



# Identifying the challenges to implement King IV in Chapter 9 and public sector institutions

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## DECLARATION

I HEREBY DECLARE THAT THIS MINI-DISSERTATION, SUBMITTED IN FULFILMENT OF MY MBA STUDIES AT THE NORTH-WEST UNIVERSITY, IS MY OWN INDEPENDENT WORK AND HAS NOT PREVIOUSLY BEEN SUBMITTED BY ME AT ANOTHER UNIVERSITY OR FACULTY.

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## **ABSTRACT**

Over the past decade, South Africa, the government and its state-owned entities have experienced turbulence as a result of ongoing scandals. More recently, a phenomenon called State-Capture has continuously been in the news and a subject of parliamentary inquiry.

Public discourse and outcomes of investigations by the Public Protector and board inquiries by the Passenger Rail Agency of South Africa (PRASA), the Auditor-General and many others that have been concluded and are ongoing indicate a chronic failure of Corporate Governance.

The purpose of this research was thus to investigate and identify the challenges experienced by state-owned entities as well as Chapter 9 institutions with regard to the implementation of the governance principles contained in the King Report on Corporate Governance for South Africa (more specifically, King IV).

Guidance from the King Committee has produced at least four reports, of which some of the suggested principles have been codified into legislation. An example of one such legislation where the principles of the Report on Corporate Governance for South Africa have been codified is the Companies Act 71 of 2008. An expectation from most is that the principles should thus be embedded within a significant part of the organisation. If the principles were embedded and observed, there would not be the scandals referred to earlier. These events indicate that there are some deficiencies in most organisations' governance practices.

The literature review and empirical results conducted and analysed as part of this study, reveal that there are indeed challenges experienced by state-owned entities and Chapter 9 institutions with regard to the implementation of King IV. The primary impediment to implementation is contradictions observed between the King IV report and founding legislation governing Chapter 9 institutions. Additionally, an absence of a sector supplement for Chapter 9 institutions does not empower or enable these

entities to attempt an alignment between their governance frameworks and the King IV report.

Factors that enable good Corporate Governance were explored as part of the study. The outcomes indicate that Corporate Governance expertise, finances and cost of implementation are not a concern for most of the entities surveyed. However, transparency, accountability and adherence to the Rule of Law were identified as the key determinants of both the impediments to effective good Corporate Governance and the implementation process.

The empirical study indicates that the relationship that the oversight structure has with its executive management impacts the effectiveness of the governance framework employed within that entity. This relationship was seen in the calculation of the correlation co-efficient. The calculation was deemed to be very significant at 0.933.

The outcomes of this study outline a number of recommendations to ease the challenges experienced by state-owned entities and Chapter 9 institutions in the implementation of the King IV report. One of the recommendations is that there should be an amendment to legislation governing the Public Protector and the Auditor-General. The objectives of the amendments will be to align to the requirements of the King Code on Corporate Governance. Alternatively, a sector supplement (similar to those developed for state-owned entities, retirement funds, etc.) must be developed to guide these two institutions (and many other that may fall within the same class). The proposals put forward will improve the governance practices of these entities. A further recommendation is for an operational plan to be developed in order to guide implementation. The plan must include continuous evaluation and monitoring to ensure adherence to the provisions of the King IV report.

Lastly, the findings of the study reveal that culture and ethical behaviour within organisations are driven by its leadership. Therefore, strict vetting and screening of the leadership of state-owned entities should be undertaken on a continuous basis, particularly as it relates to the ethical conduct of that leader.

**Keywords:** Public Sector, Corporate Governance, Governance, Risk Management, Framework, Organisational discipline, Objectives and Goals, Causal factors, Ethical behaviour, Institutions supporting constitutional democracy.

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## **DEDICATION**

I dedicate this research study to all persons who have dreams to achieve more in life – to you I say, if you put your mind to it, you will achieve it.

To my family - my mother, my aunt, cousins, etc., I thank you for believing in me and encouraging me to push forward, even when it was hard at times.

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## TABLE OF ACRONYMS

CEO	Chief Executive Officer
DAG	Deputy Auditor-General
DPE	Department of Public Enterprises
GRI	Global Reporting Initiative
HOD	Head of Department
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
IODSA	Institute of Directors in Southern Africa
IT	Information Technology
MFMA	Municipal Finance Management Act
NDP	National Development Plan
NERSA	National Electricity Regulator of South Africa
NPC	National Planning Commission
OECD	Organisation for Economic Co-operation and Development
PAA	Public Audit Act
PFMA	Public Finance Management Act
SABC	South African Broadcasting Corporation
SARS	South African Revenue Services
SCoAG	Standing Committee on the Auditor-General
SOE	State Owned Entity
Stats SA	Statistics South Africa

## CHAPTER 1

### ORIENTATION AND PROBLEM STATEMENT

#### 1.1 INTRODUCTION AND CONTEXT

One of the key instruments used by the government of the Republic of South Africa is to deliver various services and carry out policies through state-owned entities (SOEs). SOEs are governed by a wide range of legislation and statutory regulations, with some acting as autonomous entities (Ponte, Roberts & Van Sittert, 2007:5).

Significantly, SOEs are a vital portion of industries that drive the economy by providing factor inputs such as electricity, energy, transportation and telecommunications. Consequently, the South African government, as a developmental economy uses SOEs to change the lives of its people (NPC, 2011:24).

Additionally, to ensure appropriate discipline and adherence to legal prescripts, The Constitution of the Republic of South Africa, 1996 (the Constitution) introduces Chapter 9 institutions. In terms of Chapter 1 of the Constitution (1996), it (the Constitution) is a body of fundamental principles according to which a State is to be governed. It sets out how all the elements of government are organised and contains rules about what power is wielded, who wields it and over whom it is wielded in the governing of a country. These include state institutions that support constitutional democracy, and they include the following:

- The Public Protector
- The Human Rights Commission
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- The Commission for Gender Equality
- The Auditor-General
- The Electoral Commission
- The Independent Authority to Regulate Broadcasting

For this study, Chapter 9 institutions are enablers of governance, and are the subjects of the study. Murray (2006:126) explains that Chapter 9 institutions are institutions set up by the Constitution to investigate and report on governmental affairs on behalf of the citizens. The institutions exist to ensure that public finances and administration as well as professional ethics are appropriately maintained in the public sector.

With regard to the Auditor-General, it is with reference to its mandate and mission which states that "as the Supreme Audit Institution of the country it exists to strengthen the country's democracy by enabling oversight, accountability and governance in the public sector, thereby building the public confidence (Nzewi & Musokeru, 2014:38). In terms of Section 4 of the Public Audit Act (2004), the Auditor-General audits and reports on the accounts, financial statements and financial management of all government entities. Section 7 of the Public Protector Act (1994) outlines the functions of the Public Protector. In terms of this section, the Public Protector receives and conducts investigations related to complaints and allegations which point to misconduct relative to the management of government entities. It should be noted that government entities are inclusive of SOEs.

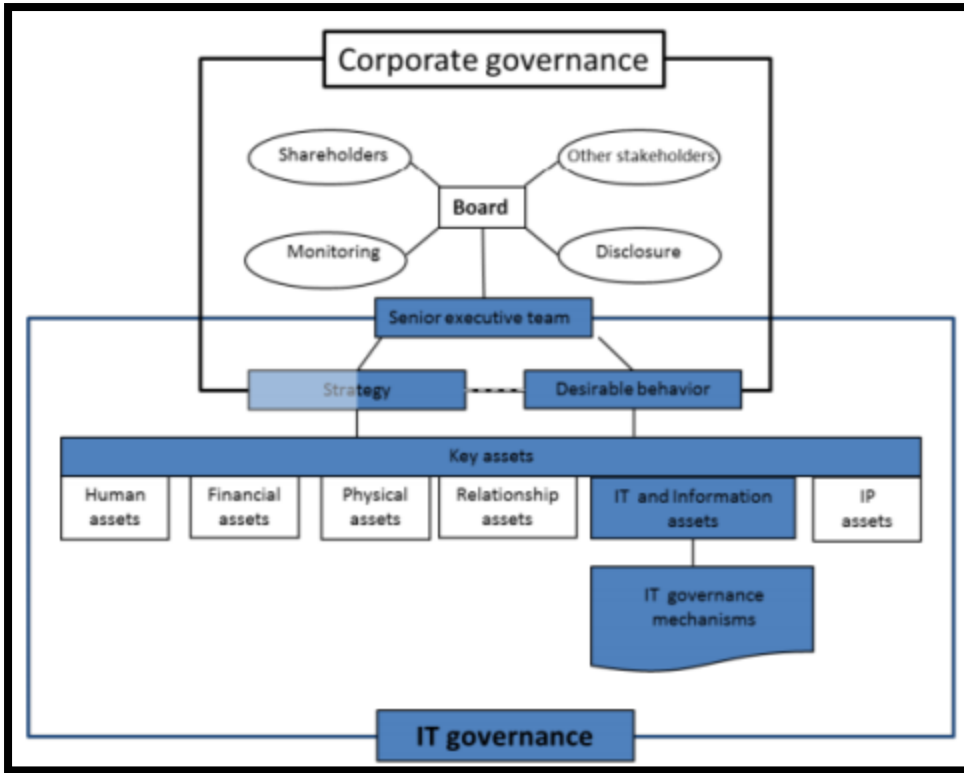
From the above, a suggestion can be made that to enable the government to achieve its principal objective of delivering critical services to the people, it is imperative that SOEs must be able to attract investments or capital to fund their programmes. However, to do that, SOEs ought to be seen to be governed in a manner befitting corporates, hence corporate. As mentioned earlier, the role Chapter 9 institutions fulfil in this regard is to evaluate and report on SOEs' performance with respect to their finances, administration and Corporate Governance.

Corporate Governance is a cornerstone of doing business in the contemporary market environment. Whereas, risk management enables an entity to identify and remove impediments to the achievement of strategic goals. By extension, the principles contained in the leading governance frameworks are applied in government departments that give rise to SOEs. These government departments include Transnet Limited, the Airports Company of South Africa, Central Energy

Fund and others. However, questions still linger as to whether governance imperatives as suggested by the King Code of Corporate Governance for South Africa, such as the governance structure, appointment of senior leadership, effective leadership, risk governance and management are appropriate for SOEs and Chapter 9 entities. The answer lies in the fourth edition of the Report on Corporate Governance for South Africa, where it states that the code is applicable to the public sector (IODSA, 2016:8).

It is evident in the performance of some of the institutions noted above that they are experiencing challenges with some of the governance imperatives. The study seeks to determine the challenges encountered by these institutions in the implementation of sound Corporate Governance principles.

One of the leading Corporate Governance frameworks applied in modern times is the King Code of Corporate Governance for South Africa, issued by the Institute of Directors of South Africa (IODSA). Concerning the afore-stated code, governance may be on a statutory basis or as a code of principles and practices, or a combination of the two (IODSA, 2016:35). Legislators in most countries have codified significant parts of their Corporate Governance principles – examples are South Africa's Companies Act, 2008 (Act No. 71 of 2008) and the United States' Sarbanes-Oxley Act of 2002. These statutory regimes are known as "comply or else", while governance principles are known as "comply or explain" (IODSA, 2016:35).



**Figure 1.1: Corporate Governance Model**

Source: Juiz, Guerrero & Lera (2014:14)

According to the IODSA (2016:11), Corporate Governance is defined as "the exercise of ethical and effective leadership by the governing body towards the achievement of an ethical culture, excellent performance, effective control and legitimacy". In an earlier version, King I described governance simply "as a system by which companies are directed and controlled" (IODSA, 1994:1). Furthermore, Wixley and Everingham (2005:2) expanded on the meaning and defined governance as being about arrangements and practices connected with management, decision-making and control in organisations.

Figure 1.1 above demonstrates a Corporate Governance model with the governance structures being:

- The board (e.g. governing body)
- The senior executive team (e.g. executive committee)
- Information Technology (IT) governance (e.g. IT steering committee)

An expanded governance model will include committees and structures that deal with modern concepts such as the Ethics and Social Committee, Remunerations Committee, etc.

Reflecting on one of the fundamental concepts of the code, “the composition of governing bodies and independence”, it is an expectation and an essential element of the Code for members of the governing body to be independent in substance and in form (IODSA, 2016:28). This expectation suggests that private and public entities are similar in character and attitude towards governance, including how they have structured themselves.

Perhaps a single major problem with Corporate Governance is the name “corporate” within Corporate Governance. In terms of the Oxford Dictionary (2017), the word corporate emanates from the Latin word “*corporatus*” – meaning formed from a body. In modern day, the word has evolved to mean a company. A company, in terms of the same Oxford dictionary, is a “commercial business”. The definition of the word “corporate” and its evolution to company implies that government institutions are not commercial businesses. This logic will then have to flow into the so-called SOEs and Chapter 9 institutions. Consequently, the purpose of this study is to identify challenges to implementing King IV in Chapter 9 institutions and state-owned enterprises (SOEs). The study also explores the differences between the relationship a company (commercial business) has with its shareholders, compared to the relationship a government institution has with its stakeholders (citizens of the country).

Government entities have accounting authorities responsible for oversight (i.e. leadership, stewardship and strategic direction responsibilities). These authorities are either defined in the Constitution of the country or a variety of legislations that give rise to the entities (i.e. SOEs and Chapter 9 institutions). Therefore, it implies that a governance model employed in the public sector may be different from the model used in the private sector. Within the private sector, the Companies Act No. 71 of 2008 gives rise to a private sector governance model (similar to the one referred to in Figure 1.1). However, in the public sector, the specific Act giving rise to the SOE provides for the governance framework to be applied therein.

A South African example is the framework under which the office of the Auditor-General was established. The Auditor-General of South Africa (AGSA) was formed through Chapter 9 of the Constitution with its powers determined in terms of Section 188 of the Constitution. The Constitution recognises the Auditor-General as a single person (unitary person) – meaning that he or she is not a body or an organisation of people nor an entity. The Auditor-General executes his or her constitutional mandate through the Public Audit Act 25 of 2004. The objective of this Act is to operationalise the work of the Auditor-General's office, thus giving it life. The Public Audit Act, further introduced the Deputy Auditor-General (DAG) responsible for the administration of the office of the Auditor-General and to assist the Auditor-General in running the institution (PAA, 2004:54).

