcomings. This exercise will assist in understanding the reasons for non-conformance to acceptable standards of good governance. In the final analysis, corrective and preventative actions will be framed to eliminate non-conformance. Having employed RCA, the following discussion tackles some of the major root-causes of non-compliance with corporate governance policies and practices.

Over the years, there has been publicly pronounced strong concerns regarding corporate governance non-conformance generally within public entities and in particular within regulatory agencies (Pressly, 2009; Thomas, 2012). According to Thomas (2012), such non-conformance can be viewed from two levels: their external governance arrangements pointing to their institutional framework and their internal governance arrangements relating to their internal systems and processes. Concerning their internal governance challenges, Thabane and Snyman-Van Deventer (2018) conclude that their boards' acute poor comprehension of focal corporate governance practices is of serious concern requiring urgent attention. In their external governance arrangements, they are negatively affected by persistent political interference by EA's who represent government's interests as a shareholder in their affairs as well as weak institutional arrangements (Kanyane & Sausi, 2015; Thabane & Snyman-van Deventer, 2018). Their internal and external governance systems and processes are comprised of fragmentation of complex

legal and regulatory regime which complicates their ability to deliver public services fairly and equitably leading to low levels of compliance to legal and regulatory measures (Kanyane & Sausi, 2015). This is exacerbated by the absence of a clear model which outlines their corporate governance and administration arrangements (Kanyane & Sausi, 2015; McGregor, 2015a). As a result of weak institutional arrangements, there is a growing trend of frequently replacing and changing of their board members in the past few years (Skae, 2017).

Nellis and Kikeris (1989:667) explain that public entities generally and regulatory agencies particularly are often plagued by internal and external challenges contributing to their failure to adhere to good standards of governance. Government as a shareholder sometimes demands them to operate in an economically viable and efficient manner, while SARAs are instructed to elevate social outcomes, such as employment creation above economic outcomes. They are therefore under persistent pressure to choose organisational operations and activities influenced by politics and not on commercial grounds. Some political leaders and public servants are known to operate in a non-economic manner and instead of pressurising them to maximise economic efficiency, they pressurise them to pursue unsustainable socio-economic goals. Kamal (2010) argues that there are generally inherent challenges of “conflicting objectives, political interference, and inadequate transparency and accountability that generally prevail” within their corporate governance arrangements. As for Rossouw (2005), there is still a considerable absence of effective legal and regulatory frameworks for promoting good standards of corporate governance at country and institutional levels in Africa as a whole. Generally, state entities and regulatory agencies’ corporate governance arrangements are over-burdened by debt traps, corporate governance challenges, and corruption problems (Kanyane & Sausi, 2015).

According to Balkaran (2008:4), prevailing corporate governance failures within SARAs are caused by, amongst others, conflictual objectives and over-regulation that they are expected to deliver and comply with which ultimately undermine the delivery of quality services. Sprenger (2010) holds that their board structural challenges are wide-ranging and diverse and they include: ineffective governance framework; unclear roles of board structures; inadequate reward system; lack of appropriate consequence management system for non-performance; lack of transparency and accountability for actions taken. This is compounded by lack of activism by the government as a shareholder as well as blurred accountability arrangements amongst the various role-players, i.e., government as a shareholder, board as a stewardship structure, and managers as overseers of day to day operational activities. Gopa Kumar (2010) highlights key governance challenges for public entities and regulatory agencies in India as including the politicians’ low-levels of

comprehension of cardinal corporate governance principles; weaknesses in maintaining regular training of board members on corporate governance fundamentals; non-disclosure of relevant information affecting adequate decision-making; fragmented board structures; absence of a robust and regular evaluation of boards; and, resistance to adapt to changes occurring within the corporate governance environment.

Scholars such as Chiu *et al.*, (2007), Tan and Wang (2007), and Yang (2008) highlight the following as corporate governance failures within Chinese SOES: promotion of managerial self-interests over public interests; lack of incentives and reward system for SOEs' overall performance for the maximisation of socio-economic benefits; competing interests and conflict between government ownership and its exercising of oversight over SOEs; insufficient representation of minority shareholders on SOEs' boards. Additionally, Tan and Wang (2007), outline poor corporate governance practices in Chinese SOEs as follows: transferring of their assets using untoward means; applying insider dealing methods to steal their assets; production of inaccurate and unreliable financial records and information; manipulation of their stock prices; and prevalence of favouritism and nepotism.

Non-conformance to high standards of corporate governance has dire consequences for the well-functioning of organisations. These negative consequences range from operational inefficiencies to corruption and malpractices. The World Bank (2013a) has estimated that bribery costs about US\$1 Trillion per annum across the world. A new form of perpetuating corruption and maladministration, especially within transition economies, is what Kaufmann (2005) defines as "state capture" where private companies bribe government officials in exchange for creating and maintaining market control. Corruption has devastating effects upon these transitioning economies as it lowers investment, contributes to resources misallocation, reduces competing interests, efficiency and innovation, promotes unresponsive policies and poor administration, increases unemployment, and exacerbates poverty rates. In South Africa, the Public Protector's report (2016) entitled 'The State of Capture' recommended the establishment of 'a commission of inquiry' to investigate alleged impropriety on the part of public officials being bribed by private companies. Subsequently, a commission of inquiry on state capture was established under the chairpersonship of Constitutional Court Deputy Judge Justice Raymond Zondo to probe these allegations. Witnesses appearing at the commission have made startling revelations on how public officials were offered bribes in exchange for government contracts. Having completed its work, the commission will produce a final report containing recommendations on how such acts of impropriety would be addressed going forward. The Ministerial Task Team (2015) established

for investigating “administrative irregularities, mismanagement and poor governance” allegations at the HPCSA have revealed that procurement irregularities were resulting in unauthorised, irregular, fruitless and wasteful expenditure; HPCSA executive management’s failure to effectively and efficiently exercise its statutory mandate; failure of executive management to perform to the required standard in the majority of the key functions. The EAAB experienced a series of governance misfortunes for a while. During 2012, the EAAB was placed under administration due to the failure of its board in the execution of fiduciary mandates as expected of them. This was followed by successive qualified audit opinions by the external auditors on the entity during the 2016/2017 and 2017/2018 financial years with matters of emphasis (Annual Report 2016/2017, 2017/2018).

Given the above discussion, it can be deduced that the existence, forms, and manifestations of corporate governance shortcomings are wide-ranging and complex. Broadly speaking, they can be categorised into two main categories: those that are structural in form and content, and those that are influenced by sociological and psychological factors. The structural corporate governance failures stem from failures that are structurally based and influenced by predominantly lack of appropriate structures and systems to provide a strong buffer for good corporate governance. Although the mere existence of structures and systems do not lead to good corporate governance per se, they provide building blocks towards fostering good corporate governance. Moreover, the constituting and implementation of structures and systems provide a sound-footing for good corporate governance. As we have already seen in Chapter 6, having effective and efficient external and internal governance structures and systems are among the key pillars for good corporate governance.

As already stated, the second broad category relates to the sociological and psychological factors attributable to the human behavioural aspects. The existence or lack of appropriate structures and systems may influence corporate governors to act in a particular way. As stated in Chapter 2, sociological and psychological factors occupy a fundamental role in influencing corporate governors to act in a particular way. From the stewardship perspective, they are expected to be competent organisational stewards conducting operations and activities of the organisation to the benefit of all stakeholders. The underlying sociological and psychological factors under the stakeholder perspective will influence corporate governors in protecting the interests of stakeholders. Agency theory influences corporate governors to act in a self-interested manner to jealously guard the interests of the shareholder. The Ubuntu theoretical perspective expects corporate governors to exhibit solidarity and promote cohesion, humanity and dignity. Furthermore, when making organisational decisions, such decisions should not only be based on short-term goals but on long-term ones which promote sustainable development in the long run.

7.4 Structural Corporate Governance Constraints

7.4.1 Board Structure

Meaningful progress towards achievement of good corporate governance principles and practices is measured at two levels, i.e. firstly, assessing compliance to procedural corporate governance matters, and secondly, assessing compliance to substantive corporate governance matters. According to Dalton and Dalton (2006:5), there is a misnomer of placing more attention on procedural matters that are structural, such as, constituting the board and its committees, CEO/Chairperson structure, and the size of the board over substantive matters, such as, organisational culture, principle and value-based system, and leadership cadre. It is easier to measure successful implementation of corporate governance from a procedural level than at the substantive level as it involves softer matters that are not easy to measure. While structural and procedural aspects are prerequisites for board effectiveness, they are not adequate for ensure the successes of the board (Dalton & Dalton, 2006:5). It is of importance to also pay attention to substantive matters as well. The board structure, size, composition and its committees are viewed by some research participants as severely hampering the optimum functioning of the board and its committees. Certain boards and committees are excessively large to be able to discharge their fiduciary functions diligently and competently. This is further exacerbated by board members' participation in multiple board committees. Participation in multiple board committees negatively affects the quality of engagement within various board committees' proceedings. In other instances, board members participate simultaneously on board committees mandated to deal with complementary but yet conflicting matters, for example, participating in Finance Committee and Audit and Risk Committee at the same time leading to being a referee and a player at the same time. Since no due regard is given to the appointment process of boards, they are often not adequately comprised of diverse skills and qualifications. This is also found in the establishment of board committees where there is an apparent lack of suitably qualified and skilled board members.

Unprecedented high levels of non-compliance to good corporate governance arrangements within regulatory agencies are associated with their complex board structural arrangements. Most often, they are characterised by large board compositions that are diverse. For examples, the EAAB board is comprised of fifteen members representing diverse interests within the property market and the council of the HPCSA is comprised of thirty-two members representing the various stakeholders within the regulated health professions. Specifically, since the mandate of HPCSA's

is to regulate many diverse health professions in addition to the conventional board committees, there are up to twelve board committees representing the interests of various health professions under the ambit of the entity. Apart from these complex corporate governance arrangements, by itself, a large board structure is a fertile grounding for the establishment of many and unnecessary board committees often with conflicting mandates. As we have observed, the existence of complex corporate governance arrangements also contributed to the failure to uphold high standards of corporate governance within the HPCSA (Ministerial Task Team Report, 2015).

Usually, the shareholder through the relevant EA appoints board members together with their CEO's. Although the board may propose the names of prospective candidate CEOs, it is the EA that takes the ultimate decision. The appointment process is normally regulated by the statute that outlines the procedure, tenure, and duties of board members. Research participants generally view the appointment process of boards as riddled with flaws. They indicate that there is an absence of a thorough and rigorous appointment process underpinned by a due diligence process, resulting in appointing unethical board members who do not have the required competency and skill levels. They stress that members of the board are tasked to push their political principals' agenda, not necessarily that of the organisation. Moreover, there is a feeling that board membership is viewed by politicians as an opportunity for cadre deployment.

Thabane and Snyman-Van Deventer (2018) found that board members and managers' lack of the required credentials are some of corporate governance non-compliance factors prevalent within public entities and regulatory agencies. Usually, government as the shareholder does not prioritise setting-up elaborate process towards constitution of boards resulting in the appointment of under-qualified and incompetent board members. Rigorous due diligence is normally not pursued towards ensuring that board members are fit and properly skilled to perform their fiduciary role. According to Skae (2017), this results in having ineffective boards which are undermined at every turn when trying to exercise their fiduciary duties, "and at worst, it creates "zombie boards" which are simply put there to rubber-stamp the decisions of the shareholder and the powerful executives who feel not being accountable to anybody".

Most of the boards of SARAs fail in functioning along with compliance with the corporate governance expectations of their founding statutes (Companies Act 2008; PFMA, 1999; King Codes 1994, 1998, 2002, 2009, 2016). As such, a general view is that there are blurred accountability lines amongst the different corporate governance stakeholders. The cause of this

is believed to be poor basic comprehension by the board collectively, and individually by members of their fiduciary duties and responsibilities. They merely pay lip service to compliance with good corporate governance and adopt a tick-box approach. This often results in poor corporate governance since boards fail to steer the organisation in the right direction. Blurred accountability lines most often result in board descending into the arena of administration and the EA into that of governance under the false pretence of intervention rather than interference when in fact it is the latter. Most of the EA's are not versed with the necessary knowledge and comprehension of corporate governance. As such, they often do not take action when expected to do so.

For example, the SABC, whose primary mandate is that of a public broadcaster, has for some time been plagued by serious corporate governance challenges necessitating an investigation by the Public Protector to verify the alleged "maladministration, systemic corporate governance deficiencies, misuse of public power and irregular appointments of employees" (Public Protector Report, 2014:10–11). The report found numerous corporate governance transgressions, such as, "inability by the board to execute its fiduciary duties, not acting in the interests of the organisation, and not providing strategic oversight to the organisation; failure of management to offer strategic guidance and advice to the board to discharge its corporate governance responsibilities effectively; the existence of a dysfunctional board that could not delineate between board responsibilities and management responsibilities; interference of the EA in the corporate affairs of the organisation" (Public Protector, 2014:22). It is important to illustrate that corporate governance deficiencies as unveiled in the findings of the Public Protector on the SABC were deep-rooted and had far-reaching consequences. The mismanagement practices led to the organisation being unable to deliver on its public broadcasting mandate effectively. The organisation had to lay-off certain employees, especially free-lancers, due to lack of adequate funding. To keep the organisation afloat, the government has recently awarded over R3 Billion to enable the SABC to finance its operations and capital expenditures.

As Thabane and Snyman-Van Deventer (2018) suggest, it is public knowledge that there are always squabbles among the EA's, boards, and CEO's which sometimes results in the expulsion of executive managers under bizarre circumstances. This is even compounded by the chopping and changing of boards every time a new EA is appointed. The Companies Act (2008:66) confers the authority to the board to govern the organisation, including the appointment of executive managers. The shareholder is empowered to appoint the board but not managers (2008:68). The separation of powers and roles amongst the different stakeholders must be maintained. Many boards appear to have missed this crucial corporate governance rule of separating administration

from governance. The board is authorised by law to oversee the operational affairs of the organisation as espoused by the Companies Act (2008), King Code (2016) and Protocol (2006). The board is the primary custodian of corporate governance within the organisation and should delegate daily tasks and responsibilities to management. In turn, it should monitor and assess the extent to which organisational strategic objectives are achieved within the overall strategic direction. It is therefore unheard of for board members to perform executive functions on for the organisation without management's sanctioning (Thabane & Snyman-Van Deventer, 2018).

Gazetov *et al.*, (2005) point-out that Russian SOEs have also been embroiled in serious corporate governance failures. Amongst others, these involved inadequate delineation of roles between government and boards which negatively affect the development of coherent strategies. Their boards often serve as transmitters of decisions taken by politicians (Sprenger, 2010). Furthermore, boards' appointment processes in Russian SOEs are riddled with flaws since such processes are not done transparently and lack credibility. This results in board members who are passive and who are non-contributing to organisational success (Sprenger, 2010). These boards are marked by frequent chopping and changing of board members (Gazetov *et al.*, 2005) and have little incentive to improve their operational and governance models and they fail to monitor the performance of managers in a systematic manner (Belikov, 2009). They usually take organisational decisions selfishly to further their interests and not for the public good (Sprenger, 2010). Sometimes political patronage highly influences the appointment of board members (Howard & Seith-Purdie, 2005; Rossouw, 2005; Williams, 2010) and this explains the calibre of some board members who fail to uphold corporate governance ethics and lack integrity (Thabane & Snyman-Van Deventer, 2018).

Within public entities generally, there is a higher prevalence of hiring and firing of CEO's and executive managers under questionable circumstances. This is strongly precipitated by purging and personality conflicts amongst the various role-players, i.e., management, boards, and responsible EA's (Kanyane & Sausi, 2015). In many instances, EA's interfere in their organisational affairs under the false pretext of intervention (SOEs Policy Dialogue Report, 2012:11). An argument often raised against the perceived "interference" by EA's is that they merely "intervene" in their affairs. It is often argued that responsible EA's cannot be bystanders and cannot simply leave them to collapse. Contrary, EA's often make controversial board appointments resulting in having incompetent board members in discharging their fiduciary mandates to an extent of necessitating shareholder intervention. As Thabane and Snyman-Van Deventer (2018) argues that "it is in most instances a clear case of shareholder interference,

which brings both agency and political costs into play". Quinn (2008) cautions politicians against using public entities as political pawns for their political goals instead of strengthening them to perform their mandated functions. The board is considered to be the primary authority obligated to lead the organisation in a desirable direction. This includes appointing executive managers tasked with the daily execution of the organisational policies, plans and programmes. The board should ensure succession planning processes in mapping out their succession (Companies Act, 2008; King Code, 2016; PFMA, 1999; Protocol, 2006). Most often, interference by EA's in the affairs of public entities weakens their boards' ability to execute fiduciary responsibilities sufficiently and turns them into blindly approving every proposal put to them, which does not promote good corporate governance.

As seen in Chapter 6, external and internal corporate governance arrangements of regulatory agencies are somewhat complex as it involves diverse interests. One of the underlying dangers is over-emphasis and over-reliance on the shortcomings and problems associated with the internal governance arrangements at the expense of external ones. Most of the research participants feel that it is important that the external stakeholders are equally equipped with the necessary skills, knowledge and proper understanding of good corporate governance to enable them to discharge their responsibility which is mainly oversight, more competently. In this regard, Parliament as an oversight structure should be equipped with parliamentarians who are competent and capable to hold the entities accountable for their actions. Equally important is to appoint EA's and Directors-general who are capable and competent to properly direct the affairs of these organisations. Having an active citizenry that demands accountability from the captains of regulatory agencies is an important element in the cock. Various watchdogs in the form of Chapter 9 institutions (Constitution, 1996), as well as civil society organisations, play an important role in ensuring that regulatory agencies take compliance to good corporate governance seriously and there are consequences for non-compliance.

7.4.2 Fragmented Regulatory Compliance

South African regulatory agencies operate within an environment of a plethora of multiple pieces of regulatory and legislative instruments. These are sometimes at odds with the broad's efforts to satisfy the developmental path that the government pursues (Kanyane & Sausi, 2015). As statutory entities, their primary goal is to fully comply with the legal architecture setting-out their strategic functional areas of operation. The legal architecture should be rooted in fundamental principles contained in section 195 of the 1996 Constitution mandating guidelines according to which public organisations should be administered. Additionally, SARAs are compelled to implement a hybrid of "soft law" and "hard law" instruments to raise their standards of compliance

with good governance. A plethora of regulatory and legislative frameworks, as Kanyane and Sausi (2015) suggest, constrain these entities to effectively respond to the government's socio-economic development mandate. Lack of understanding of the regulatory frameworks governing their specific environment, as well as blatant disregard and ignorance of the rule of law by board members within regulatory agencies, worsens the situation even further. In certain instances, board members take organisational decisions that are inconsistent with their legislative mandates.

Studies conducted by the Department of Public Enterprises (DPE) reveal contradictory prescriptions in both the PFMA of 1999 and Companies Act of 2008, thereby rendering them opposing one another. The fragmented regulatory and legislative frameworks create conflict leading to a lack of coordinated and integrated planning and inability to balance different roles (Fikelepi, 2010:115). Kanyane and Sausi (2015) suggest that the government should avoid establishing SARA's on wrong motives which result in multiple conflicting mandates and contributing towards them failing in the execution of their mandates. Both the founding statutes of the EAAB (EAA Act: 1976) and the HPCSA (HP Act: 1975) were promulgated before the advancement of the corporate governance field as we know it today. The two pieces of legislation were passed shortly before the ground-breaking development of the 'agency theory' achieved by Jensen and Meckling in 1976. Therefore, glaring inconsistencies in good corporate governance practices are found in the aforementioned two pieces of legislation. For example, the legislative frameworks provide for the establishment of executive committees tasked with the day-to-day management of the entities comprised of board members. This requirement of having board members participating in the operations of the entities in the form of executive committees fly pass the tenets of fundamental corporate governance principle propagating separation of governance on one hand and control or administration on the other. In particular, when faced with the administrative dilemma, the EAAB board invoked the provisions of their founding statute (EAA Act: 8b) to justify the establishment of an executive committee later declared to be inconsistent with good corporate governance by the external auditors (Annual Report, 2017/2018). Even though the concerted effort has been taken to implement good corporate governance practices despite archaic nature of the legislation, there remains potential tension when faced with the dilemma of two conflictual positions from the "soft law" ankle or "hard law" ankle, the inclination is to favour the "hard law" approach as there are consequences where non-compliance is experienced.

Legislative drafters often lack the appropriate acumen to create synergy between "soft law" and "hard law" to eliminate unnecessary inconsistencies. Consequently, sometimes legislative

frameworks are passed by Parliament without taking into account good corporate governance practices and principles. Since these “hard law” takes precedence over “soft law”, bad corporate governance practices are perpetuated against proper adherence to the dictates of the law. As we shall see in Chapter 8, the various King Codes on Corporate Governance (1994, 1998, 2002, 2009, 2016) had substantial influence and persuasion to the make-up of the South African legislative landscape over the years. However, it is important to have a consistent and sustained effort to create synergy in “soft law” as well as “hard law” to foster a coherent culture of good corporate governance.

7.5 Behavioural and Attitudinal Factors

The fundamental value-rational rule behind the stewardship theory is centred on psychological and sociological factors possessed by governance stakeholders, especially management. The stewardship theory views managers as a cadre of competent stewards who are inclined to respond positively to the attainment of organisational interests. Similarly, as advanced by the tenets of the stakeholder theory, managers are inclined to focus on the benefits of the entire organisation. As seen in Chapter 5, the underlying principles of the Ubuntu theory include acting with solidarity, encouraging social cohesion, being humane, respecting and treating others with dignity, and the need for sustainable development in all human endeavours. Therefore, in this regard, behavioural and attitudinal factors are often a microcosm of the organisational moral fibre. Compliance to the highest standard of moral fibre displayed by the stewards, directly and indirectly, influence individual and organisational behaviour and attitude. Generally, if the society’s moral campus is high; this is also reflected within organisational practices. Countries with high corruption perception index (CPI) are often engulfed in serious corrupt practices (Transparency International, 2017). Conversely, the opposite is also true. Greater investment in solidarity building initiatives such as the creation of social cohesion, espousing humaneness and humanity, displaying respect and dignity, and enhancing sustainable development, need to be adopted and implemented at the community and organisational levels.

Cutting and Kouzmin (2000), point-out that corporate governance irregularities are often rooted in behavioural and attitudinal factors demonstrating apathy or ignorance of organisational affairs by corporate governors. They are generally ill-equipped or not well-equipped to deal with the task at hand, i.e. promoting good corporate governance. From the behavioural perspective, this may include irregular attendance of board and committee meetings or absence without apologies. There is also an attitude of excessive concurrent board appointments by EA’s (Webb, 2007). This

is exacerbated by exhibiting behaviours and attitudes pointing to board members not adhering to their fiduciary duties and responsibilities (Cutting & Kouzmin, 2000). Moreover, a deficient moral campus leads to greed, bribery and corrupt activities by corporate governors (Brown, 2009). At the organisational level, conflicts of interests contributing to tender-ricking are also prevalent, influenced by human factors (Kanyane & Sausi, 2015). Additionally, regular board appraisals to detect these behaviours and actions are lacking (Ingley & Van der Walt, 2002).

There is a general view among research participants that the phenomenon of board careerism is highly prevalent within SARAs and contributes massively to the dysfunction of the boards. In some cases, it is perceived that board members feel some entitlement to board membership. They ultimately turn board membership as an opportunity to fill up their pockets. Since they are remunerated based on board meeting attendance, there is a tendency of creating many and unnecessary meetings, turning board membership into a cash cow. On the other hand, they nominate themselves onto too many board committees as well as boards with the principle aim of amassing financial resources. In some cases, board members serve on conflicting board committees. For example, simultaneously serving as a board member of both the Finance Committee and the Audit and Risk Committee, thereby creating a referee and a player situation. Additionally, there is a growing phenomenon of merry-go-round resulting in board members hopping from one board to another. Since there is an absence of due diligence process and system in appointing board members, the same bad or rotten apples get to be recycled within different boards, in certain instances resulting in well-functioning regulatory agencies moving from being good to worse.

Some of the behavioural and attitudinal factors afflicting good governance include bankruptcy of effective leadership, poor organisational choices and decision-making, ineffective performance, evident in constant tension between on the one hand the EA and the board, and on the other, Chairperson and CEO (Klein, 2010). The general feeling amongst most of the research participants is that this is a consequence of shortcomings in the basic skills of good corporate governance amongst the different governance stakeholders. Sometimes this leads to either EA's descending into the arena of governance based on an intervention which is interference into the affairs of the organisation. Additionally, boards tend to descend into the arena of daily operational activities and begin to bark operational instructions. Consequently, poor decision-making increases and the resultant exposure of the organisation to financial, reputational and operational risks. When governance fails, there is a tendency to engage in a blaming game -- the EA blaming the board and in turn, the board putting the blame squarely on the shoulders of management.