In reading from the Constitution, one can deduce that it does not recognise the office of the Auditor-General, but the person appointed as the Auditor-General. The Auditor-General is then accountable to parliament through the Standing Committee on the Auditor-General (SCoAG). Similarly, the Public Protector is also established through the same mechanism. Both offices attempt to mirror themselves as professional organisations, and therefore corporates. Although not mandatory, they then are expected to have structures that comply with best practice (in this instance, the King VI report). The King IV report specifically lists SOEs as those entities that should comply with the code (IODSA, 2016:6). Additionally, a sector supplement for SOEs has been developed to support implementation. However, it should be noted that the Auditor-General and Public Protector are not public entities as defined in the PFMA or the MFMA. Public entities are listed in schedule 2 and 3 of the PFMA (PFMA, 1999:71-79)

Similarly, the majority of SOEs are governed in terms of the Public Finance Management Act No. 1 of 1999 (PFMA) and the Municipal Finance Management Act 56 of 2003 (MFMA). It should be noted that although the Auditor-General and the Public Protector may elect to adopt some provisions of the PFMA and MFMA, they are not compelled to comply. The PFMA and MFMA have the following similar objectives:

- To regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in those governments; and to provide for matters connected therewith (PFMA, 1999:1).
- To secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government; and to provide for matters connected therewith (MFMA, 2003:2).

Thus, similar objectives noted from these two key legislations are the oversight role over the financial management of the respective spheres of government, including ensuring that the departments are managed efficiently and effectively.

To achieve government's developmental agenda, it is vital for state resources, including those under the custodianship of SOEs, to be managed efficiently. Thus, the PFMA and the MFMA are aimed at creating a culture of performance by employing managers to manage, and simultaneously holding them accountable for the utilisation of allocated resources in delivering services (Tsheletsane & Fourie, 2014:43).

It is without doubt that the governance structures of public and private entities are set-up differently, but they have one feature in common, which is the setting and the drive towards the achievement of objectives. However, the environments in which these two categories of institutions operate play a significant role in how their governance structures are set up and work, including their overall effectiveness. This environment includes the legal framework, and relevant stakeholders, (i.e. employees, social communities, shareholders, management, among others) (Sonnefeld, 2002:5).

It is important to note that proper governance remains central in the public sector, as it is in the private sector, because investors would not be interested in investing in institutions where their investment would not be secured. Therefore, good Corporate

Governance and its elements should be observed within the public sector – as its absence has the potential to put an end to the economy and administrative system. Siswana (2007:181-182) points out that poor governance would manifest when the relevant policies and structures do not function, do not function properly or do not exist. Conversely, good governance is found where those systems and structures operate as intended (Siswana, 2007:178). What can be deducted from this is that good Corporate Governance practices enhance the attractiveness of an entity from an investment perspective.

## **1.2 IMPORTANCE OF THIS STUDY**

Many entities outside of financial institutions have experienced difficulties in implementing and operationalising the King IV report of Corporate Governance. These difficulties are worse within the public sector, due to the legislative framework that governs SOEs. SOEs must contend with their founding legislations as well as the Companies Act. Private sector entities only have to contend with the Companies Act (as their founding legislation - which already incorporates Corporate Governance principles). This research is therefore imperative to guide public sector entities, particularly SOEs and Chapter 9 institutions, in successfully implementing appropriate solutions to enable them to adhere to the principles suggested by frameworks (such as the King Code on Corporate Governance) adequately.

This research further aims to gain an understanding of the drivers that create challenges to the implementation of the King Code of Corporate Governance and contribute to the body of knowledge aimed at addressing the challenges thereto.

## **1.3 PROBLEM STATEMENT**

It is common practice for organisations to adopt leading practices developed to drive their processes and assist them to achieve their objectives – processes that include management approval frameworks (delegation of authority) and other supporting structures (IODSA, 2016:29). The proposed topic seeks to identify the challenges experienced by a selected number of Chapter 9 institutions and SOEs in the implementation of King IV. The study further aims to evaluate the support and

guidance available to these institutions that enable them to adhere to the leading Corporate Governance framework.

For the purpose of this study,

- SOEs are defined as entities which are wholly owned by the government or in which the government is a major shareholder or has significant influence.
- Section 181 of the Constitution defines Chapter 9 institutions as state institutions set up to strengthen constitutional democracy. These institutions investigate and report on governmental affairs on behalf of the citizens. They exist to ensure that public finances and administration as well as professional ethics are appropriately maintained in the public sector (Murray, 2006:126).

The King Code on Corporate Governance is a framework that was initially developed to guide corporates to be responsible citizens. These Codes of Good Practice, has been adopted for the public sector. But, the dynamics in the public sector are different to those in the private sector, including their objectives and stakeholders – as well as how the stakeholders are engaged and managed. In their research, Kruse, Stadhouders, Adang, Groenewoud and Jeurissen (2018:4-5) acknowledged the differences between the public and private sector when they found that the private sector is motivated by profit maximisation when they embark on providing services. While the public sector is motivated by accessibility of services to the public when they embark on programmes. It should be noted that the difference outlined above confirms that the objectives and stakeholders of the private and public sectors differ and should therefore be responded to differently.

Many Corporate Governance studies have been undertaken in the assessment of the challenges faced in the implementation of governance in general. This includes the challenges faced in the implementation of Corporate Governance in Africa. However, little has been done to identify and evaluate challenges in the public sector. This study is aimed at closing this gap.

From a South African perspective, despite the visible headway made by the government and SOEs, some concerns have been noted with how governance is exercised within the entities. These are demonstrated by:

- a significant turnover of Chairpersons of boards responsible for the oversight of SOEs
- vacancies or acting persons in the position of chief executive officers
- vacancies in top management positions
- high turnover at director-general level
- disregard for good governance principles by ministers responsible for specific ministerial oversight over SOEs
- loss of confidence by investors and rating agencies in some of the SOEs and government in general
- impaired relationships between government and business, and
- unethical practices by some within SOEs.

An example that can be provided for unethical practices is the scandal relating to the enhancements to the former president's private home. In his work, Douglas (2016:1) cites that corruption thrives as a consequence of institutional weaknesses. In this case, most government departments were found by the Public Protector to have failed in their role of overseeing expenditure on the president's private home in Nkandla, where huge sums of money were misspent or found to have been misappropriated (Douglas, 2016:1).

As noted in the objective of the study, the primary intention was to evaluate the application of the King Code of Corporate Governance. The secondary intention of the study was to identify the challenges that are experienced by entities that were the subject of the study and thirdly link the challenges to the causal factors as noted in 1.4 below. Lastly, the intention was also to either contribute towards the body of knowledge around the concept of governance or to find solutions to the problems experienced by the affected entities.

#### **1.4 CAUSAL FACTORS**

Establishing, institutionalising and sustaining good governance within entities requires a concerted effort from those responsible. In reflecting on "those responsible for governance", reference must be made to the three pillars of the South African government – being the government apparatus, the private sector and the people (Nofianti & Suseno, 2014:99). For these three different pillars to work

efficiently, specific factors must work in a synchronised manner – these are the factors that influence and affect governance. The factors referred to are as follows:

- i. Adherence to **the Rule of Law**
- ii. **Accountability** by all those that are charged with governance
- iii. Strong **leadership**
- iv. Appropriate **decision-making**
- v. Demonstration of **transparency** in all decisions made
- vi. Trust-based **ethical behaviour and practices**
- vii. The drive towards **common goals**

When all these factors are celebrated and observed, good governance will be effortlessly realised. However, there may be other causal factors that affect Corporate Governance. For this study, only the ones listed above are expanded on. It should be noted that there is no specific order in which the factors stated above should be followed. But as discussed earlier in this chapter, the genesis of good governance is the establishment and adherence to the **Rule of Law**.

## **1.5 RESEARCH OBJECTIVES**

### **1.5.1 Primary objective**

This study sought to evaluate the current King Code of Corporate Governance for South Africa (IODSA, 2016), the implementation challenges experienced by public sector entities with specific reference to a selected number of Chapter 9 institutions and SOEs. Additionally, the study determined what contributes to the challenges encountered by the public sector, more specifically SOEs and Chapter 9 institutions, in the implementation of the King IV report.

### **1.5.2 Secondary objectives**

To achieve the primary objective of this study, the secondary objectives to be realised include:

- i. The investigation of the extent to which the principles contained in the Code are practised and adopted by SOEs and Chapter 9.

- ii. The investigation of whether there is a conflict between legislation that gives rise to Chapter 9 institutions and SOEs and the Code.
- iii. Investigating the practicalities of meeting the expectations of the Code and analyse the responses received during the research and contribute to the body of knowledge around public sector governance expectations (i.e. those that are beyond legislation).
- iv. Evaluating whether the King IV report is relevant for entities who are already directed through specific legislation.
- v. The exploration of the research should also assist to engrain the principles of the Code into public sector's way of directing its business.
- vi. Evaluating the implications of the failure of governance on management.

## **1.6 SCOPE OF THE STUDY**

### **1.6.1 Field of the study**

The study field for this research falls within the subject discipline of governance, but the predominant focus is on governance within the public sector. The entities that were used as research subjects are defined in the PFMA and listed in schedules 2 and 3 of the Act. Additionally, two entities contained in Chapter 9 of the Constitution – being the Auditor-General and the Public Protector formed the basis of the research subjects. The PFMA entities that formed part of the subject of the study are:

#### **(a) Schedule 2**

- Transnet Limited
- Airports Company
- Central Energy Fund
- Land and Agricultural Development Bank of South Africa, commonly known as the Landbank
- Denel

#### **(b) Schedule 3**

- Council for Scientific and Industrial Research

- National Parks Board
- Gauteng Economic Development Agency

The King Code of Corporate Governance for South Africa 2016 (King IV report) as well as its earlier versions has been a revelation in South Africa and the world over. However, over the years, there have been challenges in the implementation of the Code and the adherence to the principles contained therein. The challenges are observed in the performance of SOEs about the causal factors noted in 1.4 and the concerns reflected in 1.3 above. Of critical importance, particularly on the entities that have experienced challenges, is their legal form. Most of these entities are state-owned entities that conduct their business as "corporates", and others are institutions born out of The Constitution.

With the release of King IV report (IODSA, 2016), an attempt was made by the King committee to enable public entities to adhere to sound governance principles. This was done in the form of sector supplements to the Code. Sector supplements seem like a 'mild' admission of the difference between the public and private sector. Consequently, this study may be better placed to identify the challenges experienced by "non-private" sector entities in the implementation of the Code and propose solutions thereof.

## **1.7 RESEARCH METHODOLOGY**

### **1.7.1 Literature and theoretical review**

Literature and a theoretical body of sources were consulted in the areas of Corporate Governance, as well as legislation aimed at ensuring the effectiveness of the selected SOEs and Chapter 9 institutions. Additionally, the relationship between how a governance structure influences the effectiveness of the institution in driving towards the achievements of its goals was reviewed.

An effort was made during the literature review to assess how other leading nations (countries) have dealt with the research problem. Furthermore, a comparison was made between private sector entities and SOEs to determine what causes the difference between the two groups.

## **1.7.2 Empirical research**

Empirical research was done on a selected number of SOEs and Chapter 9 institutions to answer the research question and achieve the primary and secondary objectives. The research study looked at the following elements:

- Legislation giving rise to the entity
- The mandate of the entity
- How the entity is organised and governed
- The relationship between the entity and its principal (e.g. Department of Communications and the SABC)
- The contrasts between the legislation and the Corporate Governance principles (more specifically, The King Code of Corporate Governance for South Africa (2016))

For the purpose of this research study, as referred to in 1.6.1 above, ten entities listed in Schedules 2 and 3 of the PFMA and two Chapter 9 institutions were selected, wherein a total of 40 individuals within these entities were sampled.

## **1.7.3 Limitations**

### **1.7.3.1 Sources**

Sources that were consulted during the review included the following:

#### **1. Primary sources**

- a) Journals
- b) Theses
- c) Dissertations
- d) Peer reviewed documents

#### **2. Secondary Sources**

- a) Review articles

b) Practice guidelines

### 3. Tertiary sources

a) Newspaper articles

b) Books, and

c) Literature commonly found on the Internet.

This study is also limited to literature found and reviewed until 28 February 2018. The key words referred to on page ii of this study were used for researching the topic. These include Corporate Governance, framework, and organisational discipline, among others.

#### **1.7.3.2 Research**

The research was exploratory and sought to determine the cause of the challenges experienced by Chapter 9 and SOEs in the implementation of governance principles.

## **1.8 RESEARCH DESIGN**

### **1.8.1 Research approach and strategy**

The research study was primarily quantitative. This is so that first-hand information is obtained to get an understanding of the researched question. Furthermore, the study attempted to identify the relationship between our research question (y or the dependent variable) and the other supplementary questions (x's or dependent variables). In this instance, the variables were unit of analysis and the applicability of the King Code on Corporate Governance (Bickman & Rog, 2008:204).

A quantitative approach is encouraged where the researcher wants to determine "how many" or whether a research subject has or displays specific characteristics at a statistically significant level (Welman, Kruger, & Mitchell, 2006:57).

### **1.8.2 Research method**

As noted above, the research method followed for this study was a quantitative method, with some questions being open-ended to get more input from the respondents.

### **1.8.3 Research setting**

The intention was to perform the research in standard settings. With the questionnaire, respondents were able to respond from wherever they are as it was completed online or manually, then scanned back for analysis.

### **1.8.4 Entrée and establishing researcher roles**

Relationships with the research subjects were already built – or, at least with key persons or employees within the research subjects. There was an interest in a study such as this – due to the adverse findings observed during Corporate Governance reviews.