Sometimes the relationships are often fraught with mistrust amongst the various structures, on the one hand between the EA and the board, as well as, between the board and management on the other hand. This often leads to ignorance of, for instance, management advice which engulfs some of the regulatory agencies into serious litigious problems which are costly and have dire financial consequences. Sometimes the sources of conflict are as a result of conflict between the EA and the Director-General who is expected to furnish expert advice to the EA. Most often technical advice of Directors-general is ignored by EA's at the expense of political decisions and interests.

The appointment process of board members within regulatory agencies is filled with flaws. Many of the board members are appointed because of political patronage and loyalty. They are therefore appointed to promote a particular political agenda. Moreover, board membership has been turned into jobs for pals – a proxy for quid pro quo relationships. For instance, someone has done something for the EA and in turn, he/she is rewarded with board membership. As board members, they act at the behest and pleasure of the political office-bearers. Rather than taking organisational decisions to the benefit of the organisation, they are taken for pleasing the master. Research participants felt that board membership appointment within many regulatory agencies has become a breeding-ground for cadre deployment. There is also a high prevalence of inaction to fill vacancies at senior management levels and weak, if not absent, succession planning both at board and management levels (Williams, 2010). As a result, there are unprecedented levels of instability in board and executive leadership marked by delays in executive management appointments, political appointments and cronyism (Ensor, 2010; Klein, 2010). Castro (2007:272) emphasises that “political interference and conflict of interest result in wrongful employment choices” that are not backed by better human resources planning, poor organisational decision-making processes and systems, and ill-defined incentives for managers. Another matter that plagues South Africa's regulatory agencies is appointing board members and managers who are under-capacitated to deal with the task at hand due to being under-qualified and incompetent (Thabane & Snyman-Van Deventer, 2018). Given the limited knowledge and understanding of good corporate governance, necessary and important organisational decisions get delayed since sometimes board members either do not know what kind of organisational decisions to take, or how to take and appreciate their consequent implementation.

The role that the government plays as a major shareholder is central to huge corporate governance problems plaguing SARAs. It is felt that government as a shareholder sometimes wields much power resulting in unwarranted political interference in their corporate affairs. Most

often, such political interference takes the form of active involvement in the appointment of managers, disciplinary matters and dismissals, encroaching on the separation of power principle between governance and oversight. Consequently, managers directly appointed by the shareholder tend to disrespect the board's authority due to their perceived association with the shareholder. This ultimately negatively affects the board's ability to be the centre-piece of corporate governance and to discharge its fiduciary responsibilities efficiently and competently. Due to this political interference into their operational affairs, as Thabane and Snyman-Van Deventer (2018) observed a recent high turnover of board members, CEO's, and other managers at public entities like the SABC, Eskom, and the Post Office. A classic example of political interference is at the SABC where the shareholder unanimously amended the "SABC's Memorandum of Incorporation" (MOI), which confers "the authority to appoint, suspend, or even dismiss key executive members", resulting in instability in the appointment of CEO's (Thabane & Snyman-Van Deventer, 2018).

Most research participants have observed that normally when regulatory agencies transition from one board to another serves as a source for potential tension between the new board and old management. The old managers would be viewed as belonging to the previous board. Consequently, the appointment of a new board is followed by a high turnover of managers, including the CEO. These irregularities hamper boards from delivering on their developmental agenda as mandated by the National Development Plan (2012). They end-up not being able to discharge their mandate effectively and efficiently as they are diverted from doing so. Existence of power-relations tussles hampers the effective and efficient running of the organisation as it is marked by the existence of mistrust between these two important stakeholders who are charged with the stewardship of the organisation. For instance, if the CEO is dominant, he/she will set the agenda undermining the authority of the board.

Compliance to high standards of ethical and moral conduct is lacking within regulatory agencies' boards. At the outset, they seem not to understand their fiduciary responsibilities and duties. The primary objectives for their appointment are not based on their skills and qualifications. They are not well-trained to deliver on their corporate governance mandate. They lack transparency and accountability in their actions and are unethical in posture. As such, often board members preach one thing and practice a different thing altogether. They put personal interests before organisational interests. Most often, they engage in lobbying each other when making organisational decisions at the expense of compliance with good corporate governance. For example, they do not care how much is being spent on the board's remuneration and the need to curtail unnecessary board expenditure.

As observed in Chapter 6, one of the requirements for the strengthening of internal governance is implementing an integrated performance management system (IPMS) across the organisation. Most research participants have attributed poor compliance with good corporate governance to the irregular appraisal of the board's effectiveness and efficiency in implementing corporate governance. Implementation of an effective IPMS system at the board level will enable the identification of board performance deficiencies and remedial measures to address them. This exercise should be undertaken with openness and transparency considering the best interests of the organisational interests rather than board members' interests. To be effective, the IPMS system should cut across the entire organisation since normally performance management process as executed at the management level usually serves as a punitive measure against payment of performance bonuses. It is not performed as a corrective measure to address under-performance. Additionally, some of the regulatory agencies commission forensic investigation after forensic investigation; however, there is no concerted effort to implement recommendations of the various forensic investigations. Ultimately, it would appear that such forensic investigations are commissioned to conduct witch-hunts.

Comparatively speaking, private sector boards are staffed with board members of high quality than their public sector counterparts. The private sector invests enormously onboard capacitation and development. Board incentives and remuneration are normally higher than those of the public sector. Furthermore, the private sector also invests heavily on the orientation, induction, and capacity-building of board members. The private sector appoints board members who have been accredited through processes of the Independent Office of Directors in Southern Africa (IODSA). The appointment process of board members within the private sector is extensive and rigorous and involves an extensive due diligence process which will result in the appointment of fit and proper persons.

Generally, it is highly unacceptable for an organisation to be involved in corporate governance non-compliance matters, more especially those who are expected to promote social and transformational mandates (Thomas, 2012). From a leadership point of view, for SARAs to be effectively and efficiently run to achieve their mandated social capital outcomes, they require matured and emotionally intelligent board members and managers who are fit and proper to execute their roles and responsibilities (Kanyane & Sausi, 2015; SOEs Policy Dialogue Report, 2012:11). These underlying human factors are essential in curbing the persistent flouting of

procurement policies and processes diminishing their fiscal and social fabric causing excessive expenditures and service disruptions. These irregularities are avoidable and preventable if the board members and managers have the required social-orientation inclination of serving the people's interests rather than their personal interests because if the mismanagement of resources and governance non-compliance prevail, they will fail to effectively execute their mandates of promoting socio-economic development (Kanyane & Sausi, 2015; Van der Nest *et al.*, 2008). Government has the responsibility to exercise oversight over the SARAs boards in ensuring that they conduct their affairs beyond probity for the benefit of their organisations. In this regard, government's primary task is to exercise its oversight mandate, as well as taking remedial measures when non-compliance raises its ugly head as opposed to encroaching in the operational affairs or imposing monopoly (Protocol, 2006). Maintaining separation of roles between government and SARAs' boards will according to Quinn (2008), not be misused to pursue political interests but are empowered to effectively deliver on their socio-economic interests. Delineating the different roles to be played by various corporate governors, will arguably assist in the reduction of boardroom tensions which have in the main been accelerated by political interference.

7.6 Analysing Impact and Consequences of Corporate Governance Failures

In the previous section, through in-depth interviews, we managed to highlight and understand causes of corporate governance failures within regulatory agencies. These causes take a form of structural impediments and those that can be associated with human actions. In the following sub-sections, we present a comprehensive account of the impact and consequences of non-compliance to the highest standards of corporate governance as reflected by research participants.

7.6.1 Perennial Under-Performance

Regulatory agencies are obliged to prepare strategic plans that set out their short, -medium and long-term goals. To ensure that the organisational goals and objectives are attained, they are compelled to formulate annual performance plans and are expected to put in place adequate systems and processes to monitor organisational performance. On an annual basis, they are expected to formulate and publish annual reports documenting their performance towards achieving their organisational goals. According to Thomas (2012) over-reliance on organisational annual reports tend not to provide a clear picture of corporate governance practices. The author suggests that there should be an extensive interrogation and analysis of corporate governance practices and the implementation of its underlying principles to minimise the tick-box approach

and window-dressing. Objectively speaking, comprehensive assessment of the implementation of corporate governance practices and principles within SARAs should take cognisance of the macro- and microenvironments within which they operate. To avoid being exposed to reputational damage, such analysis should also consider the negative publicity on the popular media relating to corporate governance non-compliance. Having a deliberate reputational management strategy might avail a broader measure of assessing exposure to and potential damage to the reputation of the organisation. Formulating an appropriate methodology that can comprehensively and accurately track areas of corporate governance non-compliance within SARAs is important (Thomas, 2012).

The EAAB has obtained qualified audit opinions containing matters of emphasis on irregular expenditure and fruitless expenditure within two successive years (Annual Report, 2016/2017, 2017/2018). Moreover, on the one hand, two successive forensic reports by Sizwe Ntsaluba Gobodo as well as Grant Thornton were carried-out in succession revealing fraudulent activities and systems and control environment challenges. This was after the entity was placed under administration during 2012. On the other hand, the EA responsible for the HPCSA commissioned an investigation during 2015 after the entity has been railing from crisis to crisis, for example, procurement of its new ICT system and a series of malperformances.

According to the research participants, SARAs do not invest sufficiently in compliance with good corporate governance standards. They view the cost of compliance as costly and therefore resort to formal compliance or a tick-box approach. Subsequently, substantive compliance which constitutes the crux of compliance, suffer seriously. Despite the underperformance of most of the public entities, some have over the years received several hefty financial assistances also known as “bail-outs” from the shareholder for them to sustain the delivery of their mandates. It is through undergoing rigorous corporate governance substantive compliance processes that will nullify a tick-box approach. Formal compliance through the formulation and tabling of annual performance reports to the EA and parliament and conducting regular internal and external audits are requirements relatively easy to comply with. What might be difficult to implement are substantive compliance processes for ensuring that board members and managers operate with absolute probity and integrity as stewards within the required competent levels (Conger *et al.*, 1998; Dalton & Dalton, 2006; Rossouw & Van Vuuren, 2004). As part of ensuring substantive compliance, it is expedient to implement an organisational culture that values ethical behaviour (Fleming & McNamee, 2005:137). To this end, the appointment of board members should involve a comprehensive due diligence review of the skills, technical knowledge and experience they are

bringing to the organisation. Due regard should also be given to their ethical integrity towards the development and consolidation of sound corporate governance practices.

7.6.2 Impairment of Reputation

King Code (2016) encourages boards to acknowledge the effect that stakeholder perceptions might have on the reputation of the organisation, and therefore cautions them on the importance of effectively managing reputational risk. Taking Eskom as a case in point, for example, the board did not follow this caution when taking the path to simultaneously suspend the then CEO, together with three other senior executives, thereby leading to the entity receiving a negative credit rating from Standard & Poor's and thus crippling the agency's efforts of raising capital from financial markets. Therefore, it can be argued that the board of ESKOM was reckless in the way it has handled the matter and has exposed the agency to negative stakeholder perceptions and further risks. Therefore, it is important to effectively manage the stakeholders' perception and the reputational integrity of the organisation through a carefully developed policy to manage reputational damage. To be effective, such a strategy should identify potential risks and pitfalls and propose measures to remediate reputational damaging incidents.

SARAs have often failed in their integrated reporting duties as mandated by the King Code (2016). As seen in Chapter 6, stakeholder management is critical for SARAs as they are established to regulate various professions in the public interest. As such, they need to implement reputation building and stakeholder management strategies to enhance their positive image and reputation.

7.6.3 Financial Risks and Losses

Regulatory agencies are embroiled in the mismanagement of resources. The PFMA (1999:51) obliges SARAs to "maintain effective, efficient and transparent systems of financial, risk management and internal control". The Treasury Regulations (2001) lay down the operating norms and standards to be followed by SARAs in establishing internal audit systems controlled and directed by audit committees. Furthermore, they are required to establish "an appropriate procurement system that is fair, equitable, transparent, competitive and cost-effective" (Constitution: 213; PFMA: 51). However, notwithstanding these clear legislative and constitutional instructions, some board members have been found to have interfered in the processes of awarding tenders involving huge contracts. Legislative and constitutional compliance in some SARAs is highly questionable. In their study, (Thabane & Snyman-Van Deventer, 2018) found that governance problems facing the SAA include, irregularities in the awarding of tenders in which executive managers and board members are implicated in wrongdoing. The authors contend that despite the elaborate duties and responsibilities of board members to effectively

manage finances and to disclose relevant information to the shareholders, recklessness and carefree attitude in the financial management is high, with being bailed out by government becoming normalised.

Public entities generally are mismanaged and their governance arrangements (internally and externally) are not appropriately co-ordinated, running at huge financial losses that cost taxpayers dearly (Thabane & Snyman-Van Deventer, 2018). For example, the SAA had eight CEO's in less than five years and received bailouts at R550 million, while further granted a R5 billion guarantee by the government for a restructuring exercise (Thabane & Snyman-Van Deventer, 2018). Van der Nest *et al.*, (2008) argue that "if mismanagement of resources and corporate governance violations persist, organisations will be unable to effectively execute their mandates". Furthermore, some of the notable poor governance practices as Thomas (2012) points out, are "mismanagement of resources evident in poor long-term strategy development, poor financial accountability", while for Naidu (2009), it is "fruitless or wasteful expenditure", and Kanyane and Sausi (2015) single out "inappropriate rewards including excessive pay and benefits to executive managers and board members despite their underperformance". Consequently, such malpractices led to a loss of investor confidence (Pressly, 2009), as well as diminished confidence in SARAs by broader stakeholder groupings (Ensor, 2010).

7.6.4 Operational Deficiencies

Kamal (2010:214) points out that "when board appointments are driven by political motive, it can be expected that competence and independence are severely compromised since politicians tend not to carry out their work in accordance with the interests of the public". In support of this view, Quinn (2008:84) reflects that "when politicians are entrusted with managerial and governance responsibilities, they turn to utilise public resources to achieve short-term personal and political goals at the expense of long-term economic ones". Such practices relegate the role of board members to be mere safeguarding in the interest of their EA's, a responsibility often opposed to bringing about socio-economic efficiency (Vagliasindi, 2008:4). As a result, sometimes board members are scared of taking unpopular decisions at the expense of those favoured by EA's. Consequently, organisational decisions that will promote organisational efficiency are either not taken or delayed thereby contributing to operational deficiencies. Under-qualified and incompetent board members cause regulatory agencies to mismanage resources and not putting organisational interests before personal interests. Constant changes in EA's, board members and managers rob SARAs of skills, competencies and institutional memory required for the implementation of long-term projects. This persistent high turnover of boards and management ultimately compromise service delivery and negatively affect long-term planning.

Notably, the SABC's annual report for 2014/2015 highlights a failure by the organisation to meet its key performance targets. Consequently, the organisation reported a loss of some R395 million. This has been the case with other public entities, such as, Eskom, SAA, etc. who perpetually underperform operationally. Such perennial underperformance has always necessitated government intervention through regular bailouts to these public entities. In the case of PRASA, for example, the Public Protector probed alleged practices of "maladministration, financial mismanagement, tender irregularities, and irregularities appointments of both board and staff members" (Public Protector Report, 2015). A major finding of the Public Protector was the prevalence of a culture of systemic failures, and of hiding information that could expose maladministration and improper conduct at PRASA. "If this trend is not contained, it could derail the effective and efficient procurement of goods and services to support PRASA's operations to ensure effective service delivery" (Public Protector, 2015:382). As Thabane and Snyman-Van Deventer (2018) reported, Eskom's problems surpass its inability to keep South Africans' lights on. Eskom's challenges are also intimately linked to its diminished ability to raise capital for the construction of additional power stations since poor corporate governance practices led to the country being downgraded by credit rating agencies.

7.7 Conclusion

Failure to adhere to high standards of corporate governance is attributable to a lack of appropriate internal organisational systems and controls directly influenced by external structural and institutional imposition of ill-conceived organisational policies and programmes. Additionally, human behavioural factors such as greed, corruption, etc., strongly influence high levels of non-conformance to good corporate governance. The main concern is "whether the board is knowledgeable, skilled, experienced, diverse and independent enough to discharge fully its governance role and responsibilities" (King Code, 2016: principle 7). Corporate governance failures and other associated problems frustrate the government's efforts to achieve its socio-economic development objectives (Kanyane & Sausi, 2015). These failures and setbacks have far-reaching consequences, leading to the near-collapse of some of the public entities. This dire situation is exacerbated by a lack of concerted efforts to address the situation and unwillingness to take action against those responsible for non-compliance with high standards of good corporate governance. Scholars such as Thabane and Snyman-Van Deventer (2018) hold that "given its unique socio-political and economic complexities, a country like South Africa needs the types of strategic enterprises anchored in good corporate governance compliance". The new Public Accountability legislation will go a long way in consolidating compliance to the highest standards

of compliance. The new legislation will empower the Auditor-General to take steps against recalcitrant regulatory agencies and boards and no longer merely issue recommendations.

CHAPTER 8

MEASURES AND STRATEGIES TO IMPROVE COMPLIANCE TO CORPORATE GOVERNANCE WITHIN REGULATORY AGENCIES

8.1 Introduction

In the previous chapter, we provided a thorough prognosis of the major causes of non-compliance to required standards of corporate governance within regulatory agencies, using an in-depth interview method. We have also discovered the devastating effects of these transgressions on the building of optimum functioning regulatory agencies. In this last chapter, we pay particular attention to measures and strategies that may be employed to improve levels of compliance with good corporate governance. Most importantly, the measures and strategies that are discussed have been heavily influenced by the corporate governance failures and shortcomings observed and discovered through in-depth interviews. Moreover, the measures have been underpinned by best practices espoused by King Code (2016). Additionally, we conclude by presenting the contribution that this study makes to the corporate governance body of knowledge and limitations identified which may be considered for further study. Therefore, in the following section, we focus on qualitative reporting.

8.2 QUALITATIVE REPORTING

The primary objective of qualitative social enquiry is to investigate and explain complex different social settings (Ritchie *et al.*, 2003). Strauss and Corbin (1998), suggest that when engaging in qualitative reporting, academic participants will generally be interested in abstract and conceptual aspects of the research, with other participants being interested in descriptive, narrative, or case contexts. When reporting on qualitative evidence, findings should be presented in an accessible form to fully respond to the research objectives (Ritchie *et al.*, 2003). A major challenge in qualitative reporting is finding ways of narrating the researcher's story clearly and logically. Ritchie *et al.* (2003), elaborate that "the richness and detail of the original data must be presented while maintaining the right balance". There is a need to illustrate the bases for interpretations and conclusions reached using availing the evidence in support thereof (Hammersley & Atkinson, 1995; Holloway & Wheeler, 1996; Ritchie *et al.*, 2003).

A credible and dependable qualitative report should provide an adequate description of data to understand the basis for and sufficiency of an interpretation (Ritchie *et al.*, 2003). Scholars such

as Holloway and Wheeler (1996), Patton (2002), Ritchie *et al.*, (2003), Rubin and Rubin (1995), and Strauss and Corbin (1998), stress the need for considering a story to be narrated and how it can best be projected in an orderly and interesting manner to the audience. Normally, decisions regarding the structure, style and scope of the qualitative report are important to enable understanding and view of the social setting that has been researched. This involves a four-stage approach, i.e. detailing a summary of key findings and conclusions, as well as, supportive evidence; solving of the puzzle by the reader alongside the researcher (Morse, 1994); “organising findings through the analytical presentation of existing theory and the research study evidence; presentation of interviewees’ responses or cases through the research design” (Rubin & Rubin, 1995). Moreover, there are also decisions to be made about whether to “adopt a realist style (what you found out) or a confessional style (how you did it)” (Hammersley & Atkinson, 1995). Furthermore, it is debatable where the authority should lie and whose voice should be dominant, i.e. that of the researcher or the research participants (Hammersley & Atkinson, 1995; Ritchie *et al.*, 2003; Rubin & Rubin, 1995; Seale, 1999).

In presenting measures and strategies to be employed to heighten levels of compliance to the highest standard of good corporate governance, the researcher has adopted a realist style. In the light of complex corporate governance arrangements, the researcher was able to provide explanations and descriptions of the accounts of research participants regarding appropriate measures and strategies to be implemented to increase compliance to good corporate governance within regulatory agencies. The recommended measures and strategies were capable of satisfying the research objectives highlighted in Chapter 1 of the research study.

8.3 Discussion on Key Findings and Recommendations

The corporate governance movement which started around the 1970s set the tone for the foundation of theoretical frameworks and models within the corporate governance field, translating into the development of systems and processes underpinned by good corporate governance practices and principles. The ground-breaking work of Jensen and Meckling in 1976, charted the way forward for the emergence of the agency theory becoming the dominant theoretical perspective characterising organisational practices and relationships over four decades. Following this seminal work, more theoretical frameworks and models within the corporate governance field such as viewing the phenomenon of corporate governance from the stakeholder perspective, employing psychological and sociological elements involving the stewardship theoretical perspective, using organisational resource-base to construct the

resource-dependency theory, setting-out institutional-dependency theoretical perspectives such as the political and institutional perspectives emerged. Additionally, as observed in Chapter 5, African ontological and philosophical perspectives were employed to generate a new theoretical perspective called Ubuntu to guide African organisations in implementing their corporate governance practices and principles.

The 21st century has been characterised by a myriad of challenges facing organisations and societies in general. In particular, organisational leadership is persistently challenged to address a wide-range and diverse issues, such as, management of gender relations and mainstreaming, addressing societal inequalities, managing socio-economic and political tensions, need for radical transparency and accountability, and rapid technological advancement (King Code, 2016). The series of King Codes on Corporate Governance (1994, 1998, 2002, 2009, 2016) were heavily influenced by the Cadbury (1992) and series of OECD guidelines (2001, 2005a, 2005b, 2010, 2015). King Code (2016) became operational as from April 2017, ushering in a paradigm shift from “apply or explain” adopted by its predecessors to “apply and explain” approach. The code substantially dropped down the number of principles contained in King Code (2009) from 75 to 17. Except for principle 17, applicable to institutional investors only, Principles 1 to 16 can be employed by any Organisation despite any corporate form or size.

One of the main differentiators of King Code (2016) from its predecessors is that it defines corporate governance phenomenon from an “outcomes-based approach”. From this approach, corporate governance becomes the practice of ethical and effective leadership expected of boards towards the achievement of governance outcomes which according to King Code (2016) are “ethical culture, good performance, effective control and legitimacy which constitute the philosophy, principles, practices, and outcomes which serve as the benchmark for corporate governance in South Africa”. In South Africa, compliance to good standards of corporate governance is shaped by the influence of a hybrid system, that is, voluntary compliance commonly known as the “soft law” approach and through a “hard law” approach. The “soft law” approach is mainly provided for by the series of King Codes on Corporate Governance. As already seen in Chapter 4, the bedrock of corporate governance for SARAs is first and foremost derived from their founding statutes. This is further reinforced by the need to comply with constitutional principles as laid down in Chapter 2 of the 1996 Constitution dealing with fundamental human rights and section 195 prescribing a set of fundamental principles applicable for the designing of an effective and efficient public administration. Additionally, the PFMA (1999) prescribes a robust good

governance model requiring SARAs to comply with when implementing corporate governance arrangements.

An analysis of the literature reviewed indicates that the phronetic methodological perspective is still yet to be fully exploited in studying corporate governance (Flyvbjerg, 2006a; Kuljak, 2014; Rowley & Gibbs, 2008). The methodology is useful in analysing social phenomenon changes dependent on values and power of social actors (Flyvbjerg, 2006a). Flyvbjerg further argues that to change reality, “social science should analyse social phenomenon taking into account value and power”. He developed four-stage value-rational questions as phronetic methodological guidelines that research participants should answer from their individual perspective: “where are we going; is this development desirable; why, if anything, should we do about it; and, who gains and who loses and by which mechanisms of power?”

Additionally, several scholars such as Flyvbjerg (2006a), Flyvbjerg *et al.*, (2012), Kuljak (2014), and Rowley and Gibbs (2008), agree on the key elements characterising the phronetic research methodological perspective as the basis for discovering reality. The guidelines offer a useful tool to systematically and logically explain social actors interacting with a social phenomenon. The phronetic methodology guidelines have been employed to undertake a social enquiry into good corporate governance practices to be adopted by SARAs with a view of improving corporate governance standards and compliance.

8.3.1 Focusing on Values

Over the past few years, awareness of the need for increased transparency and accountability in public sector Organisations has resulted in the OECD playing a leading role in developing guidelines for effective performance and ethical practice. The OECD Principles of Corporate Governance, issued from time to time since 1999 have gained worldwide recognition as an international benchmark and a reference tool for sound corporate governance (Jesover & Kirkpatrick, 2005:127) and they are recognised internationally as one of the basic pillars of international financial and governance stability (Cuomo *et al.*, 2016). Research suggests that the King movement on corporate governance does not only serve as a blueprint for ethical conduct for South African organisations but also had a greater influence on corporate governance arrangements within the African continent (Okeahalam *et al.*, 2003). The corporate governance phenomenon is being presented as a favoured organisational approach since corporate governance fosters relationships between management, board, and the broader stakeholder groupings (King, Code, 2016; OECD, 2004). Pretorius (2015:240) posits that “corporate

governance is the steering of society through networks and partnerships between governments, organisations, and civil society associations”. As Fleming and McNamee (2005:137) suggest, the networks and relationships to be created should be done within high ethical ways and morally high-grounded approaches.