Due to difficulties in securing time with leaders within the SOEs and Chapter 9 institutions, the subjects were engaged through questionnaires. Up front requests were made with the relevant individuals within the entities selected for research purposes, to allow for adequate time to respond to the questionnaires.

### **1.8.5 Ethical considerations**

The research topic is not of a clinical nature. However, the primary ethical principles of research were followed during and after the study. This mainly refers to the treatment of research subjects and the handling of the data or information. The approach that was developed as it relates to ethics, was as follows:

- a) Respect for persons: this refers to the respect that was afforded to the respondents during and after the research. The individuals were informed of the purpose of the study. Where they would like to remain anonymous or their information treated as confidential, such request was respected.

- b) **Equitability and Fairness:** The selection of participants was done to ensure equitability and fairness. This was also followed in the analysis of research data.

At the initial stages of the study, the researcher intended undertaking a mixed method. However, this approach was amended due to challenges with the availability of the research participants. Therefore, only a quantitative method was undertaken, with questionnaires developed for completion by the respondents.

The questionnaires were disseminated through email and collected through the same method. It should be noted that prior to the respondents being engaged, a letter from the university was shared with them on how their responses will be treated, including a foreword from the researcher on the purpose of the research.

## **1.9 LAYOUT OF THE STUDY**

This mini-dissertation has four separate chapters. These chapters are presented as follows:

### **CHAPTER 1: Orientation and problem statement**

This chapter discussed the introduction and background of the study, causal factors and the importance of the study as well as the problem statement. The chapter also projects an overview of the research design and layout of the chapters that are to follow.

### **CHAPTER 2: Literature review**

This chapter evaluates and investigates, through a literature review, the essential elements of the Report on Corporate Governance for South Africa, the legislation relevant to the selected research subject, and the relationship between the effectiveness of the institution in achieving its goals and the structure within which it operates. The review also includes the evaluation and determination of the guidance that enable the successful implementation of the Corporate Governance principles within SOEs and Chapter 9 institutions.

## **CHAPTER 3: Empirical study and research results**

This chapter expresses the research methodology by discussing the sampling, data collection and recording methodologies to be used in the study. It also outlines how the survey instrument was developed and compiled for the study participants and the data collection. The outcomes of the study are also presented and discussed.

The empirical study presents a description of the research methodology applied to test the research questions and the problem statement outlined in Chapter 1. This chapter provides the results of the research and creates a favourable outcome of the research in the form of research findings. Additionally, the results of the research questionnaire are presented as per the collected data from the research subjects.

## **CHAPTER 4: Conclusions and recommendations**

In this chapter, deductions based on the literature review and empirical investigations of the study are made. Additionally, the chapter also includes recommendations for further studies.

### **1.10 CONCLUSION**

In recent years, there have been cries by the public for government departments of the Republic of South Africa and SOEs to be run efficiently and for the benefit of all the citizens of the country rather than a connected few. Mismanagement has been identified as the ill within these entities. At the core of this mismanagement are the governance practices by the entities.

This research sought to evaluate the authenticity of the above statement and determine the causes of the governance failures within the selected research subjects. The research provides a high-level comparison of the workings of public and private sector entities – and determine the reasons why SOEs are not able (in the context of the research topic) to behave as expected concerning the principles defined in the Report on Corporate Governance for South Africa.

It is accepted that the objective of government is to provide essential services to its people. However, to fulfil that objective, the government requires institutions that are

robust and well governed. The robustness or resilience of these entities can only be possible if there are appropriate and fit for purpose governance and risk management frameworks. This study thus evaluates the performance of the selected SOEs concerning the Corporate Governance elements defined in the Report on Corporate Governance for South Africa.

## **1.11 CHAPTER SUMMARY**

This chapter was aimed at framing the basis of the research, including its importance, its objectives and the related limitations. Numerous studies have been conducted in this area, however, not many have evaluated the causal factors that impact or are impacted by good governance. Furthermore, little acknowledgement has been placed on the governance structures that are found in private and in the public sector. It should be noted that the statutes that establish private and SOEs differ – consequently, their governance structures are likely to be different.

It is for the above reason that this study is relevant, as it would contribute towards the body of knowledge around public sector governance as well as towards the solutions to address the failures that are experienced by SOEs.

## CHAPTER 2

### LITERATURE REVIEW

#### 2.1 INTRODUCTION

Good governance and enhanced service delivery to the South African public has turned to be at the core of the government agenda as citizens are increasingly demanding more transparency and accountability from SOEs. The South African government has answered the call on transparency and accountability by establishing institutions devoted to acting as service-delivery agents (Curristine, Lonti & Joumard, 2007:20).

For this study, service-delivery agents are those entities established by the government to either deliver services to the citizens or enable service delivery – these are the SOEs.

There is no standard definition for a state-owned entity. Some necessary features include their status as established legal entities operating within a commercial environment and the fact that the primary shareholder is the government (Fourie, 2014:33). In the South African setting, the government has distinguished between institutions mandated with oversight and regulatory and those tasked with service-delivery. In his case study report on SOEs and quasi-fiscal activities in South Africa, Dawood (2014:1) distinguished these state bodies and identifies SOEs as those public entities or government business enterprises with an important characteristic of being operationally independent from government in fulfilling their mandate. For this study, the focus is on the objectives these entities seek to achieve and how governance is enabling or inhibiting them.

Chapter 9 institutions can be identified as institutions mandated with oversight. According to Asmal, Dithebe, Johnson, Masutha, Burgess, Matsomela, Delport, Camerer, Smuts, van der Merwe, Raibally, and Simmons (2007:3), oversight is exercised by ensuring that:

- the integrity of the state and its institutions is restored from the perspective of the majority of citizens

- democracy, in relation to the rights and responsibilities of citizens and government officials flourish across the country
- the Rule of Law is respected, and
- the state and its institutions are transparent and receptive to the requirements and rights of its citizens.

Stakeholders, be it in the public or private sector, are consistent in their demand for established entities to project good governance. However, the extent of dishonesty within some SOEs in the form of mismanagement and lack of unaccountability does not augur well for good governance (Bhorat, Buthelezi, Chipkin, Duma, Mondli, Camaren, Qobo, Swilling & Friedenstien, 2017:10). Recent scandals in the South African context framed as "state-capture" reflect a significant deficiency in the ethics of those tasked with governance. It should be noted that ethics is one of the critical elements of good governance (IODSA; 2016:22).

As noted earlier, SOEs are entities which are wholly owned by the government or in which the government is a major shareholder or has significant influence and Chapter 9 institutions exist to investigate and report on governmental affairs on behalf of the citizens. They were set-up to ensure that public finances and administration as well as professional ethics are appropriately maintained in the public sector (Murray, 2006:126).

It should be noted that governance is not only confined to the ethical behaviour of those that are tasked with it, but also extends to effective leadership. Effective leadership involves the achievement of strategic objectives and positive outcomes (IODSA, 2016:12). Therefore, governance is a values notion and is normative by nature as it emphasises the "ought to be" instead of the "is" in the means-ends continuum (Sindane, 2011:756). However, Watt (2011:105) reflects that the achievement of strategic objectives and positive outcomes by an organisation are not the only measures of a leader being effective.

The Report on Corporate Governance for South Africa (2016) defines Corporate Governance as the exercise of ethical and effective leadership by the governing body towards the achievement of an ethical culture, excellent performance, effective control and legitimacy. In an earlier version, the King report described governance

“simply as a system by which companies are directed and controlled” (IODSA, 2009:1). Furthermore, Wixley and Everingham (2005:1) expanded that, governance is concerned with the structures and processes associated with management, decision-making and control in organisations.

In the context that has been laid out, governance and legislation must be synchronised to enable formations or organisations to achieve their goals. However, if there is a conflict between legislation and the King IV report, that legislation or law must prevail (IODSA, 2016:35).

One principal instrument used by the South African government to deliver services and carry out policy mandates is through the SOEs (NPC, 2011:8). These SOEs are governed by a wide range of legislation and statutory regulations, while some acting as autonomous entities. It is acknowledged that SOEs are a vital portion of an industry that drives the economy through providing factors of production. To ensure appropriate discipline and adherence to legal prescripts, Chapter 9 of the Constitution establishes some state institutions that are aimed at supporting constitutional democracy.

The founding of Chapter 9 institutions was confirmed by Dawood (2014:1) where he stated that the creation of some of the Chapter 9 institutions is provided for in the Constitution. Furthermore, individual state bodies and legislation have initiatives to create and guarantee the existence of enterprises, such as the National Electricity Regulator of South Africa (NERSA). It is a common practice in all three spheres of government in South Africa to establish service delivery agencies within set guidelines. Dawood (2014:28) goes on to emphasise the existence of guidelines that were developed recently to outline the circumstances under which organs of the state can establish public entities or service-delivery agencies. Notwithstanding the establishment of service-delivery agents in all three spheres of government, there are governance gaps and frameworks that are not clearly defined to ensure proper oversight of these service delivery agents. These service-delivery agencies would typically enter into shareholder contracts with parent departments. Nevertheless, the overall impact of these agencies in accomplishing government goals is yet to be seen.

To enable the South African government to achieve its objective of service delivery to its people, SOEs must be able to attract capital to fund developmental programmes (Curristine, *et al.*, 2007:15). It has been noted that with the recent credit downgrades, SOEs' ability to attract capital at reasonable rates has been affected. These credit downgrades are as a result of the decline in how government and internal governance has been eroded within the entities. It is therefore essential that an entity that is required to attract investment needs to have adequate governance processes that allow for flexibility to compete for such capital in the capital markets (OECD, 2008:9). The purpose of companies that compete for capital is evident to be a primary shareholder focus. However, shareholder interests should not be the only interest that company directors should be concerned with. Accordingly, in terms of version 3.1 of the Global Reporting Initiative's (GRI) Reporting Framework a trend has been established for South African entities and most entities in the whole world to report through a compulsory operating and financial review to increase transparency and usefulness to all stakeholders. The reporting requirements are driven primarily by the GRI and the International Financial Reporting Standards (IFRS). From a South African perspective, the King IV report and the reporting guidelines as provided by the National Treasury prevail (Treasury, 2010:2).

The purpose of open and transparent reporting is to develop cooperation between shareholders and other stakeholders. Aguilera and Jackson (2003:448) suggest that the needs of three stakeholder groups which are providers of capital, employees and management should be taken into account. The varying demands from these stakeholder groups then require that these entities be governed in a manner befitting corporates, hence, Corporate Governance and risk management. The modern South African capital market environment calls for compliance with Corporate Governance principles as contained in the King IV Code which has become one of the cornerstones of doing business. Additionally, the principles contained in the governance frameworks, must be applied in government departments that give rise to the SOEs. Nonetheless, questions are still asked as to whether these governance requirements are appropriate for government entities and departments and are these

entities applying appropriate risk management practices and frameworks aimed at enabling them to achieve their objectives (McGregor, 2014:5).

In terms of the OECD Guidelines on Corporate Governance of State-Owned Enterprises (2015:8) good governance of SOEs is critical for well-organised and open markets at both the domestic and international level. Thus, the argument emphasises the strategic role played by SOEs in providing vital public services including public utilities. The business activities of these SOEs have a direct effect on the effectiveness and competitiveness of the rest of the economy and the lives of citizens, making SOEs key players in international markets. Their competitiveness, therefore, lies in upholding open trade and investment conditions that reinforce economic growth.

Studies on Corporate Governance of SOEs in South Africa should therefore be founded on an integrated chain. The starting point being the review of situational possibilities aimed at the actual manner of Corporate Governance and determination of the primary hindrances and success factors. Razakov (2015:41-42) suggests the main success factors related to Corporate Governance to be:

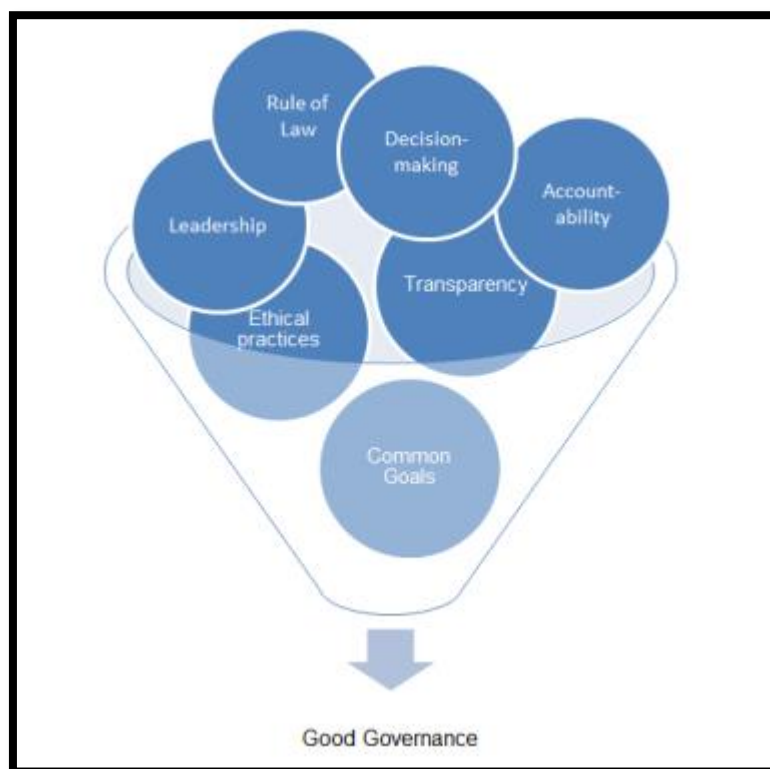
- The firm's internal and external business contexts relating to the board norms and standards
- A firm's external business context and individual board members' roles
- A firm's internal business context and individual board members' tasks, and
- A firm's internal, external business contexts and individual board members' competence and independence.

This literature chapter evaluates and reviews prior studies on Corporate Governance and the implementation challenges experienced by SOEs, with specific reference to Chapter 9 institutions and a selected number of SOEs. The literature review outlines a theoretical base upon which the compliance with the principles of Corporate Governance is located.