Scholars such as Fleming and McNamee (2005:137), Francis and Armstrong (2003:376), Poovan *et al.* (2006), Rossouw (2009:6), and Young and Thyil (2008), propagate the need for the creation of organisational ethical value-system for corporate governance to be effective. The organisational value-system should consist of shared values and norms. To be effective, they should be consulted upon with all relevant organisational stakeholders. Centrally, the value-system should drive organisational culture and behaviour through “moral philosophy, values, and norms of behaviour that guide an organisation’s behaviour within society” (Francis & Armstrong, 2003:376). Among others, as seen in Chapter 6, organisations should formulate organisational codes of ethics and rules of conduct, orientate and train boards and staff on ethics, and undertake ongoing and regular ethics audits to assess the effective implementation of these codes.

Rossouw (2005:95) suggests the existence of a profound understanding of good corporate governance having the capacity to increase investments both locally and internationally, as well as having the potential to reduce corruption and unethical corporate practices. Ethical and effective leadership should thus complement and support one another. Ethical leadership is demonstrated using “integrity, competence, responsibility, accountability, fairness and transparency. It involves the anticipation and prevention of negative consequences of the organisation’s activities on economic development, societal upliftment and environmental sustainability” (King Code, 2016). Mervin King who was the chairperson of the committee which drafted a set of codes on corporate governance for South Africa since 1994, speaking about effective leadership and ethical conduct, points out that “there is no single leader of an organisation, but rather, a collective leadership involving the chairperson who leads the board and a CEO who leads the management team”. Moreover, some managers lead various strategic business units within an organisation.

There should be a greater realisation by the boards of SARAs that they do not only accountable to the shareholders, but rather to all stakeholders of the organisation concerned. They are therefore duty-bound to conduct their directing of the organisation in the best interest of all stakeholders. They are ever faced with the dilemma of steering their organisations to sustainably create value for meeting organisational needs, as well as, those of society. To safeguard

organisational and the societal interests, these boards should determine broad organisational policy frameworks and strategy and set parameters for their implementation and execution by the CEO and management. Thereafter, they should exercise ongoing and regular monitoring and oversight role. In line with good corporate governance, it is incumbent on the boards to establish board committees to oversee and monitor strategic areas such as information and technology, remuneration, compliance, audit, risk, and social and ethics matters.

More importantly, in the interest of maintaining the principle of “separation of powers”, on one hand, the EA should appoint board members and enable the board to truly function independently. Furthermore, the board should maintain an arm’s length distance from the operational aspects of the organisation. To prevent interference and to minimise undermining management, there should be absolute trust for promoting the exercising of respective roles of the EA, the board and management. However, the necessary checks and balances should not be compromised to ensure that the board and management do not go beyond the set parameters. Even though the CEO is the face of the organisation, he/she remains accountable and liable for reporting to the affairs of the organisation to the board. Consequently, “the relationship between the board and the CEO should be allowed to be conducted in accordance with good corporate governance ethos” (Skae, 2017). It is therefore essential that the EA should ensure that he/she recommends board members who possess qualities of “integrity, competence, responsibility, accountability, fairness and transparency”. Ultimately, the board should independently elect its chairperson, with the approval of the EA and thereafter be afforded space to exercise its mandate. The EA should not have a direct line to the CEO to avoid undermining the relationship between the board and the management structure (Skae, 2017).

According to research participants of this study, most of the board members of the SARAs lack the required credibility and moral campus when discharging their fiduciary duties and responsibilities. As such, they feel that creating a coherent value-system remains one of the pillars of good corporate governance within SARAs. Such value-system should be underpinned by fundamental principles of competence, integrity, accountability, transparency and fairness to foster ethical organisational culture. Therefore, focusing on values reinforces and strengthens organisational ethical outlook. These fundamental principles and values should be imbued across SARAs, from the top of the organisational hierarchy to the bottom level. Additionally, as regulatory agencies, SARAs have an added responsibility, to foster a culture of professional conduct and ethical behaviour amongst their regulatees. To achieve this two-tier goal-oriented task of inculcating an ethical organisational and industry culture, specific organisational and industry

codes of ethics should be developed and implemented. The SARAs orientation and induction programmes for employees and board members should involve, raising awareness on organisational codes of ethics. Effective and efficient implementation of industry-wide codes of ethics should be accompanied by public campaigns to create awareness amongst members of the public as well as dedicated training programmes specifically tailor-made for the regulatees. It is of utmost importance that SARAs should become exemplary in displaying high ethical conduct as this positive action will encourage the industry to follow suit.

Moreover, to evaluate the successful implementation of the codes of ethics, regular and continuous monitoring mechanisms should be introduced. Principles 1 to 9 of the Code on Corporate Governance (2016) lay down the fundamental principles organisations should implement to foster a culture of ethical behaviour. Actualisation of these principles should lead organisations to the creation of high moral ground, high levels of competence, acting with integrity, fostering accountability and transparency, and promoting fairness and social justice towards the greater good of organisations. In particular, principles 1 and 2, require boards of SARAs to set the tone for ethical conduct by cultivating an ethical organisational culture through exemplary leadership, characterised by integrity, good faith, advancing best organisational interest and eliminating conflict of interest. To ensure that they are effective and efficient in delivering public services, in the appointment of boards, responsible EAs should not pay lip service to the appointment process or promote political patronage. The composition of boards as appointed should reflect sufficient collective and individual competence, adequate knowledge and experience of the organisational mandate and its contextual operational setting. One of the cornerstones of good governance is for boards of SARAs to be accountable and transparent in the exercising of their governance role and execution of their responsibilities. They should exhibit Ubuntu theoretical perspective by adopting a stakeholder-centred and people-driven approach in executing of their governance role and responsibilities and directing the organisation in a sustainable, equitable and fair manner. To achieve strategic organisational objectives, boards of SARA should adopt effective ethical leadership and act with integrity, accountability, transparency and fairness. As already seen in Chapter 6, to enhance effective compliance to good corporate governance, the following critical elements are essential: adoption and implementation of organisational and industry codes of ethics; fair recruitment procedures and processes; integrated performance management; fair procurement processes; boards' appraisals; and, provisioning of sanctions and remedies for non-compliance. Using protected and anonymous disclosure, or secured whistle-blowing mechanisms to identify cases of unethical conduct and appropriately investigating such cases should be encouraged.

Good corporate governance dictates that the organisation be seen as a responsible corporate citizen (King Code, 2016: principle 3). For SARAs to achieve corporate citizenship efforts, they should involve conscious compliance with the Constitution (1996:195) laying down fundamental principles for public administration, various legal prescripts, best industry practices, and adherence to their codes of ethics and policies (see Chapter 4). The organisation's core purpose and values, and strategy and conduct, should be congruent with being a responsible corporate citizen. They should continuously oversee and monitor how organisational activities and outputs affect their responsibility as a corporate citizen. Appropriate targets and measures for the achievement of responsible corporate citizenship should involve employment equity, black economic empowerment, fair remuneration, occupational health and safety, capacity development, socio-economic transformation, prevention of fraud and corruption, consumer protection, and the promotion of human rights culture.

8.3.2 Power Relations

Unleashing corporate governance within SARAs reflects complex power-relationships amongst the various stakeholders. Since they exist to promote the achievement of the greater societal good, the complex corporate governance arrangements and relationships most often stifle sustainable development initiatives. As such, Thabane and Snyman-Van Deventer (2018) suggest, serious challenges regarding the separation of power and control between boards, management and the various EA's have always been experienced. Highlighting the tug-of-war at the SABC prevalent at the time, the authors indicated that they hampered organisational sustainability initiatives leading to the virtual downfall of corporate governance in the organisation. In terms of the corporate hierarchy, the board is recognised as the custodian of corporate governance. Management is tasked with the day to day functioning of the organisation while being answerable to the board. When the EA transcend the boundaries of separation of powers by openly favouring embattled managers undermines the board and will result in the board being incapable of taking decisive action against those managers. Consequently, this weakens the board's ability to be a focal point for corporate governance and a more appropriate approach would be for the EA to have confidence in the board and maintain an arms-length relationship with the organisation. When a board fails to execute its fiduciary duties, the EA has the power to dissolve the board (Thabane & Snyman-Van Deventer, 2018).

Boards of SARAs must be granted adequate powers and capacity to let them exercise their fiduciary duties competently and diligently. For board members, embracing good corporate governance practices will be of crucial importance if they were to depend on the protection provided by the "business judgment rule" as provided for in the Companies Act (2008) during

litigation. Without strong and effective governance structures and processes, board members will struggle to show that justifiable steps were applied to promote self-awareness; appropriate measures are in place to deal with material financial interests if any; there was sound basis for assuming that decision making was done to protect the organisation.

The focus of effective leadership is the projected results and the achievement of strategic objectives and envisaged outcomes. For effective leadership to thrive attention should be placed on full execution of organisational activities and operations. In discharging effective leadership, boards' primary Governance role and responsibilities should be the formulation of organisational strategy and approving broad "policy and planning processes that give effect to the strategy and set direction" (King Code, 2016). To enhance value creation, boards of SARAs are required to implement an integrated approach in organisational strategy development and execution. The strategy mapping should involve the drafting of organisational vision and mission, the setting of organisational risks and opportunities, business and financial modelling towards attaining organisational performance and sustainable development. To minimise tension in role clarification, boards of SARAs should be responsible for steering and directing realisation of organisational activities through strategy formulation and delegate implementation to management. They should consider the feasibility of: "the short, medium, and long-term organisational goals; the risks associated with organisational social, economic, and environmental context; resource allocation; and, stakeholders' interests and expectations" (King Code, 2016: principle 4). "The board assumes responsibility for providing the direction for how each governance area should be approached, addressed and conducted. This is followed by the formulation of policy in the form of frameworks, standards and plans by management to be approved by the board. The board oversees and monitors implementation and execution by management, and finally ensures that there is accountability for the performance in respect of each of these governance areas through reporting and disclosure" (King Code, 2016; Tricker, 2012:174).

SARAs' boards should approve organisational policies and operational plans developed by management to give effect to the approved strategy. These should include, key performance measures and targets for assessing achievement of strategic objectives and outcomes over the short, medium, and long term. The boards should exercise continuous oversight on management's implementation of strategies and operational plans against agreed performance measures and targets. "They should ensure that the SARAs are solvent and liquid, and continually

assess and respond to the negative consequences of their activities and outputs” (King Code, 2016: principle 4).

The overall responsibility and accountability for corporate governance performance are placed over the shoulders of boards of SARAs. In this regard, they are expected to be the focal point and custodians of corporate governance in the SARAs. This includes performing the leadership role by setting organisational strategic direction; approving policies and planning processes; overseeing the conduct of management, monitoring of implementation processes, and ensuring accountability for organisational performance. A charter should be formulated to set-out the scope of duties and protocol to guide effective functioning (King Code, 2016: principle 6).

In the execution of their organisational affairs, SARAs should strive at all cost to reduce agency and political costs which often are caused by a lack of transparency and unclear mandate. In this regard, to achieve organisational goals, they should continuously assess appointment processes and procedures of board members, the structure and composition of the board, addressing compensation and remuneration matters, maintenance of the harmonious board-shareholder relationship, managing the delegation of authority and maintenance of ethics and integrity issues. Additionally, how they deal with different roles of government as shareholder, regulator, financier and customer as well as the efficacy of ownership model of SARA and its impact on corporate governance should be regularly assessed (Thabane & Snyman-Van Deventer, 2018). For SARAs to be successful in the execution of their fiduciary duties, it should be a precondition that they should appoint board members with unquestionable high calibre and good track-records.

8.3.3 Putting Emphasis on Little Things to Get Closer to Reality

The 4th industrial revolution is strongly driven by technological platforms that have changed how organisations conduct their business. This has created a world characterised by the increased need for radical transparency and accountability which increasingly makes it impossible for organisations to conceal their activities. These technological advancements assist organisations to generate large amounts of data using sophisticated analytics to provide knowledge on human behaviour and their organisations by a click of a button (King Code, 2016). Consequently, it has become essential for organisations to analyse and predict organisational trends overtime. In this regard, stakeholders are fed with credible and accurate information about the organisation. Like its predecessors, King Code (2016) strongly advocates a stakeholder-centric approach to good governance. In this regard, the board should recognise legitimate needs, interests and expectations of stakeholders. A stakeholder-centric approach is a dynamic process involving

always striking a balance of interests. By their very nature, SARAs operate in a societal setting, since their activities have an impact on societal interests of all stakeholders. The interdependency and inter-relationship between SARAs and society, as observed in Chapter 5, should be supported by the African philosophical and ontological perspective of Ubuntu or botho. In the context of SARAs, to achieve this idea of Ubuntu, their activities should be characterised by principles of solidarity, social cohesion, humaneness, dignity and sustainability. These principles “should underlie a common purpose to all human endeavours, based on service to humanity” (King Code, 2016).

Boards of SARAs should thus embrace an approach which is stakeholder-inclusive and balances the needs, interests and expectations of stakeholders in those of the organisation. As seen in Chapter 6, they should implement stakeholder management approach underpinned by seven cardinal principles, i.e. ensuring stakeholder acknowledgement and monitoring; developing effective communication systems with stakeholders; engaging in “adaptive processes and behaviour towards stakeholders; ensuring interdependence of efforts and rewards among stakeholders; establishing organisational collaborative partnerships; avoid unacceptable activities; recognise stakeholder conflicts” (Clarkson Centre for Business Ethics, 2000). They should provide the “direction for how stakeholder relationships should be approached and delegate to management responsibility for implementation of effective stakeholder management”. Continuous oversight should be exercised over stakeholder management. The stakeholder approach should involve methodologies for identifying stakeholders; determine each stakeholder’s interests; integrating the management of stakeholder risk into the overall organisation-wide risk management system; and, assessing the quality of stakeholder relationships.

Thomas (2012) argues that it is unacceptable for organisations mandated to enhance socio-economic transformation agenda, such as SARAs, to be continuously violating good corporate governance practices and principles. Therefore, the government should provide effective oversight through the board to ensure that an organisation operates beyond probity. In this regard, the primary role of government is that of oversight and not interference in the operational affairs of the organisation (Protocol, 2006). Clarifying the role of government from the outset, Thomas (2012) asserts that it assists in reducing potential board-room tension fuelled by political interference. Doing so will result in minimising poor corporate governance problems. As such, government as the shareholder should beforehand conduct a proper due diligence process in the appointment of fit and proper board members. Appointment of fit and proper board members

serves as an assurance that they will carry out their fiduciary tasks more competently and diligently. Having that assurance, “government should adopt an arms-length approach to the affairs of the SARA as a way of insulating these corporations from political interference” (Thabane & Snyman-Van Deventer, 2018). SARAs should be properly managed towards the achievement of their set objectives in an economic and socially acceptable manner.

Conceptually speaking, through inter-dependence and inter-relationship, one person benefits by serving another. This is also true for a juristic person, which benefits it by serving its society of internal and external stakeholders, as well as the broader society. In line with this ethos, organisations should also take responsibility for the environmental outcomes of their activities and outputs, as those affecting society as a whole. According to Mubangizi and Ile (2015:78), “good governance extends beyond the capacity of the public sector to the rules that create a legitimate, effective and efficient framework for the conduct of public policy”. It implies managing public affairs in a transparent, accountable, participatory and equitable manner. It entails effective participation in public policymaking, the prevalence of the rule of law, and an independent judiciary, institutional checks and balances through the separation of powers and effective oversight (Kanyane & Sausi, 2015).

There are generally competent and diligent persons wanting to provide service to the public sector out there. However, they are discouraged by reports of the prevalence of corruption and mismanagement in the various regulatory agencies. Much more effort needs to be done to attract these competent persons to join the public sector.

8.3.4 Looking at Practice Before Discourse and Studying Contexts

It is one thing to set out the rules of the game and it is another thing to practice those rules. The greatest challenge is to create an environment wherein such rules can be practised. Consequently, economic, social and cultural environments that would ensure such rules are practised in reality should be put in place. “It is often the more subtle and less measurable factors within board culture that can impact board success” (Tan & Wang, 2007). These issues are concerned with promoting constructive debates and the creation of harmonious relationships (Bendixen & Thomas, 2000). This involves establishing open channels of communication and appreciating the contribution of all stakeholders (Bendixen & Thomas, 2000; Coulson-Thomas, 1994). Conger *et al.*, (1998) holds that the main ingredient is for board members individually and collectively acting with absolute integrity. Upon appointment, a new board should create a cohesive force with executive management. Rather than creating an attitude of “we are your

bosses”, they should rely on the expert knowledge and advice of managers as they are often suitably qualified and experienced for their positions (Thomas, 2012). Fleming and McNamee (2005) and Thomas (2012), assert that it is necessary to regularly monitor organisational culture to increase its moral wellbeing.

Dalton and Dalton (2006:7) point out that no amount of consideration to effective and efficient processes and procedures can overcome board members who elect to conduct themselves with less than integrity, honour, honesty and respect for others. In this regard, the authors hold that compliance with good corporate governance practices defies a tick-box approach. “It is accepted that, while fully compliant and duly audited financial statements are critical, they are insufficient to discharge the duty of accountability” (King Code, 2016). Good corporate governance requires board members and management to operate based on integrity, honour, and trustworthiness (Conger *et al.*, 1998; Dalton & Dalton, 2006; Rossouw & Van Vuuren, 2004; Thomas, 2012). SARAs’ board members should “act in good faith and for a proper purpose”. They should also act in the best interest of their organisations and with the degree of care, skill and diligence. The obligation of acting in the best interest and of care, skill and diligence is considered discharged when a board member takes reasonable and diligent steps to familiarise himself/herself with a matter, has no material personal interest in any matter under deliberation, and makes rational decisions. Given the laxity displayed by some SARAs’ boards in the recent past, it is arguable whether these crucial provisions are observed (Protocol, 2006). Fleming and McNamee (2005) and Thomas (2012), recommend that “appointment of board members should not only include assessment of the expertise, technical knowledge, and their skills, but due regard should also be given to their ethical reputations and their contribution to sound corporate governance practices”.

Research participants posit that board committees staffed with independent non-executive board members are more effective and efficient than those staffed with non-executive board members. As such, most often you will find Finance and Audit and Risk Committees being more effective since they are staffed with independent non-executive board members. Reasons given for this situation is that normally the process of appointing independent non-executive board members is more robust and rigorous and often does not involve EAs.

For boards of SARAs to operate effectively and efficiently, there should be an arm’s length distance between EAs and board and between the board and management in terms of a clear delineation of powers of the respective stakeholders. As technocrats, it is felt that Directors-

General should be granted more authority to guide and direct regulatory agencies. They should, in turn, play an active role in advising EAs to play their oversight role more prudently and effectively. More guidelines should be developed to guide board members to implement good corporate governance practices and principles. There should be an enforceable code of conduct to regulate the conduct of board members within regulatory agencies. Since boards are expected to regulate the conduct of industry stakeholders, similarly, there should be a code of conduct for board members which is monitored regularly and enforced.

The PFMA (1999) establishes accountability for the SARAs boards and requires board members to exercise the duty of utmost care to ensure reasonable protection of SARAs' assets. To this end, board members should act with fidelity, honesty, integrity and in the best interest of the SARAs in managing their financial affairs, and should disclose to the responsible EA and parliament, all material facts. Furthermore, board members should, within the board's sphere of influence, seek to prevent any prejudice to the SARAs' financial interests. It is essential that SARAs "are well governed with prudent accountability and transparency in respect of the management and allocation of valuable state resources" (Molefe, 2006:2). McLellan (2009) goes so far as to state that society expects no less than the sound governance of this sector. Research participants suggest that Parliament, through the various Portfolio Committees, should take a keen interest in how regulatory agencies are run. Members of Parliament should be adequately equipped on corporate governance training to enable them to hold both the EA and the board accountable.

8.3.5 Asking "How" And "Why" Questions and Moving Beyond Agency and Structure

Thomas (2012) argues that it is indisputable that boards of public organisations such as regulatory agencies should be obligated to operate efficiently and effectively in the best interest of their organisations. To be able to do so, board members should undergo intensive training to arm them with the knowledge and skills needed for exercising their fiduciary duties fully and efficiently. During their induction and orientation period, board members should receive intensive training on the regulatory frameworks governing their environment and their specific legislative mandate. There should be a clear and elaborative process of appointing board members to regulatory agencies. Such appointment process should be embedded with due diligence practices involving a thorough assessment process of the individual skills and expertise of prospective board members. The process should involve disclosures by potential board members. Only board members who at the minimum comply with the requirements of the Independent Office of Directors in Southern Africa (IODSA) should be appointed to boards of SARAs, i.e., those who

have complied with CPD (continuous professional development) requirements in respect of certified directorship and chartered directorship.

Formal training and development programmes should be implemented within the public sector, intended at providing capacity and training to public sector board members. To avoid and minimize the rotation of under-qualified board members, due diligence process should incorporate interview processes, as well as thorough scrutiny of their board membership within the respective public entities. Overall, research participants recommended that appointment of board members to regulatory agencies should be guided by fundamental principles of transparency, accountability, social justice, and Ubuntu, for example, having board members being publicly interviewed to determine their suitability for board membership. Additionally, prospective board members should meet a fit and proper test before they are appointed. Invariably, if a thorough due diligence process is followed, this will result in the appointment and selection of right board members, translating into reliable and effective boards. Conversely, if the appointment process is wishy-washy and flawed, this will result in of wrong board members being appointed and therefore dysfunctional boards.

Research participants hold that government should apply a stick and carrot approach when dealing with compliance with corporate governance. There should be benefits to those organisations that make an effort to promote higher levels of compliance with good standards of corporate governance and punitive measures to those who are flouting the rules of the game. As Thomas (2012) suggests additional funds generated after the budget for the delivery of services has been allocated should be directed at offsetting losses incurred for procuring such services used or saved to avoid the need for bailouts from the government as the major the shareholder. Instead, the government should concern itself with the setting of clear objectives and concrete performance targets for SARAs, approval of recommended board members, as well as exercising oversight on both the board and the organisations they are appointed to direct. (Vagliasindi, 2008). Accordingly, OECD (2005a) notes it is best practice, “that the board, and not government, should have the power to appoint and dismiss the CEO along with full responsibility and accountability for the operations of the organisation without political interference”.

Castells (2001) and Williams (2010), recognise public entities as instruments of socio-economic development and the NDP 2012) acknowledges their pivotal role in assisting the government to achieve its developmental agenda. Adams *et al.*, (1992) and Cook and Kirkpatrick (2003),

highlight their inputs to the minimising of inequalities, creating more employment opportunities and assisting the government with the developmental path. The Protocol (2006) provides that the board as a focal point of corporate governance should properly manage and direct the organisation towards the achievement of the goals of the developmental agenda. To this end, boards are expected to sacrifice some executive and many non-executive directors, for the sake of promoting objectivity when decisions are made. The Protocol further stipulates that the performance of the organisation is at the heart of the mandates of the board. Therefore, the board accounts to the shareholders as far as the performance of the organisation is concerned. Furthermore, the Protocol recommends that the chairperson of the board should be nominated by all the board members; ideally, the chairperson should be a non-executive member. Overall, SARAs are to be afforded space to exercise their independence in working towards achieving set objectives, while the government plays an oversight role on them. Ensuring the existence of strong and transparent structures in SARAs lies within the parameters of the role played by the government to promote their long-term interests (OECD, 2005a; PFMA, 1999. Howard and Seith-Purdie (2005), posit that for organisations to fully attend to their objectives, the government should ensure that a framework of processes and systems is available for effective monitoring and evaluation.

As already observed, various King Codes, as well as legislative instruments, acknowledge that the capacity of the board to direct the SARAs influences organisational performance and recommends that the EAs should strive towards properly constituting the boards through among others appointing members with good records of ethical and professional behaviour. It is good practice for the appointment of the CEO and establishment of a framework for the delegation of authority to be done by the board. However, in some SARAs, as seen in Chapter 7, the EA appoints the CEO, which conflicts with good corporate governance. As we observed, in cases where the CEO is appointed by the EA, the CEO is not held accountable by the board but by the EA and this renders the disempowered in their role of monitoring the performance of the organisation concerned. A board functioning in this kind of environment will find it difficult to promote good corporate governance (Thabane & Snyman-Van Deventer, 2018). The PFMA (1999:50) stipulates that “board members may not act inconsistently with the responsibilities assigned to the board or misuse confidential information obtained as board members for personal gain or to improperly benefit another person. Board members should be compelled to disclose their interests to the board, whether direct or indirect and withdraw from board proceedings when any matter in which they have such interest is considered unless the board decides that the member's direct or indirect interest in the matter is inconsequential or irrelevant”.