## 2.2 OVERVIEW OF THE BASIC CONCEPTS

This section provides a summary of the theory of Corporate Governance foundation and state ownership. Furthermore, the scholarly work produced by researchers on the subject of Corporate Governance of SOEs and the empirical evidence relative to this study is highlighted. The approach is to analyse the contributions made by prior studies on the Corporate Governance of SOEs in South Africa while defining the research needs and knowledge gap with the current research.

Establishing, institutionalising and sustaining good governance within entities requires a concerted effort from those responsible for governance. In reflecting on “those responsible for governance”, reference must be made to the three pillars of government – being the government apparatus, the private sector and the people (Nofianti & Suseno, 2014:99). For the three different pillars to work efficiently, certain factors must work in a synchronised manner – these are the factors that influence and affect governance. When all these factors are celebrated and observed, good governance will be effortlessly realised.



**Figure 2.1: Factors that influence or affect good governance**

Source: own

There is no specific order in which the factors displayed in Figure 2.1 above should be followed. But as discussed in Chapter 1, the basis of good governance is the establishment and adherence to the **Rule of Law**.

It should be noted however that, from a government perspective, systems and processes that are aimed at enabling the government to drive adherence to the Rule of Law are usually linked with bureaucracy. This may however result in poorly executed accountability. Bureaucracy has a positive connotation wherein it is a governance or leadership form expressed to govern vast territories, where rules, regulations and hierarchies are replicated to direct citizens of that territory (Spahr, 2015:1). However, in the context of the factors highlighted, bureaucracy has a negative connotation. If it is not executed correctly, it may result in corruption and loss of confidence in the ability of the government to efficiently run its territory.

The Constitution of South Africa is the foundation of the Rule of Law. Equally, according to Malan (2012:274), the Rule of Law requires rational decision-making. The Rule of Law is a factor of legal precedence and prohibits arbitrary decisions. Therefore, the doctrine of legality lies at the very heart of the Rule of Law (Malan, 2012:275).

Manyika (2016:1) also emphasises that for human dignity, equality, advancement of human rights, the achievement of freedoms, non-racialism and non-sexism to be achieved, the Rule of Law must prevail. It is noted that in the current dispensation, there is an absence of the Rule of Law displayed in the form of corruption and maladministration. It is, therefore, necessary to acknowledge that sustaining good governance involves long periods, perseverance and necessitates pledges and considerable optimism by all the stakeholders.

**Leadership** is an essential component of good governance and also essential for the Rule of Law to thrive. Therefore, for entities or territories to thrive, they need effective leaders. Effective leadership has the potential to ensure that the values enshrined in the Constitution are achieved, as they guide the actions of public officials throughout established systems. By way of definition, DuBrin (2010:3) defines leadership as “the ability to inspire confidence and support among the people who are needed to achieve specific goals”. This definition is important and resonates

with the study in that it is not confined to an organisation, but also encompasses other areas that require the achievement of goals. Furthermore, the definition also touches on one of the key factors that impact on good governance (i.e. a drive towards the achievement of “common goals”).

DuBrin (2010:258) lists nine key roles a leader should play in an organisation. Attention should be drawn to the following key roles:

- Building trust, and Inspire teamwork, and
- Anticipate and influence change.

The above two leadership roles allude to the behaviours expected from the leadership. They also lean towards ethical leadership and practices.

Buckley, Beu, Dwight, Howard, Berkson, Mobbs and Ferris (2001:12) define organisational ethics as that which is focussed on shared value systems that guide, channel, shape, and directs the behaviour of those that are being led, in a productive direction. Furthermore, organisational ethics are deeply concerned with both the moral values and the moral actions of people (Jones, 2007:6).

A mutual observation among contributors to leadership theory is that “ethics” is central to leadership (Ciulla, 2014:8; Piccolo, Greenbaum & Den Hartog, 2010:260). It is therefore essential to note that the behaviour of leaders would have a material impact on good governance and the ethical conduct of the people they lead. Unethical conduct stems from the behaviours and attitudes of leaders (regardless of whether the sector is public or private), where desired behavioural values are not upheld and embodied. If unethical conduct manifests within entities, that could be attributed to deficiencies in leadership, accountability and transparency. The effectiveness and efficiency in the South African public sector can be improved by placing greater emphasis on accountability, transparency and the adherence to the Rule of Law.

An addition to the factors that affect good governance is the **decision-making** process. There are generally differences in the motivations of those that are charged with governance in their decision-making process. The decision-making process in

the private sector is associated with market forces, while that of the public sector is shaped by political considerations (Dillon, Buchanan & Corner, 2010:229). These two approaches affect the speed with which decisions are made and the implementation thereof.

**Transparency**, in the context of this study, refers to the widespread availability of relevant, reliable information about the periodic performance, financial status, investment opportunities, governance, values, and risks associated with the country (Khanna, Palepu & Srinivasan, 2004:485). For both the public and private sector, accountability is a crucial component of ensuring good governance. Accountability empowers independent or external persons to be able to appraise the performance of an entity or country objectively.

Efforts by the government, such as open public administration, habitually, present an array of problems. An example that can be provided in this regard is a poorly designed consultation processes, which can result in additional costs, without improving the quality of decisions (Casalino, Buonocore, Rossignoli & Ricciardi, 2013:1).

A variety of reasons can be provided for government, SOEs and Chapter 9 institutions to be transparent in their dealing with the public. The following four primary reasons are proposed:

- The need to inform the public about laws and decisions and the public's right to be informed, to know their rights and obligations.
- The public's demand for the information needed to ex-ante political control and for ex-post monitoring and evaluation of the public sector (Sorrentino, 2010:52).
- The demand of information in order to participate actively in decision-making processes, and
- The provision of information needed to access government services (Casalino, *et al.*, 2013:2)

It should be noted that transparency is for the benefit of governance and generally to the advantage of organisations. Transparency launches and sustains cooperation,

participation and collaboration amongst all stakeholders, being the public, politicians or regulators, employees, etc.

Equally, **accountability** is associated with transparency because it assigns roles and responsibilities to appropriate levels. According to the Merriam-Webster on-line dictionary (2018), accountability is an obligation of an individual or organisation to accept responsibility and account for its actions. Accountability, therefore, occurs where there is a link between persons and the performance of tasks subjected to another persons' direction (Stapenhurst & O'Brien, 2005:1).

Shrives and Brennan (2015:23) state that the suitability of Corporate Governance systems in different countries is mainly linked to the robustness of their underlying regulatory mechanisms, which thus stems from the **Rule of Law** preferred by that country. In many countries, concerns with Corporate Governance by institutions drive regulatory change. Some changes led to the codifying of the King Report on Corporate Governance into the Companies Act no. 71 of 2018 and institutional funders such as the International Monetary Fund (IMF) imposing Corporate Governance conditions for extending financial assistance to countries, especially after the financial crisis of 2008 (Fox, Gilson & Palia, 2016:2). Additionally, country-specific codes, such as the Cadbury Code in the United Kingdom have been implemented, and in the United States, the Sarbanes-Oxley legislation was introduced after the Enron accounting debacle.

In conclusion, the elements that have been noted in this section as those that affect good governance could also affect good governance – albeit positively. For example, good governance promotes the Rule of Law and inversely, the Rule of Law is a fundamental element of good governance. It is therefore of critical importance for all the causal factors as noted earlier to work in a synchronised manner for good governance to be realised. A deficiency in any of the factors has the potential to collapse good governance.

### **2.2.1 Theoretical framework of corporate governance and state ownership**

According to Mittal, Gupta, and Gupta (2013:150), Corporate Governance has been practised for as long as there have been corporate entities and yet the study of the

subject is less than half a century old. It should be noted though that the first traditional assumption of a structure within a business was criticised. These related to the intentions for the existence of business firms, their confines, and their organisation. Razakov (2015:14) also referred to “The Nature of the Firm”, to have further questioned the same motives of business existence. The criticism brought out a much more robust and thoughtful understanding of the bases and nature of business costs and what induces alternative types of economic organisations. In different industries, more contributions have been made on the motives of the existence of business firms, such as the agency theory by Dalton, Hitt, Certo and Dalton (2007:2), the theory of transaction costs by Young, Tsai, Wang, Liu and Ahlstrom (2014:341), the Williamson’s incomplete contracts theory discussed by Aghion and Holden (2011:182) and the theory of property rights by Gibbons (2005:205). The theory of the firm became the starting point to investigate Corporate Governance and ownership of the contemporary corporation and was further developed by all subsequent theoretical contributions.

There are many arguments postulated for and against the theories outlined above. Chief amongst them is the criticism of the agency theory wherein Bosse and Phillips (2016:276) state that the agency problem is where the principals seek to influence agents in order to economise on these costs. Self-interest mainly consumes all actors within the agency theory and the actors try to maximise their self-interest. This self-interest may thus create misalignment between agents and their principals. It should thus be noted that the concept of Corporate Governance was born out of the agency problem that arose when the ownership of companies became separated from the control thereof and run by agents (Rossouw, Van der Watt & Rossouw, 2002:289).

Hilb (2012:3) has a strong criticism of the agency theory, wherein he highlighted the following failings of the theory:

- The theory assumes that earnings and stocks cannot be manipulated
- The theory primarily or exclusively builds exclusively on extrinsic motivation, and

- The theory takes into account only the needs of top executives and shareholders with no justifiable needs of employees, customers and the environment.

In recent years, the topic of Corporate Governance has gained prominence as a result of a large number of attention grabbing Corporate Governance scandals (Hilb, 2012:1). The main cause of these scandals is the failure of Corporate Governance. South Africa, including its SOEs is not spared from the scandals. Currently, the country is dealing with scandals related to most of its SOEs such as Eskom and Denel, where the executive (i.e. the government as the shareholder) is accused of interfering within these SOEs – a phenomenon termed State Capture.

### **2.2.1.1 Corporate governance in general**

The King Report on Corporate Governance has been the ultimate authority on Corporate Governance in South Africa since the first release, being King I (Rossouw, *et al.*, 2002:296). Many of the principles advocated by the King Report on Corporate Governance (IODSA, 2016:21) found their way in legislation, listing requirements and frameworks carrying out governance reforms within the country. It should be noted that prior to the release of the King IV report (IODSA, 2016), the behaviour of SOEs and Chapter 9 institutions were governed by the protocol on Corporate Governance in the public sector issued by the Department of Public Enterprise in South Africa (DPE, 2002). This document is, however outdated and needs to be updated. At least two King Corporate Governance reports (i.e. King III and King IV) are not incorporated into the document. It should be noted that if the protocol document is not updated, government entities would inconsistently apply the provisions of the 2016 King's Report on Corporate Governance with respect to the following elements, prevalent in the public sector. These are:

- The mandate of the entity,
- The corporate status of the entity,
- The powers of the entity to appoint board members, and
- The borrowing powers of the entity.

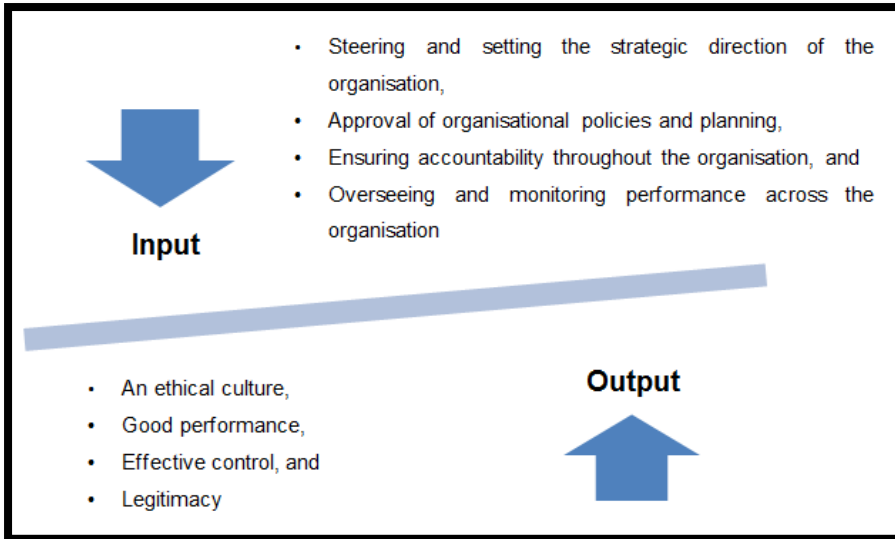
It should be noted that the legal status of the King IV report, as with its predecessor, is of a set of voluntary principles and leading practices. If therefore, there is a conflict between legislation and the King IV report, that legislation or law conflicting with the King IV report must prevail IODSA (2016:35).

It should be noted that the protocol on Corporate Governance clarifies the expectations and the interpretations of the enabling legislations and hybridise that with the principles of the King I and II reports. Therefore, it is unlikely that there will be a contradiction between the protocol and legislation. However, there may be a contradiction between the protocol and Kings III and IV. However, as earlier noted, where there is a contradiction, the law will prevail.

The King IV report on Corporate Governance (IODSA, 2016:40) identifies at least 17 principles that represent the objectives of the drive towards good Corporate Governance. Some of the principles that are relevant to this study are:

- The governing body should lead ethically and effectively (*principle 1*),
- The governing body should serve as the focal point and custodian of Corporate Governance in the organisation (*principle 6*),
- The governing body should ensure that the arrangements for delegation within its own structures promote independent judgement, and assist with balance of power and the effective discharge of duties (*principle 8*),
- The governing body should govern compliance with applicable laws and adopted, non-binding rules, codes and standards in a way that supports the organisation being ethical and a good corporate citizen (*principle 13*).

With regard to the scope of application of the King IV report, the codes of Corporate Governance are concerned with the roles and responsibilities of the governing body and the outcomes that can be derived thereof, as outlined in figure 2.2 below.