According to Hilb (2004:76), “regulatory agencies should be strategically directed and coherently controlled by applying fundamental entrepreneurial and ethical principles”. This approach accords to the value orientation to the stakeholder and Ubuntu perspectives. It is important to have a framework that encompasses aspects of transparency, integrity and accountability for the board to effectively direct and monitor organisational performance. (Hilb, 2004:76). For good governance to be achieved, board members and managers should possess the requisite credentials, skills and good track records to manage performance, because if this is not the case, the rationale for having them appointed will be questionable (Thabane & Snyman-Van Deventer, 2018). However, there are regulatory agencies that are run properly and uphold the highest standards of corporate governance. These entities should be used as role-models to promote compliance to good corporate governance and their best practices are replicated in other regulatory agencies. Regulatory agencies must learn from one another regarding better ways and means of promoting good corporate governance. The success stories should be pronounced more sharply so that others can learn from such excellent successes. It is recommended generally as a good practice to always embark on a comprehensive review process regularly to examine the relevance of the mandates of regulatory agencies. This review process should be undertaken when legislative amendments are being considered amongst others, the review process should consider issues such as an assessment of their mandates.

8.3.6 Dialoguing with the Polyphony of Voices

As several authors hold, the role of the board has come under the scrutiny in several ways, such as structure, composition and size of the board, leadership capability and capacity, organisational internal control system, audit and risk management system and ethics and integrity (Coulson-Thomas, 1994; Crawford & Stein, 2004; Giroux & McLelland, 2003; Kesner & Dalton, 1985; Michie & Oughton, 2001; Peng *et al.*, 2003; Xie *et al.*, 2003). McLellan (2009) suggests the following to be pillars of sound corporate governance: establishing and maintaining a sound relationship between governance, compliance, and organisational culture; establishing appropriate structures to promote good governance; appropriate use of committees and teams; actively managing conflicts of interest; addressing interests of varying stakeholders; as well as, monitoring assessment of organisational culture and values. Having SARAs boards constituted of suitably skilled and well-experienced persons to direct big organisational, as Thabane and Snyman-Van Deventer (2018) suggests, is of paramount importance towards the improvement of their corporate governance performance and should be non-negotiable.

Boards’ of SARAs primary responsibility is the provisioning of strategic direction. They should, therefore, have the necessary autonomy to achieve the organisational strategic goals and

objectives free from political meddling by the EA's in a sustainable manner. However, given their political nature, Kamal (2010), suggests that there is a perpetual absence of transparency and accountability within them resulting in diminishing public and social confidence. Appointment of board members within regulatory agencies should be underpinned by an assortment of members with relevant skills and qualifications (Howard & Seith-Purdie, 2005; Minichilli *et al.*, 2007). In cases where the appointments of the board are influenced by politics, their independence is usually undermined since politicians tend to use their resources towards realising immediate personal and/or political goals which disadvantage futuristic economic goals (Kamal, 2010:214; Quinn, 2008:84). Vagliasindi (2008:4) states that these corporate governance malpractices result in the implicit protection of the interest of their EAs. Government as a shareholder should take a keen interest in how they are managed and controlled by holding their boards accountable for its actions (Kanyane and Sausi, 2015). This could be done by imposing punitive sanctions, such as the removal of board members and holding board members personally liable for their actions. Therefore, it is important to reiterate that good corporate governance requires of all stakeholders to demonstrate "honesty, transparency, ethics and integrity" at all times for the good of the organisation that they are serving or working for (Kanyane & Sausi, 2015).

There is consensus that existing regulatory frameworks are adequate to ensure compliance with good corporate governance. What is lacking is the effective and efficient implementation of the regulatory frameworks. For instance, the PFMA (1999:46-86) sets out the financial governance responsibilities of SARAs to maintain prudent and accountable financial reporting and disclosure. Particularly, SARAs are required by law to have a structure or body which is directly responsible for the implementation of the PFMA in promoting accountability. Accounting authorities should see to it that financial and other records are sound and subjected to scrutiny audit authorities and Parliament. Principles 11 to 15 of King Code (2016), prescribe best practices to be adopted by SARAs in the implementation of good governance. These practices have proven over the years through the various King Codes to be best practice. In this regard, boards of SARAs are required to implement best practices in managing risk and resources including information, compliance with legal prescripts, as well as the remuneration of human resources. To ensure effective governance, these services and functions should be integrated into decision-making processes. Boards of SARAs should approve and evaluate policies articulating risk tolerance levels and appetite, set directives on the employment of technology and information, develop directives on compliance to laws, fair, responsible, and transparent remuneration, and that enable an effective control environment. Management should be formally delegated to deliver on these services and functions in an integrated and sustainable manner. Assurance of the effectiveness of risk management, benefits of technology and information management, full compliance with

management processes, fair and equitable remuneration, and effectiveness of the control environment should be regularly made through reporting per the approved intervals. The research participants observed that most often, legislative reforms do not keep up with new approaches to good corporate governance practices and principles. As such, legislators must be abreast of the changing corporate governance reforms to align legislative reforms to such changes.

The USA-based National Association of Corporate Directors (NACD) (2009), provided principles which emphasise the pivotal role of boards in promoting accountability through oversight activities, as well as seeing to the appointment of suitable board members committed to using their expertise and time to effectively direct the organisation towards achieving its goals while adhering to the set ethical standards. The NACD principles stress the importance of independence, objectivity and integrity in the conduct of board members, thereby instilling good compliance with the desired organisational culture. Balasubramanian (2009) posits that the alignment of board members to a political party's ideology may be used to measure their objectivity. Dalton and Dalton (2006:6), stress "the need for independence of board spiritually as well as structurally". OECD (2005a) highlights the need to carefully balance the role played by the government as the major shareholder which includes ratifying recommended members for appointment to the boards, against interference or encroachment by political parties. Adherence to keeping clear the lines between the government's shareholder responsibilities and the regulatory role is rather a need which is sometimes difficult to maintain since the lines are sometimes a bit blurry. Klapper and Love (2004:36), hold that "the ownership of government, when exercised professionally and responsibly, attempts to improve corporate governance in all sectors of the economy". There should be clear segregation and understanding of the various roles to be played by different corporate governors, such as the oversight role to be played by the EA, the governance role to be exercised by the board, and the administrative role to be executed by management. OECD (2005a) has a framework that can be suitable for enhancing corporate governance on the development path line South Africa. According to Davies and Schlitzer (2008), some researchers have criticised the applicability of principles originally developed for developed countries to developing countries which have weaker, if not non-existent, institutional frameworks. Okeahalam (2004) laments the lack of sufficient research on the effectiveness of such corporate governance principles imposed on developing countries without the uniqueness of the context of each country. In addition to their conventional corporate governance roles, boards of regulatory agencies are required to oversee implementation of issues such as gender representivity, disability sensitisation, and in the South African context "employment equity" and "broad-based black economic empowerment". In this regard, it is necessary to design measures for the effective evaluation of the implementation of programmes relating to these matters. The research

participants posit that broadening representation in boards in terms of race and gender is advantageous to the promotion of well-balanced and diversified boards. Boards that are well-balanced and diversified in across race and gender orientation tend to do well on CSR-related issues.

There is a strong feeling amongst the research participants that the IODSA is biased towards the private sector. Consequently, its training and development programmes offered on directorship capacitation are biased towards the private sector. There is a strong feeling towards the establishment of a public sector bias organisation aimed at strengthening directors serving on the public sector organisations. In this regard, training and development to be offered by this new entity will be customised to the public sector environment.

Regulatory agencies are considered creatures of statutes. Their functional areas are clearly defined within their legal architecture. Moreover, there are a plethora of regulatory frameworks they are expected to comply with, such as, the PFMA (1999) which promotes a transparent and accountable financial management and administration. As such, it is argued that SARAs do not need fully-fledged board structures as propagated by the King Code (2016). Instead of having fully-fledged board structures, SARAs should rather have advisory boards or be incorporated in their parent ministries. Consequently, they will be able to save board expenses for other important statutory functions. Additionally, it can be explored whether a particular regulatory agency cannot be incorporated into the parent ministry. Rather than being fully autonomous, they can be established as semi-autonomous entities. Furthermore, to enhance boards' independence, there is a view that due consideration should be given regarding the appointment of retired specialists within SARAs boards having the know-how, experience and skills. It is argued that since they are retired, they no longer have a direct and conflict interest and therefore may offer independent and unbiased advice. This should be carried out in the context of SARAs' regulatory authority.

8.4 Significance and Limitations of the Study

The research results advance knowledge of causes of corporate governance failures, factors responsible for the collapse of corporate governance **and the impact of corporate governance failures** on the national economy. This is done in several ways, such as by bringing out: **1)** the

contemporary justifications for establishing SARAs in the context of developmental aspirations of South Africans hence the need to devise ways to improve the functionality of these entities; 2) citizens perceptions about the politicization of SARAs and the extent to which political expediency compromises compliance with standards hence the need to create an appropriate environment to ensure that the SARAs are able to execute their mandate **with** limited political interference while meeting minimum requirements for compliance with standards; 3) overlapping functions of public entities and how this frustrates service delivery and corporate governance compliance in so far as SARAs adopts a pass the buck approach that is a product of among others, lack of accountability hence the need for government to regulate the activities of these regulatory agencies; 4) the environment within which SARAs operate, with implication for non-compliance hence the need for an appropriate implementation framework to improve compliance with corporate governance within regulatory agencies in South Africa and elsewhere. It is clear that corporate governance is taken for granted in South Africa mainly for political convenience and regulation of SARAs by the government would seem out of order because regulating regulatory agencies would seem antithetical to the independence of these entities. But the situation is by no means hopeless, given opportunities presented in the form of recommendations to improve compliance with corporate governance, in particular, the implementation framework for compliance that is intended to reboot the effectiveness and efficiency of SARAs by ensuring that they play according to the rules and henceforth become accountable.

8.4.1 Theoretical and Conceptual Contribution to the Study

A comprehensive review of the research study's major findings and recommendations gravitated towards the generation of a new theoretical construct called the Ubuntu theoretical perspective. Essential embodiments of this theoretical perspective have been discussed extensively in Chapter 5. The theoretical perspective is offered as an alternative to other theoretical lenses in the pursuit of good corporate governance practices within organisations generally, and within SARAs particularly. Furthermore, the Ubuntu theoretical perspective will help African organisations to view and implement corporate governance practices from an African ontological and philosophical lens.

One of the key objectives of this research study was the formulation of a corporate governance compliance framework for SARAs. High levels of non-compliance to good standards of corporate governance are symptomatic to a lack of customised guiding instruments for SARAs to implement their corporate governance responsibilities effectively and efficiently. Whilst it is understood that

such a guiding instrument would not serve as a panacea to all corporate governance ills within SARAs, the framework instrument will go a long way in providing a helping hand in their implementation process of corporate governance. The corporate governance compliance framework as contained in Chapter 6 of this research study zooms into the following pertinent corporate governance matters:

- The regulatory environment of SARAs;
- The value-system to be inculcated within SARAs;
- SARAs internal governance systems and structures; and
- SARAs' external governance systems and structures.

In this study, the highly regulated corporate governance environment in which South African SARAs function was discussed. Furthermore, it was also discovered that SARAs found to have failed in upholding good corporate governance practices, often had some measures in place to monitor or manage misgovernance. Corporate governance defines the way an organisation is directed and managed and stipulates basic rules to help organisations to conduct their affairs in an honest, transparent and accountable manner. Exercising good corporate governance offers boards and management a structured approach and authority to effectively work towards achieving the objectives of the organisations and stakeholders they serve. In particular, the PFMA (1999) as a governance model provides a whole system approach to financial management within the public sector. It promotes integrity and accountability in financial reporting, external quality assurance and scrutiny, effective internal control, and effective auditing standards. It is therefore questionable whether the existence of corporate governance measures on its own leads to the reduction of the likelihood of corporate governance collapse. Normally, organisations engage in the tick-boxing culture where there is no compliance with the rules.

This study was also set out to contribute to the sustenance of reiteration to SARAs to always strive for compliance with good corporate governance. As Madhani (2008, 2014) cautions that, corporate governance revolves around adhering to ethical conduct while focusing on delivering the mandates given to the organisation concerned. Value-creation through ethical conduct is an essential element of corporate governance and contributes towards the survival of the organisation. Good corporate governance is a key driver of sustainable corporate growth and long-term competitive advantage. Enhance corporate governance of SARAs contributes to the achievement of targeted performance, improves compliance with capital market composure, demonstrates the practise of being transparent and accountable, drives economic efficiency,

improves investor confidence and sustains economic growth (Madhani, 2014). SARAs require robust decision-making processes and mechanisms for ensuring that outcomes are achieved relative to the resource inputs contributed towards them. Decisions made need to be kept under review so that the achievement of outcomes is optimised. A study by Avcin and Balcioglu (2017) considered four good corporate governance principles: “treatment of shareholders; disclosure and transparency; protection of stakeholders; and, the role and duties of the board”. Thomas (2012), contends that corporate governance in failures South African organisations generally have received fair coverage in media reports. Yet, there appears a paucity of research on the specific nature of such failures. It is against this backdrop that the study sought to contribute to the corporate governance body of knowledge by exposing these corporate governance violations and provide practical mechanisms towards their reduction.