**Figure 2.2: Relationship between the effectiveness of the governing body (input) and governance outcomes (output)**

Source: IODSA, 2016:40-41

The roles and responsibilities of the governing body, as recommended by the King IV report, stretch “from” leading ethically and effectively, ensuring the governance of risks in a manner that supports the organisation in setting and achieving its strategic objectives, “to” ensuring that the organisation practices responsible investment in order to create value across organisation (IODSA, 2016:43-73).

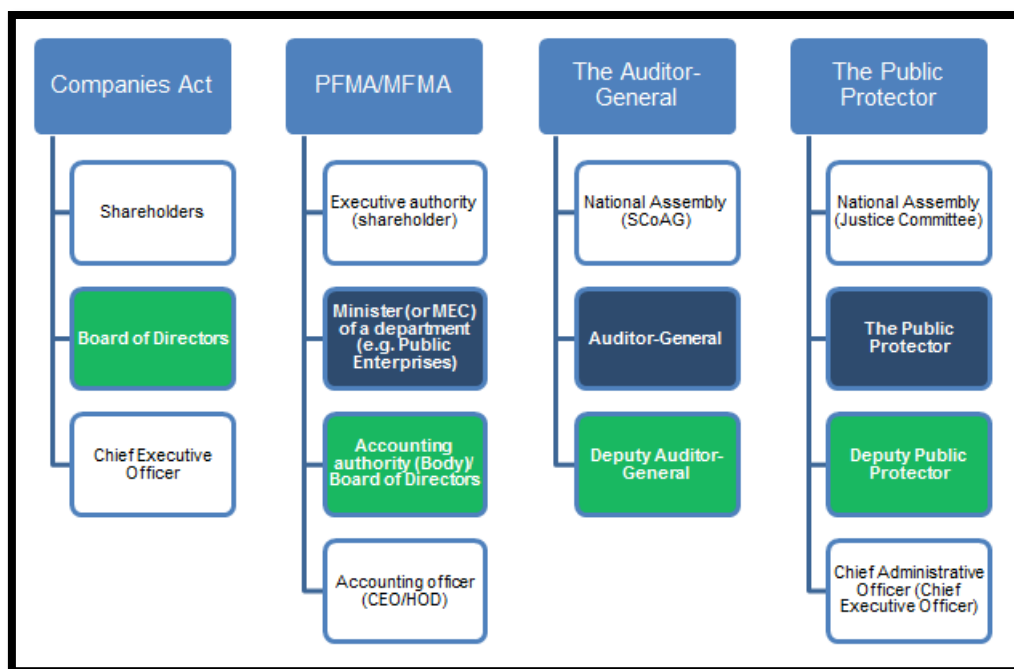
The governing body is defined as the structure that has primary accountability for the governance and performance of the organisation. It includes, amongst others, the board of directors of a company, the accounting authority of an SOE or Chapter 9 institution and a municipal council (IODSA, 2016:12).

In contrast, public sector legislation (including both the PFMA and MFMA) does not identify the governing body within its governance structure. In one examination of the MFMA, the legislation identifies three key role players as well as their roles and responsibilities. These role players are the Minister of Corporative Governance, the Mayoral Committee, the Mayor and the Municipal Manager (MFMA, 2003:52-76). In the context of a municipal entity (for example, the Johannesburg City Parks & Zoo), the entity has a board of directors which will be accountable to the Mayoral

Committee through the Mayoral Committee member for Community Development (IAR-JCPZ, 2016:9).

It is noted that there are differences between the provision of King IV and the MFMA. Where in the context of the King IV report, the governing body (board of directors) is the accountable body - while in the public sector, the accountable body would be a representative of government. In the example of the Johannesburg City Parks & Zoo, referred to earlier, the accountable body would be the Mayoral Committee member for Community Development.

Figure 2.3 below shows a high-level outline of the organisational structures or governance levels that are typically found in the research subjects, compared to that which are commonly found in the private sector. It should be noted that the comparison excludes committees of the board such as the audit, risk and information technology committees. For this study, the levels that extend beyond the Board of Directors are not expanded on.



**Figure 2.3: Accountability comparison matrix**

Source: own

As can be noted from Figure 2.3 organisations that fall under the PFMA/MFMA legislations have at least four layers of accountability and responsibility – ranging from the CEO or Head of Department (HOD) to the Executive Authority, being the shareholder. It should further be noted that a shareholder in the context of government could be a member of the community (a voting citizen), but in this instance, they are represented by the National Assembly of parliament.

Earlier in this study, the causal factors that affect the sustainability of good governance were introduced. One of them was the decision-making process. What can be deduced from Figure 2.3 is that, the larger the management or governance structure, the more complex the decision-making process becomes. It is also affected by factors such as bureaucracy. According to Nutt (2005:289), in the decision-making process, public organisations experience more turbulence, interruptions, recycles and conflict compared to private sector organisations. These characteristics are encountered due to different roles these organisations fulfil in society. There are a variety of classifications widely accepted on the distinguishing factors of these two sectors. Nutt (2005:291) alludes this to environmental, transactional and process factors which account for the strategic decision-making processes within organisations. Environmental factors are ordinarily external to the organisation and include market and political influences amongst others. Public sector strategic decision-making processes intend improving cooperation and collaboration within the different public-sector entities. Furthermore, many key players are provided with an opportunity to suggest alternatives to arrive at a decision. This impacts on the efficiency and effectiveness of decisions.

Mwaura (2007:53) cites the lack of autonomy as one of the elements that impact on the inefficiencies within SOEs. The far-removed accountability lies to those that are charged with governance, the less efficient will the decision-making process be. What complicates the decision-making process further is the principal or agent relationship that led to the formation of the organisation.

In the context of SOEs, poor performance by management and the board of directors is attributable to the existence of multiple agents (Mwaura, 2007:40). Distinct to the private sector, where there is usually a single principal (shareholders) and an agent (directors or executives), SOEs are directed by multiple agents, being the directors

and officials from the government (usually, ministers). As earlier noted, voters who elect public officials, are considered to be the principals of both the board of directors and the State. It is thus noted that inefficiencies on the part of the SOE, its directors and board of directors ascends due to the agents (public officials) who have the powers to appoint board members and issue managerial instructions do not always act in the best interest of the SOE, but in the interest of voters who can vote them out (Mwaura, 2007:40).

Omnipresent ownership structures differentiate public from private sector organisations. In a public entity, numerous persons and organisations (such as, individual voters, civil society, parliament, government pension fund, government bondholders, etc.) have a stake in the entity. This makes autonomy and flexibility within the public sector difficult (Nutt, 2005:294).

Additionally, Razakov (2015:15) notes that the critical areas of Corporate Governance are:

- Ownership research
- Ownership classification system
- Structure research
- Board of directors
- Shareholder activism
- Disclosure audit and internal controls
- Executive pay and the market for corporate control, and
- Stakeholder involvement.

The above key areas are evidence that the subject is a multilevel phenomenon, yet most researchers have taken a single level of analysis approach to the Corporate Governance issues thereby creating a fractional perception. Razakov (2015:15) further argued that applying a multilevel method allows one to embrace the dimensions required to examine the research questions thoroughly.

Razakov (2015:15) concurs with Hitt *et al.* (2007:74) that, to deepen the influence of management research, studies must take an approach that embraces considerations such as the application of different approaches to existing models. By ensuring that there is collaboration across different disciplines and topics to address real-life

problem. It is thus noted that Corporate Governance is indeed a multi-disciplinary subject, which, although it must be embraced holistically, its implementation and roll-out within entities must be done in stages in order to achieve a maximum effect.

There are nonetheless several theorists who contributed immensely to the general understanding of the essential features of Corporate Governance. This was done by means of their theories such as the agency theory, stewardship theory, and the stakeholder theory.

Corporate Governance requires separation of control and ownership in the process of generating wealth for the owners of the organisations. In other words, decision agents do not own the wealth created by their decisions. Razakov (2015:16) further elaborates that the contract structures of all these organisations separate approval and monitoring from the initiation and implementation of the decisions. It is therefore noted that the wealth created by decision agents, is for the benefit of the owners of the organisation. In the context of a commercial entity, the decision agents would be the board of directors (governing body) and the owners of the organisation are the shareholders.

There are three expansive opinions on the debate related to Corporate Governance. These relate to how governance processes affect the performance of organisations, the ability of governance processes to create wealth, and how Corporate Governance rules should be reformed. These expansive opinions are based on the analyses of the finance model, and market myopia in a detailed manner which established a view termed as the social wealth maximising model (Razakov, 2015:17). This third opinion makes several recommendations that would see more flexibility in Corporate Governance practices that would allow for adaptations and changes to suit situational aspects or firm-specific needs.

To enhance the robustness of the agency theory Bosse and Phillips (2016:276) further tested the hypotheses of agency theory. The theorists applied the sociological and psychological methods of governance that depict a man as "individualistic, opportunistic, and self-serving". The study then contrasted these sociological and psychological methods with the stewardship theory that portrays a man as "collectivist, pro-organisational, and trustworthy". In doing so, the study endeavoured

to reconcile the variances between the hypotheses, thereby recommending a model centred on subordinate psychological qualities and the organisation's specific features calling it a "*homo-economicus*" model.

In an attempt to develop an understanding of who bears the agency costs and why, Dalton, *et al.*, (2007:20) investigated the root of agency costs spawned by the presence of debt and external equity in the capital structure and presented a model that incorporates the theories of agency, property, and finance (Razakov, 2015: 16). The model confirmed a link between the agency costs and "separation and control" issue.

### **2.2.1.2 National governance systems**

Many theories such as the law and finance theory, the political theory, the endowment theory, and socio-cultural theory, exists with the power to elucidate on factors that affect the development of national governance systems (Razakov, 2015: 17-18).

A study by Lan and Heracleous (2010:298) contributed immeasurably to the theory of Law and Finance. The researchers evaluated the legal models of Corporate Governance adopted by several national governance systems, based mainly on the prisms of Anglo-Saxon Common law and Civil law traditions. They concluded that managers' efforts to expropriate would be successfully dissuaded by the law as it effectively protects investors.

Finlayson (2012:2) on the other hand, played a tremendous part as far as the political theory of national governance systems is concerned. He mentions that *politics* dictate the decision-making process when establishing the legal framework and financial system of a country, as a response to the claims of various political groups. Razakov (2015:18) further alludes that governmental constraints had an impact on the advancement of Corporate Governance through the conception of large and leading financial institutions that had significant effects on the control exercised by investors over management.

History shows that colonial policies dictated the creation of institutions through implantation and resource extraction strategies. This trend led Beck, Demirguc-Kunt and Levine (2002:140) to describe the *endowment theory*. They argue that nations that have fewer resource endowments are likely to struggle to develop efficient financial institutions. Their findings suggest that other variables such as social and cultural factors hugely influence the creation and development of financial and legal institutions.

The contribution to the theory was further supported by a study conducted by Torche and Valenzuela (2011:191). They concluded that the features of *social and cultural traditions* such as hierarchic organisation of religion and trust have a knock-on effect on the development and quality of institutions. These conclusions were made after undertaking a study on the role of trust and social capital relative to the efficiency of the legal system and financial development. It is therefore noted that social and cultural traditions of an organisation may have an impact on how that organisation embraces Corporate Governance principles as advocated by the King IV report.

### ***2.2.1.3 The state of governance in South African SOEs and Chapter 9 institutions***

Most of the theoretical works done on Corporate Governance refer mainly to developed nations or major western economies. Fewer studies exist on the challenges experienced by SOEs and Chapter 9 institutions in implementing Corporate Governance. It should, however, be noted that some effort has been undertaken through the release of the King IV report, with regard to the inclusion of a sector supplement for SOEs. However, there is still no guidance extended to Chapter 9 institutions in this regard.

For Chapter 9 institutions, the theory published, largely interrogates the role of Chapter 9 institutions as guardians of constitutional democracy. Calland and Pienaar (2016:65) note that the recent controversies in South Africa have focussed attention on the role and the authority of Chapter 9 institutions. Additionally, Borat, *et al.* (2017:7) reported about a systemic betrayal of the South African public by the Zuma administration which has weakened governance within the cabinet and at strategic SOEs. The report notes that the weakening of governance intended to secure control

of the SOEs, by chronically weakening operational structures within those institutions. These trends can be easily traced to business newspapers such as the Business Times and Mail & Guardian. Where for almost a decade, the Gupta family has been accused of taking over the appointment of ministers of the South African government. The appointment of government ministers is the sole responsibility of the president. A South African weekly newspaper, The Sunday Times on its publication of the 1<sup>st</sup> of February 2016, reported that the Guptas have become involved in most scandal involving the president of the country, where they have been accused of having influence over the president and other high-ranking people in the state.

SOEs habitually and traditionally present wrong impressions of governance, as their boards or shareholder representatives (usually Ministers) lack the competence or independence required for good governance. Additionally, in many instances the boards and senior management of SOEs are appointed on political grounds by the government. This action sometimes makes them ineffective (Rossouw, 2005:96). It should further be noted that some state departments and SOEs fail to respond to recommendations made by Chapter 9 institutions, leading to debilitated integrity of the government and its institutions in the eyes of most in the public (Asmal, *et al.*, 2007:xiii). What those who are in government tend to forget is that the function of Chapter 9 institutions is defined in national legislation where it has been indicated that they are part of governance but not part of government. This was confirmed in the court case of the Independent Electoral Commission v Langeberg Municipality (2001) that “*although a Chapter 9 institution is an organ of state as defined in Section 239 of The Constitution, these institutions cannot be said to be a department of an administration within the national sphere of government over which Cabinet exercises authority*”. In other words, and as earlier suggested, Chapter 9 institutions are independent of government institutions and based on their skills and competencies, they are better placed to evaluate the performance of government institutions and provide recommendations for redress.

#### **2.2.1.4 State ownership**

In many economies, including South Africa and particularly in the past three decades, there has been a continued active privatisation of SOEs and other state

assets through public share offerings and direct asset sales (Megginson, 2017:6). However, within the same period, economies such as China, Singapore and Russia have driven a phenomenon known as state capitalism, where strategic enterprises are supported to compete with privately owned enterprises. In this context, there is, therefore, a contradicting fiscal phenomenon experienced throughout the world and more specifically in emerging economies.

From the South African context, the direction in which the government is going, as well as the motivation and objectives of that direction are contained in the National Development Plan (NDP). The primary objective of the plan was to unite the country towards a common goal and programme to achieve prosperity and equity for all (NPC, 2011:16).

The NDP was published in 2011; however, its implementation has not yet commenced at the time of writing this paper or is not cohesive. There have been questions arising from the lack of implementation of the NDP. The questions are directed at the leadership within government, including the Chapter 9 institutions.

Additionally, the failure of government leadership has subsequently, given rise to the debate on the role and position of SOEs in the country's mixed economy and progressive system of democracy. SOEs make an essential contribution to economic development, not only locally, but also regionally and internationally, by sourcing capital equipment, finance and, most importantly, partnerships for development (Fourie, 2014:32). Universally, the public sector is required to be responsive to environmental changes (both internal and external), emanating from government policy, globalisation, public expectations and others (OECD, 2008:52).

The question now arises if the failure could be construed as a failure in governance. Pritchett, Woolcock and Andrews (2012:1) suggest that the adverse performance of governments concerning governance of departments and SOEs manifests at the micro level as a result of the pervasiveness of corruption of officials as well as extensive gaps between adherence to the law and actual practice in regulation. This leans itself to the failure of the state and its enterprises to employ proper corporate decision-making, which in turn is the essence of Corporate Governance. Grossi, Papenfub and Tremblay (2015:277) state that Corporate Governance refers to the

processes or arrangements by which companies are directed and controlled, and these are relevant for all organisational forms. SOEs, as entities that play a vital role in South Africa, have a history of Corporate Governance challenges – both structural and otherwise. Grosman, Okhmatovski and Wright (2015:10) argue the issues surrounding SOEs, noting the challenges ranging from absence of autonomy and inefficient management practices, together with a short supply of skilled human resources and sub-optimal modes of operation which have beset these entities for years. It is thus of critical importance that the performance of SOEs improve in order to reduce poverty and enable the state to achieve its developmental agenda.

It is clearly evident that there are obstacles on the way for the Government to achieve its objectives. It is hypothesised that the public sector is inefficient and ineffective in governing state-owned institutions as opposed to shareholders' stewardship of private entities. Intense debates, on the pros and cons of state ownership of enterprises, have surfaced, inspired by the view that SOEs are inefficient. Mihaiu, Opreana, Cristescu and Pompiliu (2010:133) argue that the objectives pursued by the public and private sectors are usually different. More often, the private sector seeks to obtain economic benefits, showing a reduced concern for social and environmental issues, while the public sector aims to secure social benefits and improve the welfare of its citizens.

It is worth noting that the South African government is making efforts to improve effectiveness and efficiency within the public sector. This is in the form of introducing legislation such as the PFMA and the MFMA in which SOEs are granted greater operational discretion with fixed budgeting limits. The two pieces of legislation aim to provide the national treasury with more significant involvement in the details of expenditure, and SOEs being responsible for managing their programmes within budget (Bester, 2007:80).

The PFMA and MFMA legal frameworks oblige the leadership of organisations to recognise and respond to micro and macro dynamics. The micro-dynamics describe internal processes and controls, and macro-dynamics describe the 'outside world' that can affect the internal processes within a department (Siswana, 2007:30). It is therefore important for the leadership of organisations to enjoy both analytical and conceptual skills so that they can practice critical Corporate Governance principles

such as risk management and financial management to the satisfaction their primary stakeholders.

Siswana (2007:30) further argues that it is vital that executive management comprehends the relationship between public service and its environment. This is therefore an acknowledgement of the dynamic nature of the public-sector environment. Thus, executive management should be able to scrutinise and understand such dynamic environment (macro) because it could affect budgeting and strategic planning (micro environment).

Bevir (2013:4) suggests that the essence of Corporate Governance is the ability of a corporation to employ a proper corporate decision-making process rather than focusing on monitoring managers. Grossi *et al.* (2015:277) state that Corporate Governance is defined as "a set of institutions, i.e. formal and informal constraints on behaviour, determining the capacities of firm stakeholders to control the decisions and cash flows in a given corporation". Diamond and Price (2012:58) observe, however, that due to the decompression of trade barriers, more emphasis should now be placed on the various functions of Corporate Governance, rather than on the institutions.

Grosman *et al.* (2015:9) remark that the emphasis of the debate has shifted to compliance with the ever-evolving set of regulations, because of legislation in general, and the Sarbanes-Oxley Act in the United States of America in particular. Since the inception of the Sarbanes-Oxley Act, Corporate Governance practice has evolved into a legalistic, compliance-based approach. The approach in the United Kingdom has been more strategic and voluntary and has been referred to as the so-called "light touch" approach. This divergence in approach has developed increasingly different trajectories in this aspect. Siswana (2007:24) argues that isolating the environment from matters of governance could make it difficult for the executive management to make organisational decisions that are based on the transformational agenda of government. It is noted that the King IV report (IODSA, 2016:2) appreciates that organisations operate in societal contexts which they affect and by which they are affected. The environment and how organisations treat it is a fundamental concept of the King Code on Corporate Governance.

Ultimately, there is therefore a merit for state ownership of revenue generating entities. An eventuality supported by the OECD on its Guidelines on Corporate Governance of State-Owned Enterprises. In 2014, OECD (2014:21) advised of the rationale for state ownership of revenue generating entities. It noted that the entities should however remain competitive as compared to those in similar industries.

#### **2.2.1.4.1 Rationale for state ownership**

The state establishes and administers the SOEs on behalf of the general public, thus it must judiciously develop objectives that justify state ownership and subject these objectives to frequent reviews. The OECD recommends the following guidelines on Corporate Governance of State-Owned Enterprises (OECD, 2014:25):

- The ultimate purpose of state ownership of enterprises should be to maximise value for society, through an efficient allocation of resources.
- The government should develop an ownership policy. The policy should among other things define the overall rationales for state ownership, the state's role in the governance of SOEs, how the state will implement its ownership policy, and the respective roles and responsibilities of those government offices involved in its implementation.
- The ownership policy should be subject to appropriate procedures of political accountability and disclosed to the general public. The government should review at regular intervals its ownership policy.
- The state should define the rationales for owning individual SOEs and subject these to recurrent review. Any public policy objectives that individual SOEs, or groups of SOEs, are required to achieve should be clearly mandated by the relevant authorities and disclosed.

All SOEs established with a goal to undertake economic business activities, either in its entirety or in combination with public policy objectives would be able to apply these guidelines. However, entities established with a primary purpose of furthering public policy functions are not expected to implement the guidelines, even if they have the legal form of an enterprise.

As earlier noted, Mihaiu *et al.* (2010:133) stated that the “innate feature of SOEs is their inefficiency compared to private firms”. Lufunyo (2013:27) concurs with Mihaiu and cites numerous concerns around cost effectiveness, efficiency, accountability, better performance management and, ultimately, service delivery. The researcher also agrees with these two writes and notes the main root cause of these inefficiencies as lack of accountability and undue pressure bearing from politicians.

Razakov (2015:21-22) identified the debates conditions and summarised them as:

- Market competition, not property rights, is the determinant of enterprise performance.
- State uses SOEs for purposes other than social welfare.
- Regardless of government goals, private firms will be more successful than SOEs in addressing Corporate Governance issues.

Some researchers believe that the absence of competition in doing business will lead to inefficient allocation of resources and adverse performance regardless of ownership (Razakov, 2015:21-23). The argument by these researchers is that competition in the marketplace incentivises organisations for efficient allocation of resources. However, Grosman *et al.* (2015:11) argued against the incentivised market competition as far as SOEs are concerned, citing interference from politicians chasing political agendas as the main culprit causing these inefficiencies. There is some belief that a mixture of competition and possible threats of takeovers or bankruptcy would support the efficiency of SOEs (Razakov, 2015:21).

Another argument is related to the different objectives of nations and their governments which bring out different perspectives on SOEs. Some governments behave with self-interest and some with social-welfare-maximising behaviour. Social welfare maximising governments believe that markets are prone to failure. Therefore, the best mitigating solution is state ownership of SOEs. However, Grossi, *et al.* (2015:277) pointed out the challenge that comes with the assumption of market failure which is the difficulty in quantifying the costs and benefits of social goals. Razakov (2015:22) further argued that where there is political interest in an SOE, the politicians will seek to maximise their political agenda at the expense of the interest of the SOE. These political interests may lead to inefficiencies within SOEs.

#### **2.2.1.4.2 Causes of SOE inefficiencies**

In their study, Grosman *et al.* (2015:11) further alluded that the main cause of SOEs' inefficiencies is the self-interest behaviour of politicians who tend to politicise the behaviour of SOEs. The main studies on the subject of SOEs inefficiencies have been based on the theory of separation of ownership and control. Razakov (2015: 22) discusses the differences in Corporate Governance of private and public enterprises pointing out that it could be analysed from the perspectives.

In the agency theory, state ownership (state as the principal) was identified by scholars such as Jensen and Meckling (1976:311) and Fama (1980:291) as the origin of the difference in Corporate Governance of SOEs. It is noted that government ownership of SOEs could be the main culprit for the poor performance of SOEs and the source of challenges that hampers SOEs Corporate Governance transformation as opposed to private enterprises. It is therefore crucial that transformation is prioritised and implemented in this area to improve performance relative to private enterprises in the same industry. However, to this day no government has been able to confront the challenge fully. The OECD Guidelines on Corporate Governance of State-Owned Enterprises gives advice on how the state should act as an informed and active owner.

#### **2.2.1.4.3 The state's role as an owner**

The state as an owner should take an active role in the governance of SOEs ensuring transparency and accountability, with a high level of competence and efficiency. The OECD provides the following guidelines for the state as an owner (OECD, 2015:20-21):

- Governments should simplify and standardise the legal forms under which SOEs operate. Their operational practices should follow commonly accepted corporate norms.
- The government should allow SOEs full operational autonomy to achieve their defined objectives and refrain from intervening in SOE management. The government as a shareholder should avoid redefining SOE objectives in a non-transparent manner.

- The State should let SOE boards exercise their responsibilities and should respect their independence.
- The exercise of ownership rights should be clearly identified within the state administration. The exercise of ownership rights should be centralised in a single ownership entity, or, if this is not possible, carried out by a coordinating body. This "ownership entity" should have the capacity and competencies to carry out its duties effectively.
- The ownership entity should be held accountable to the relevant representative bodies and have clearly defined relationships with relevant public bodies, including the state supreme audit institutions.
- The State should act as an informed and active owner and should exercise its ownership rights according to the legal structure of each enterprise. Its prime responsibilities include:
  - Being represented at the general shareholders' meetings and effectively exercising voting rights.
  - Establishing well-structured, merit-based and transparent board nomination processes in fully- or majority-owned SOEs, actively participating in the nomination of all SOEs' boards and contributing to board diversity.
  - Setting and monitoring the implementation of broad mandates and objectives for SOEs, including financial targets, capital structure objectives and risk tolerance levels.
  - Setting up reporting systems that allow the ownership entity to regularly monitor, audit and assess SOE performance, and oversee and monitor their compliance with applicable Corporate Governance standards.
  - Developing a disclosure policy for SOEs that identifies what information should be publicly disclosed, the appropriate channels for disclosure, and mechanisms for ensuring quality of information.
  - When appropriate and permitted by the legal system and the state's level of ownership, maintaining continuous dialogue with external auditors and specific state control organs.
  - Establishing a clear remuneration policy for SOE boards that fosters the long- and medium-term interest of the enterprise and can attract and motivate qualified professionals.

In the presence of weak performance compared to private enterprises, practitioners and scholars alike have advocated for the privatisation of SOEs as a solution. Cuervo-Cazurra, Inkpen, Musacchio and Ramaswamy (2014:921) suggest that, because of the inefficiencies experienced by the public sector, SOEs should rather be privatised. However, privatisation has also not achieved the anticipated results, especially when there is political resistance or SOE candidates for privatisation are not attractive for investments. This is largely as a result of a legacy of mismanagement (Razakov, 2015:16-23). Transformation in the area of Corporate Governance for SOEs is the only solution that is seen to more likely bring efficiency and profitability that is comparable to the performance of private enterprises.

#### **2.2.1.4.4 Procedure on corporate governance in South African SOEs**

As noted earlier in Chapter 1, the support for public sector governance is provided for in the Constitution. Section 40 of the Constitution sets the tone of governance by outlining the different spheres of government of the Republic. These are the national, provincial and local spheres of government. The section notes these different spheres as "distinctive, interdependent and interrelated". Section 41(1)(c) further states that all spheres of government "must provide effective, transparent, accountable and coherent government for the Republic as a whole".

To remain effective, and for the benefit of its citizenry, according to Fombad (2015:1202), the government must create a hierarchical system that enables the coordination of transactions that are triggered by public interest and organised by the government in the form of legal acts to exercise control over citizens and private organisations. It is for this reason that some legislations have been created to enable this exercise of control, the PFMA is one such Act. In South Africa, the starting point for defining a national or provincial SOE is the PFMA. The PFMA lists public entities, and their subsidiaries in Schedules 2 and 3 (PFMA, 1999:8).

The challenge for every government, South Africa included, is to build a platform for growth consisting of proper infrastructure and logistics, competitive input prices, skills, technology and innovation and partnerships, efficient regulation and effective government offerings. In this endeavour, SOEs are critical mechanisms to assist

governments to achieve economic growth and service delivery, but also to reduce a country's tax burden (Fourie, 2014:30).