This study was set out to contribute to the knowledge area of corporate governance stakeholders, such as, corporate owners, practitioners, regulators and civil society in several ways: firstly, it serves as a sounding board for good corporate governance practices within SARAs; secondly, it contributes to the theoretical enhancement within the field of corporate governance; thirdly, it provides a conceptual framework to aid SARAs in their implementation of good governance practices; and lastly, it massively contributes to the enhancement of the corporate governance body of knowledge. It is hoped that this study will assist in raising more interest in the study of the corporate governance phenomenon and towards the development of theories in this area. As we have already observed, deficiencies of governance are attributable to behavioural patterns than organisational. It is therefore suggested that implementation of behavioural changes will lead to the feeling of ownership of good corporate governance by various stakeholders within the organisation. The theoretical contribution of the study calls upon organisational stakeholders to adopt behavioural changes by adopting Ubuntu principles when implementing good governance practices.

8.4.2 Limitations of the Study

During 2013, Cabinet pronounced on the findings of the Presidential Review Committee on SOE's. The review concentrated on seeking practical and tangible ways of overhauling and consolidating SOE's for their optimum functioning. Outcomes of the review provided several far-reaching recommendations: rationalising their number; reorganising and streamlining their functions; implementing mandatory performance reviews; development of an overarching SOE's governing legislative framework standardising their corporate governance arrangements; adoption of a model for centralised ownership of commercial and development finance organisations; a model for decentralising regulatory and non-commercial entities; delineation of

clear roles of government in terms of shareholding, policymaking, regulating and implementing of objectives. Furthermore, the Presidential Review Committee (2013) recommended categorisation of SOE's into: "commercial entities, development finance institutions, statutory corporations and non-commercial entities". As for the development of a centralised model, Kanyane and Sausi (2015) in their study, proposed the establishment of "an independent monitoring and compliance agency, similar to that of the French Government Shareholding Agency (APE) but adaptable to the South African environment". Further research is required to extrapolate the necessity and practicalities surrounding some of the recommendations as contained in the review.

Incrementally, legislative measures have been passed over time. However, there is little evidence to suggest that the governance of SARAs has improved over time (Thomas, 2012). According to Kanyane and Sausi (2015), there is, therefore, a strong view that there is a need for singular overarching legislation based not only on legislative reform but also on the practical application of having to deal with the dynamics on the ground. Corporate governance non-compliance over which SARAs have some control is well documented (Khumalo, 2009; Furlonger, 2010) and "can be regarded as symptomatic of strategic lethargy" (Williams, 2010:34) in an economy that has to compete on a global platform. It, therefore, becomes expedient to investigate additional measures towards the enhancement of corporate governance compliance levels.

Moreover, it could be interesting to undertake a comparative analysis of the levels of non-compliance to good corporate governance practices and principles within regulatory agencies. Gaps identified would potentially lead to the development of additional systems and processes to develop the corporate governance phenomenon.

8.5 Conclusion

The rise of global socio-economic integration, accountable and transparent organisations has substantially minimised acceptance of corrupt behaviour as a norm and led to the adoption of higher corporate governance standards in both private and public organisations. The real challenge for non-compliance to good corporate governance practices remains lack of and/or non-implementation of corporate governance codes, applicable legislative frameworks and guidelines. Improving good corporate governance is a "journey" rather than an "event". It is a continuum that is never-ending, as long as modern organisations exist. It is a challenge with unlimited space for improvement and innovation. King Code (2016) puts it that "the more an organisation's business model positively impacts on society and the environment, the more the

quality of life in developing economies will improve. This improvement, in turn, will positively affect the prospects for those organisations”.

Pistor and Xu (2005) lament imposition of western-style corporate governance legal architecture upon transition and emerging economies. The authors emphasise the importance of corporate governance systems that are unique to a particular environment. They further argue that policymakers tend to directly import developed countries’ corporate governance policies into emerging economies, thus making them difficult to implement. As seen in Chapter 5, South African companies generally, and regulatory agencies, in particular, need to adopt and implement corporate governance practices rooted in African ontological and philosophical perspectives. The first step towards this journey of improving their corporate governance compliance should be the implementation of Ubuntu principles and practices to be reflected in their corporate governance arrangements. By so doing, regulatory agencies that promote solidarity, cohesion, humanity, respect and dignity, and sustainable development will be created. Moreover, implementation of corporate governance compliance framework by SARAs as provided for in Chapter 6, to implement good corporate governance practices should assist in increasing their levels of compliance with good corporate governance standards.

Human creativity plays a crucial role in directing behaviour or conduct. Ritchie et al (2003) expressed that “social research should explore lived experiences to reveal the connections between the social, cultural and historical aspects of people's lives and to see the context in which particular actions take place”. It from this perspective that the previous chapter revealed major causes leading to corporate governance collapse within regulatory agencies. The catastrophic consequences of non-compliance to good corporate governance practices can be reduced by implementing new ontological and epistemological perspectives as provided in Chapters 5 and 6 to improve compliance levels. Chapters 5 theorises a new theoretical perspective underpinned by African ontological perspective to provide more clarity and assist regulatory agencies towards their improvement of implementing corporate governance. Moreover, Chapter 6 presented a framework for corporate governance compliance and implementation to serving as a guiding instrument to regulatory agencies towards improving good corporate governance practices in their entities.

The UN Sustainable Development Goals (SDG), adopted in the UN General Assembly of 2015, African Union (AU)’s 2063 Africa Agenda, and the National Development Plan (2012), has become the blueprints for sustainable development. Heightened by activism by civil society

means more expectations from stakeholders are expected to surface. Corporate governance collapse within some of the SARAs has placed boards, government and stakeholders first in dealing with corruption and other corporate crimes, in addition to their role of protecting the interest of all stakeholders of the organisation. Constant corporate governance restructuring is therefore vital for minimising risks of poor governance in organisations (Brown, 2005; Jackson & Fogarty, 2005; Roberts & Candreva, 2006; Tremblay, 2012).

NDP (2012) stipulates that South Africa aspires to be a developmental state. The NDP serves as the blueprint for this developmental trajectory and SARAs need to be aligned to this agenda. In the quest for improving the quality of life of the people, based on a vibrant democracy, a fair justice system, together with other relevant initiatives, the government should be responsible for the establishment of viable, efficient and effective SARAs. Embracing good corporate governance stands to successfully drive SARAs towards the protection and advancement of the country in accordance with the developmental agenda. King Code (2016) puts it that “good corporate governance helps enhance the functioning of their leadership structures and provides the arrangements by which they should be governed towards meeting their strategic objectives”.

“Knowledge is understood as buried metal and the interviewer is a miner who unearths the valuable metal. The knowledge is waiting in the subject's interior to be uncovered, uncontaminated by the miner. The interviewer digs nuggets of data or meanings out of a subject's pure experiences, unpolluted by any leading questions” (Kvale, 1996:3). It is from this context that the researcher believes that understanding SARAs' compliance with good corporate governance standards and practices has been unearthed through knowledge gained from conducting this study. Applying proven and well-researched methodological and ontological perspectives, true meanings generated from research participants' encounters of corporate governance phenomenon were uncovered. This journey of discovery led to the formulation of frameworks to aid SARAs in the improvement of good corporate governance practices.

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ANNEXURE A

DATA COLLECTION TOOL

TOPIC GUIDE

The purpose of the topic guide was to assist in the collection of data and conducting of empirical investigation into corporate governance compliance levels within South African Regulatory Agencies (SARAs) in order to develop an appropriate corporate governance compliance framework to improve their compliance levels. The topic guide as developed contained non-directional and open-ended questions allowing the research participant to freely express their feelings, emotions and experiences in respect of application of corporate governance within their entities.

The topic guide centred on the following key aspects:

Assessment of the nature, forms and manifestations of regulatory agencies' non-Compliance to corporate governance to determine the extent to which they adhere to acceptable standards of good corporate governance.

The conducting of a root-cause analysis to identify and quantify corporate governance failures to identify appropriate measures to reduce them.

Identifying and isolating factors and variables leading to corporate governance collapse.

Analysing the impact and consequences of failure to adhere to corporate governance principles by regulatory agencies to identify appropriate measures to curb them.

Identifying an effective and efficient corporate governance compliance framework for regulatory agencies to improve their compliance to good corporate governance practices.

ANNEXURE B

OBTAINING CONSENT TO CONDUCT RESEARCH STUDY

The purpose of this research study is to examine compliance to corporate governance by South African Regulatory Agencies (SARAs) to develop a corporate governance compliance framework to assist them to improve their compliance to good corporate governance. The sample of the research study is consisted of a combination of Board members and managers within the selected SARAs in order to obtain diverse perspectives on their feelings, emotions and experiences in how corporate governance is unleashed at their respective SARAs. Semi-structured interviews will be held on a one-to-one basis between the researcher and the identified research participants. To guide and direct the interview process, a questionnaire with open-ended questions will be utilized during the interview process.

The researcher hereby guarantees that the interview process as well as the outcome thereof will be treated with the utmost confidentiality. Further that, data collected during the interview process will be utilized solely for the purposes of the research study. Your regulatory agency was selected by the researcher to constitute the population of the research study. Accordingly, the researcher has selected some of your board members and managers to participate in this research study in their capacity as Board members/managers within your regulatory agency. It is trusted that our request to conduct the research study within your entity will meet with your favourable response.

ANNEXURE C

RECRUITMENT OF RESEARCH PARTICIPANTS

South Africa is widely recognised as the continental leader and global player in the field of corporate governance due to its high standards set for compliance and governance. Consequently, many African countries and globally hold South Africa with high regard and use it as a benchmark for the development of their corporate governance systems, processes and procedures. But however, despite these good intentions, some of the government entities are involved in systematic corrupt practices and maladministration which has the most far-reaching devastating effects to the state and its public institutions which include, economic chaos, social upheavals and inequities, economic growth stagnation and lowering the flows of private investment.

The primary task of government entities is not just to generate financial results on investment to the government on a short-term but to achieve wider societal returns on a long-term basis. They must be bigger strategic players linking to the ambition of creating new jobs. They can be an instrument for exponential value-creation if the right ideas, people and processes are put together. The need to examine the causes and impact of corporate governance failures within regulatory agencies was influenced by some of these entities persistent non-compliance to acceptable corporate governance standards and conduct. This research study aims to understand the development and application of phenomenon of corporate governance with a view of formulating an appropriate corporate governance compliance framework suitable for regulatory agencies to enable them to improve their corporate governance compliance. The framework as constructed will direct the implementation process of corporate governance within regulatory agencies. To obtain diverse perspectives on the application of the phenomenon of corporate governance, face-to-face interviews will be coordinated with each of the research participants on one-on-one basis. Board members and managers have been identified to participate in the study. For this purpose, a questionnaire has been developed to guide the interview process. The nature of the questions is open-ended to allow more interaction.

You have been selected by the researcher to participate in this research process. If you are in concurrence thereof, by return of this e-mail or signature of the attached letter, please indicate so. The researcher guarantees your confidentiality and privacy throughout the research process.

Further that, data collected during the interview process will be utilized solely for the research study. Thanking you in anticipation for a favourable response.

ANNEXURE D

ANALYTIC HIERARCHY

THE ANALYTIC HIERARCHY (ADAPTED FROM RITCHIE ET AL., 2003)

A depiction of the stages and processes involved in qualitative analysis

Seeking applications to wider theory/policy strategies

Developing explanations (answering how and why questions)

Detecting patterns (associative analysis and identification of clustering)

Establishing typologies

Identifying elements and dimensions, refining categories, classifying data

Summarising or synthesising data

Sorting data by theme or concept (in cross-sectional analysis)

Labelling or tagging data by concept or theme

Identifying initial themes or concepts

| | |
|----------------------|---|
| EXPLANATORY ACCOUNTS | Iterative process throughout analysis |
| | Assigning data to refined concepts to portray meaning |
| | Refining and distilling more abstract concepts |
| DESCRIPTIVE ACCOUNTS | Assigning data to themes/concepts to portray meaning |
| | Assigning meaning |
| DATA MANAGEMENT | Generating themes and concepts |