In any economy, SOEs are vital to the growth of that economy and in the development of the country's strategic sectors, especially energy, transport, telecommunications and manufacturing. The importance of SOEs is observed in how they have propelled the Chinese and Singaporean economies. These two countries are noted to have supported their SOEs to compete with multi-national entities. The PFMA lists approximately 300 public organisations consisting of nine constitutional institutions, 21 major public entities, 153 national public entities, 26 national government business enterprises, 72 provincial public entities, and 18 provincial government business enterprises. Constitutional institutions are listed as Schedule 1 organisations, major public entities as Schedule 2 organisations, and the remainder as Schedule 3 organisations. Some large SOEs involved in infrastructure development programmes have been separated from their policy-making ministries and now resort under the Department of Public Enterprises (DPE) as the SOE shareholding ministry, where the Minister of Public Enterprises represents the interests of government as the shareholder, while the relevant policy ministry focuses on policy-related issues (Fourie, 2014:34).

The current dispensation presents governance challenges, and the interrelatedness of government's strategic objectives has already ensured the development of mutually inclusive policies pertaining to the governance of the SOEs. The departments concerned include the Department of Energy, the Department of Transport, the Department of Communications and the Department of Minerals and Energy (DPE 2012(b):2). The DPE provides shareholder oversight to the nine SOEs that are governed within departmental programmes. The DPE is currently concerned with structuring a developmental portfolio focusing on efficiency and financial stability within the SOE environment to promote South Africa's national capacity regarding identified areas of manufacture and infrastructure development. Performance measurement in this regard remains imperative. Identified key performance indicators relating to an increase in the economic value of a particular portfolio, as well as its outputs aimed towards developmental initiatives, are vital tools towards obtaining the desirable outcomes (DPE, 2012:8).

The South African government is investing in large-scale projects relating to water, transport, electricity, telecommunications and infrastructure at an estimated cost of approximately R3,2 trillion by 2020 (DPE, 2012: 3). SOEs are central to building industrial capacity to strengthen South Africa's economy to meet the demand for global goods and services. They are, by their very nature, ideally positioned to fulfil the country's developmental objectives through public-private facilitation roles, coordination and social interaction. The building of collaborative relationships with essential customer communities can also ensure higher levels of investment and operational efficiency, especially concerning incorporating communities in development plans and projects (DPE, 2012:2).

Budgetary soundness, strength and expansion of income assets are critical objectives inside organisations. However, they may demonstrate hard to accomplish if an undertaking is characterised by a particular crucial long-extend plan which expects it to expand financial results, rather than concentrating on net revenues as it were.

The emphasis on the role and function of SOEs in South Africa may be contextualised in the predetermined direction taken in the government's policy relating to the state's pursuit of market goals to structure the developmental state as the structure of national well-being. Government investment in infrastructure can contribute effectively to increased investment by users of that infrastructure. Additionally, investment can contribute towards opportunities for suppliers of equipment and support other governmental activities.

SOEs are seen as catalysts for growth and development due to their dual role in the economy. By their very nature, SOEs creates a demand for goods and services and are encouraged to support entities that will positively impact the national economy (DPE, 2012:2). As infrastructure development and strategic positioning are critical objectives of the South African government, the four largest SOEs within the DPE portfolio, namely Eskom, Transnet, SAA and Denel, are analysed in this study.

The growth of the economy is, however, stifled by the rampant corruption that is reported across many SOEs and other government entities such as the South African Revenue Services (SARS). Reference is made to KPMG's report on a rogue

SARS unit, which has damaged South Africa's image. In the interview, Rossouw (2017:2) noted that the South African economy is paying a heavy cost for the mismanagement of the country's resources, as a consequence of depraved and careless management.

#### **2.2.1.4.5 Protocol on Corporate Governance for public enterprises**

The government through the national treasury established the procedure "Protocol" on Corporate Governance for all public enterprises. The protocol is comparable to the King I and II reports on Corporate Governance and is a code of good practice that is aligned to the PFMA that all public entities and SOEs must comply with. The principles embedded in the procedures ensure the independence of SOEs with the main purpose to provide guidelines on the relationship between the executive authority (minister) and the SOEs. As Dawood (2014:8-9) reports, the guiding principles of the Protocol are as follows:

- “The executive authority should exercise policy control over SOEs consistent with the executive authority's accountability to parliament and the public:
  - The executive authority should set clear objectives for SOEs.
  - Any social service obligations that the SOE undertakes should generally be specified through a shareholder compact.
  - The directors of SOEs should ensure the development of business strategies, adherence to policies and procedures, and the monitoring of management in implementation”.

The protocol was developed in line with the principles of the PFMA, laying out the foundation for the relationship between the executive authority and the board of SOEs. The relationship should be governed by a shareholder compact where the executive authority should closely monitor the degree to which the board sets the performance targets, attains the goals, and take remedial actions when necessary. Dawood (2014:9-10) noted some challenges that would possibly arise as a result of the separation of ownership and control and the possibility of incoherencies between the principles laid out in the procedures and the policy and the regulatory regiments as discussed below.

#### **2.2.1.4.6 Policy and regulatory regiments for SOEs in South Africa**

Dawood (2014:9-10) further reported the following in his case study report on SOEs and quasi-fiscal activities in South Africa:

- A policy applicable to an SOE is approved by the cabinet and directed through the appropriate policy department to the applicable executive authority. Both the policy department and the executive authority must ensure that necessary structures and processes are in place at the SOE to implement the policy. The policy department's role would then be to monitor, review, and oversee service delivery of the SOE to ensure that it is consistent with the goals of the policy.
- The challenge is often that the Treasury regulations state that the SOE must submit quarterly reports to the executive authority for monitoring and oversight purposes, but quite often the policy department is not the executive authority. Moreover, policy directives may affect the viability of the SOE, which affects the financial performance and shareholding by the executive authority.
- The government's role as regulator is more concerned with the industry in which the SOE operates. The regulator would be responsible for pricing and for consumer and industry interest. While the regulator is a government agency, the regulator and SOE can and should be in an independent and arms-length relationship, which is unlike the relationship between the executive authority and the policy department, which play a more direct oversight role. For example, the National Energy Regulator of South Africa (NERSA) approves annual electricity tariff increases. Eskom is currently requesting a 16 percent increase in electricity tariffs for the next five years. Before NERSA can formally approve any tariffs, it must go through a public participation process. NERSA has requested comments from the public on Eskom's application and is organizing public hearings in each province to take feedback from communities.

The challenge observed from the above prescripts lies in the problem of separation of ownership and control as noted by scholars such as Finlayson (2012:2) and Razakov (2015:18). The problem is noted to be the separation of the policy department of the SOEs from the executive authority. The likely implication of the above separation is the impact of the policy directives on the performance of the

SOEs. In the example of NERSA earlier referred to, if NERSA does not approve the 16 percent tariff increase requested by Eskom, Eskom may fail to provide adequate services to its customers or fail to re-capitalise itself to meet future electricity demands, which will ultimately have an impact on its performance.

#### **2.2.1.4.7 State-Owned Enterprises in the marketplace**

The role of government in the economy, in relation to the scope, effectiveness, and tools of intervention in the economy is an ongoing subject of discussion. Economic crisis experienced in the past decade fortify the importance of the state in the management of the economy. State intervention in the marketplace goes as far back as the Great Depression, where after the World War, governments needed to intervene to drive reconstruction projects related to the destruction caused by the war (Kwiatkowski & Augustynowicz, 2015:40).

Shatkin (2014:119) summaries how the Singaporean state has used direct involvement in the marketplace as a tool to gain access to revenue, achieve urban redevelopment objectives and exert influence over society and the economy. The Singaporean and Chinese governments' involvement in their local and global economies has been termed state capitalism - wherein some of their entities are listed in the Fortune 500 annual list published by Fortune magazine.

Corporations in the marketplace, including SOEs, establish a network of corporate relations. Any entity associated with such a corporation's business operations will participate in its corporate relations and exert direct influence on its activities and also be affected to a certain level by the actions of the corporation. This relates to the corporation's management, shareholders, employees, suppliers, consumers, investors or potential funders and state agents such as the receiver of revenue. All such participants of corporate relations carry a certain level of interest in the affairs of the organisation. The location of the participant in the structure of relations will fundamentally define the content of the interest. Razakov (2015:25-30) identified specific facets that hold a focal point in the corporate relations of a characteristic firm. These are "setting company objectives, accessing company information, distributing financial assets of a company, and acquiring decision-making rights". However, it is common knowledge that the participants in the corporate relations are

not necessarily located on the same level in the structure of the relations. Corporate conflicts are likely to ensue from the divergences of interests of the majority and minority shareholders and company management thereby obstructing company development and capital resources.

It is, however, the location of the state in the system of corporate relations that causes uncertainties. Razakov (2015:23) alludes that... " concerning the company, the shares of which are owned by the state, it acts as a participant of external relations, as a regulator of the national economy, and on the other hand as one of the owners of the capital and acts as a subject of corporate relations". The presence of the state as the owner of shares and as a regulator of the national economy tends to stifle competition. The absence of competition in doing business will lead to inefficient allocation of resources and adverse performance regardless of ownership. The argument by scholars is that competition in the market-place incentivises organisations for efficient allocation of resources. However, Grosman, *et al.* (2015:11) argued against the incentivised market competition as far as SOEs are concerned, citing interference from politicians chasing political agendas as the main culprit causing such inefficiencies.

However, the OECD Guidelines on Corporate Governance of State-Owned Enterprises give advice on the role of the legal and regulatory framework for SOEs in the market place as follows (OECD, 2015:22-23):

- Consistent with the rationale for state ownership, the legal and regulatory framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities. This entails that there should be a distinct separation between the legislative role of the state and its ownership of enterprises. This is demonstrated by how the state has structured itself to maintain independence.
- Additionally, in the event that an SOE or a department responsible for oversight combines economic activities and public policy objectives, transparency and disclosure regarding their cost and revenue structures must be maintained, allowing for attribution to main activity areas.

It is noted from the above that governance is central to the functioning of the government and SOEs. A concerted effort is made to ensure that there is a separation between the legislative mandate of the state and its delivery system.

In this section, there is also an acknowledgement that inefficiencies, due to political interests and bureaucratic tendencies, could be experienced thus hampering governance principles of transparency and accountability amongst others.

### **2.3 ROLE OF ETHICS IN CORPORATE GOVERNANCE**

Corporate Governance is made necessary by the differences between the interests of those who have effective control (management) over organisations and the interest of the suppliers (shareholders) of finance (capital). The OECD states this as the "principal-agent problem". The problem originates from the split between ownership and control. The OECD believes that amid problems and challenges of monitoring their interests, providers of capital that do not have control of influence over the entities they fund will find it risky and costly to safeguard their investments from the inappropriate behaviours of management and major shareholders.

The appetite to serve one's interest, encouraged André Petersen of the Chartered Institute of Purchasing and Supply to put it in summary during a breakfast presentation on the 5th February 2013 as follows: *"Business is a 'dog eat dog' world. The business environment is a lonely and hostile world. Either you trample on others, or you yourself will be trampled upon. To consider the interests of others would be a fatal mistake. It would leave you vulnerable and open to attack from any of the other dogs in the pack. The implication for ethics is clear. There is no room for ethics in business, because business demands that you should fight for your interests"*, (Petersen, 2013:8). Petersen's statement thus contradicts the core principles of good governance, which fiercely drive ethical tenets (core values) and considerations for sustainability.

Although there are conflicting interests of business stakeholders, Corporate Governance is guided by principles and core values. Effective governance policies and frameworks should be identified with an integrated reporting system making individuals and boards look at things from various angles when addressing all

organisational issues relating to strategy, processes, technology and people (Desai 2012:61-65).

A further review of literature brings forward the intuition of ethics in relation to Corporate Governance. Literature shows that Corporate Governance is a code of ethics. Petersen (2013:8) rightly describes ethics as a set of principles of right conduct or a system of moral principles. He further defines it as the “principles, norms and standards that guide an organisation’s conduct of its activities, internal relations and interactions with external stakeholders”. The definition shows that a code of ethics is neither rules nor regulation, but guidelines seen to direct corporations towards accountability and transparency.

Bose (2004:40) suggests that ethics is all encompassing and applies from the governing body level through to suppliers of the entity. Ethical conduct must therefore touch all individuals involved in the value chain that makes up what the entity is all about. Ethics is therefore important to a corporation as it create a solid foundation for Corporate Governance, ensuring business sustainability and good corporate reputation. A corporate framework of ethical principles builds on a culture of trust, transparency, competence and integrity thus playing a key part in preventing fraud which further becomes a shared responsibility amongst the stakeholders of a corporation. Desai (2012:61-65) contributes to the definition of business ethics by defining it as a process for integrating values such as honesty, trust, transparency and fairness into its policies, practices and decision making. He further alludes that business ethics is inherently linked with Corporate Governance. Organisations that make use of ethical practices will in return anticipate being treated ethically. Such anticipations and subsequent espousal of ethical practices generate chain effects concerning endorsing ethical practices. This definition is aligned to the definition in the King IV report. In that the major theme of the King report is on ethical leadership. Ethical leadership will in turn ensure that ethical behaviour permeates throughout the entity.

Governing bodies and executives of SOEs and Chapter 9 institutions are responsible for strategic and operational governance and ethical codes and practices. However, there are varied views on the effectiveness of such governance codes and frameworks in improving practices within these state entities.

A culture of greed and self-interest, particularly within the public sector, impairs the ability of entities to achieve their goals and objectives, as well as their adherence to sound governance principles. Greed and self-interest manifest into corruption, therefore, combatting corruption and instilling an environment of integrity is the greatest challenge for governance in South Africa (McGregor, 2014:57). Corruption vitally conflicts with accountability and the Rule of Law because it undermines governance, diminishes public trust in the credibility of the state, and threatens the ethics of government and society (Torche & Valenzuela, 2011:192). It is therefore unlikely for the country to achieve its developmental agenda (earlier referred to) if lack of ethical principles continues to be perpetuated.

## **2.4 LEADERSHIP AND CORPORATE GOVERNANCE**

One of the major challenges facing South Africa and some developing nations of the world is the need for the creation of steady political and socio-economic environments for policies and programmes to be successfully implemented. The issue of getting the right leadership to fight corruption and drive good governance has been a recurring decimal in South Africa and Africa in general (Anazodo, Igbokwe-Ibeto & Nkah, 2015:42).

Kehinde, Imhonopi and Evbuoma (2016:38) state that leadership is very important for the provision of better governance. Leadership improves societal development, as it is a process of influencing the activities of an organised or structured group towards the setting and attainment of goals. From an economic point of view, institutional governance (which will encompass SOEs and Chapter 9 institutions – which are the subject of this study), necessitates rules and guidelines aimed at promoting growth in order to alleviate poverty and achieve the country's objectives of "a better life for all". To achieve this, there is a desperate need for leadership.

ACCA (2010:4-6) conducted a survey on leadership and governance and made recommendations that the government and other social partners such as the private sector and civil society must ensure that governing body members and senior executives have a mutual appreciation of Corporate Governance principles and ethical standards. It therefore implies that the government and the social partners ought to have mechanisms to drive governance and ethical standards, as well as

mechanisms to evaluate whether governing body members and senior executives adhere to the set principles and standards. Properly implemented Corporate Governance and ethical principles and standards enable effective leadership. Conversely, effective leadership ensures roles and responsibilities for strategic and operational governance and ethical practices are clear to both governing body members and employees. Good and effective leadership and governance are pivotal to the success of any organisation, sector or economy. Effective leadership ensures getting things right with a noteworthy bearing on economic growth and performance of enterprises, sectors and economies (ACCA, 2010:4-6). The centrality of Corporate Governance in managing organisations has led to the crossroads many firms have reached as a result of loss of trust in their leadership (Teen, 2012:1).

Effective leadership and Corporate Governance are viewed from different perspectives by different organisational stakeholders (Teen, 2012:1). For example, employees would see good governance as a feeling of appreciative to committing to achieving the mission and strategic aims of the entity they work for. This entails the appreciation that these employees understand what is required of them and they will perform per expected in exchange, for fair treatment, support and career development. They would also expect to be regularly consulted for matters that concern them and the work environment.

Governance can be categorised into two paradigms. The first is Corporate Governance dealing with compliance with legal duties and financial solvency issues of the organisation and the Corporate Governance codes. The second is leadership governance focussing on steering the organisation in the right direction while strategizing the quality assurance matters. For a state entity to be successful, both corporate and leadership governance are required to be effective. However, this argument does not suggest that the two areas should be viewed in separation from each other (Teen, 2012:1). The two paradigms are closely related with overlaps and the requirement to not side-line stakeholders' inputs in governance.

According to DuBrin (2010:3), leadership could be defined as the ability to inspire confidence and support among the people who are needed to achieve organisational goals. This entails that a leader should be able to lay out a vision for his subjects and

rally them towards its attainment by way of instructing and motivating them directing them towards goals.

According to Isaacs (2016:3), leadership is a social stimulus relevant to the achievement of organisational goals. A manager's ability to persuade or influence a subordinate to freely achieve organisational goals is a crucial characteristic in the success of any organisation. However, it is worth noting that being a manager in an organisation does not equate to being a leader. Some theorists argue that leadership is a quality an individual is born with while others believe it can be transferred through coaching, training or mentoring. Nevertheless, there are many aspects that make one a successful leader with several elements making up successful leadership.

Kehinde *et al.*, (2016:27) questions the assumptions the manager makes about the behaviour of his or her subordinates. Kehinde *et al.*, (2016:27) questions the relationship between assumptions and the types of power a manager may use. Here, the profile of leadership considers the idea that being a leader is not a single role but a group of important roles that managers play in the life of an organisation.

For this study, the demonstration of virtuous leadership by all stakeholders within a governance structure (i.e. management, governing body members and the government) is paramount because, exemplary leadership has a positive effect of governance and depraved governance is continually being considered on one of the primary root causes of all evil within our societies (Anazodo *et al.*, 2015:46).

In South Africa and many other developing states, civil society is increasingly participating in programmes that shape the direction of the country. Therefore, politically, good governance will involve the formation of a representative and an accountable form of government. It is therefore essential to note that good governance necessitates a robust and pluralistic civil society.

A pluralistic society is one where there is freedom of expression and association, a society that is diverse in terms of beliefs and needs, amongst others (Borgida, Federico & Sullivan, 2009:168). Good governance requires good institutions and a set of rules governing the actions of individuals and organisations and the

negotiation of differences between them, and good governance requires the primacy of the Rule of Law, maintained through an impartial and effective legal system and good governance requires a high degree of transparency and accountability in public and corporate processes (Anazodo *et al.*, 2015:46).

## **2.5 CONCLUSION**

SOEs and Chapter 9 institutions are vital to the growth of an economy and in the development of every country's strategic sectors. It is expected that SOEs are governed in a flexible manner for them to be able to compete with the private sector for resources. Additionally, there is a need for strong constitutional institutions (Chapter 9s) and Section 181 of the Constitution advocates for institutions that will strengthen the country's constitutional democracy.

The argument is related to the different objectives of a nation and their governments which bring out different perspectives on SOEs. Some governments behave with self-interest and some with social-welfare-maximising behaviour. Social welfare maximising governments believe that markets are prone to failure. Therefore, the best mitigating solution is state ownership of SOEs. However, state ownership is thought to be stifling competition and flexibility in SOEs.

Some scholars believe that the absence of competition in doing business will lead to inefficient allocation of resources and bad performance regardless of ownership (Razakov, 2015:21-23). The argument by these researchers is that competition in the market place incentivises organisations for efficient allocation of resources. Other scholars, such as Curristine *et al.* (2007:15) believe that SOEs need to attract capital in order to achieve its objective of service deliver to its people. To achieve its developmental agenda, government, through SOEs and Chapter 9 institutions needs to demonstrate effective leadership. Kehinde *et al.* (2016:38) states that leadership is very important for the provision of better governance. Leadership improves societal development and influences the activities of organised formations and groups towards the attainment of goals. The researcher thus notes through literature review that there is a strong relationship between an effective leadership and good governance.

The ethical behaviour of leadership, is a foundation of Corporate Governance (IODSA, 2016:5) and has the potential to influence both negatively and positively, the ethical culture of an organisation. Consequently, organisations leadership have the obligation to define a set of principles of right conduct or a system of moral principles that they would prefer for their organisations (Petersen, 2013:8).

Through a protocol on Corporate Governance, the South African Treasury (and by extension, the South African government), has tried to improve the governance of SOEs – by providing a set of guidelines on the relationship between the executive authority and the SOEs (Dawood, 2014:8-9). However, this protocol is outdated as it has not incorporated changes introduced by King IV.

### **2.5.1 Lessons learnt**

In the literature reviewed, the researcher sought to understand the causal factors of good Corporate Governance. The causal factors being adherence to the Rule of Law, leadership, accountability, transparency among others. The protocol on Corporate Governance, as alluded to earlier, seeks to clarify the roles and responsibilities of the different stakeholders in SOEs and Chapter 9 institutions. However, the conflicting objectives of these two sets of entities (i.e. SOEs vs. government) present challenges due to the agency theory nature of the entities as well as the decision-making processes involved therein. During the literature review, an accountability matrix (Figure 2.2) was developed, which contrasts the organisational structures or governance levels of private sector entities to those of public sector entities. It is noted that in the private sector the decision-making process is shorter as compared to the public sector. The shortened decision-making process may be as a result of the organisational structures observed therein. It is also noted that bureaucracy in the public sector is necessary as it ensures adherence to the rules and regulations set-up to direct the representatives of the citizens of a country (Spahr, 2015:1). This is as a result of the internal controls implemented to ensure that decisions made are for the benefit of the public.

Bureaucratic processes embody rationalization of transactions and events. Bureaucratic processes present a more predictable and systematic means to realize organisational objectives (Roth & Sonnert, 2010:386). The predictability being

referred to is important to SOEs and Chapter 9 institutions, due to their size and geographic spread. It should however be noted that bureaucracy also has the ability to create inefficiencies within a system. The inefficiencies within a system are caused by anti-bureaucracy. Consequently, a distinction needs to be drawn between bureaucracy and anti-bureaucracy. Bozeman (1993:283) defines anti-bureaucracy as organisational red tape, which is a specific dysfunction of bureaucracy. It refers to a compliance burden as a result of the rules, regulations, and procedures that remain in force with no functional object.

Mwaura (2007:53) cites lack of autonomy as one of the elements that impact on inefficiencies within SOEs. According to Peters (2001:14), where there is an attempt to make government entities efficient and effective, the outcomes are usually negative. This is due to the fact that public sector entities are not meant to be quasi-autonomous organisations. Quasi-autonomous organisations advance their own interests rather than the interest of the public.

The recent controversies in South Africa necessitated the review of literature on the role of Chapter 9 institutions. Calland and Pienaar (2016:67) note that Chapter 9 institutions are the guardians of constitutional democracy. They are a system of checks and balances provided largely by the Constitution of South Africa to supporting constitutional democracy. These institutions evaluate the performance of public entities, with respect to elements such as financial performance, adherence to laws, and the achievement of objectives (amongst others). A review of these elements ensures that there is accountability and transparency from the entities reviewed.

Chapter 9 institutions are not spared from governance failures. In his report, Asmal *et al.* (2007:15) found that internal tensions have been experienced in most of the Chapter 9 institutions. They further note that this is often the result of the absence of clear lines of authority between the members of the institution, its head and the secretariat. These have in turn impacted on the efficiency and effectiveness of the institutions. What is paramount, is financial independence from the state – especially for the Public Protector.

Lastly, literature confirms that there are inefficiencies in SOEs and notes causes of the inefficiencies. Grosman *et al.* (2015:11) cite self-interest behaviour of politicians as the major cause. Literature alludes to the drive by politicians to preserve their positions at the expense of good Corporate Governance and in the interest of SOEs and Chapter 9 institutions.

## 2.6 CHAPTER SUMMARY

In its quest to deliver services to its people, the South African government established State Owned Entities (SOEs). These are entities whose characteristics include operating within a commercial environment with a profit motive and government being the sole or major shareholder.

This study focussed on the objectives SOEs seek to achieve and how governance is enabling or inhibiting them. SOEs are governed by a wide range of legislation and statutory regulations. This includes the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA), the Municipal Finance Management Act 56 of 2003 (MFMA) and the Constitution of the Republic of South Africa, 1996. The requirements laid out in the legislation referred to are governance imperatives and as such may not be in line with Corporate Governance principles as contained in the King Report on Corporate Governance (IODSA, 2016).

In the literature review, the origin of Corporate Governance and its objectives were determined and its theoretical basis outlined. Additionally, the literature on the development of national government systems was analysed in order to evaluate how they contributed towards the development of Corporate Governance as well as the conflict they experienced between their roles as shareholders and another as policy setters.

It has been noted that failure in governance is more prevalent in public than in the private sector. The literature on the causes of inefficiencies in SOEs was reviewed to identify the challenges that these entities are experiencing which inevitably impact on their ability to achieve their objectives. Lastly, a literature review was undertaken on the role of ethics in Corporate Governance as well as that of leadership. With reference to the previous chapter (i.e. Chapter 1), these two are some of the causal factors noted as impacting on good governance within entities.

Chapter 9 institutions are expected to be the guardians of the constitution and fulfil their roles as set out in The Constitution. However, governance failures also impact these institutions. However, through the literature review, the researcher notes that the failure is as a result of how these institutions are funded.

On the literature review, it was noted that SOEs are vital to the growth of an economy and the development of strategic sectors of the country. These entities compete with similar entities that are in the private sector and other foreign government entities for resources, largely capital. It is therefore of critical importance that their governance practices are found to be sound in order to attract capital at favourable terms. Lastly, there is a continuous debate on the performance of SOEs on the subject of governance, which gives the proponents of privatisation of SOEs ammunition to advance their case.

## CHAPTER 3

### RESEARCH METHODOLOGY AND EMPIRICAL STUDY

#### 3.1 INTRODUCTION

This chapter addresses the motivation for the research method. Additionally, the chapter discusses the research design, population, sample and data collection tools and research limitations (if any).

This research topic follows on many others that have been undertaken by scholars with the sole intention of contributing towards the body of knowledge, as well as solve the research problems identified. Generally, “research” provides a method of seeking and attaining answers within the bounds set by scientific techniques. Research methods afford one knowledge and skills needed to solve problems and meet challenges in a fast-paced decision-making environment (Blumberg, Cooper & Schindler, 2008:4). Research is a process that involves obtaining scientific knowledge through various objective methods and procedures (Welman *et al.*, 2006:2). The inclusion of the words "objective methods", the authors were emphasising that there should be valid and relevant facts that are undeniable.

As earlier noted in Chapter 1, the objective of this study was to identify challenges to implement King IV report in Chapter 9 and public-sector institutions. The research was limited to the twelve (12) institutions outlined in Section 1.6.1. This encompasses entities listed in schedules 2 and 3 of the PFMA and Chapter 9 of the Constitution. Therefore, the basis for this chapter is to give a comprehensive explanation of the following research elements:

**Table 3.1: Research Elements**

i. Choice of research design.	ii. Research methodology
iii. Research design for the current study.	iv. Reliability of the data collection instrument
v. Validity of the data collection instrument.	vi. Population and sample
vii. Data analysis	viii. Ethical considerations

### **3.2 RESEARCH DESIGN**

Research design constitutes the blueprint for the collection, measurement and analysis of data. It is the plan and structure of investigation so conceived as to obtain answers to research questions (Blumberg *et al.*, 2008:195). The focus of a research design is based more on turning a research question and objectives into a research project. It considers research strategies, choices and time horizons. Thus, the choice of research needs to be explored and a detailed time plan outlined (Saunders, Lewis, & Thornhill, 2009:160).

Data collection methods for responding to the research question are classified as either qualitative or quantitative methods (Saunders *et al.*, 2009:482). The distinction is mainly based on the kind of information used to study a phenomenon (Blumberg *et al.*, 2008:191). The choice of method is used to create an understanding of what is essential to enable an analysis of data collected meaningfully. Qualitative measures use non-numerical data and may include focus groups and personal interviews. Quantitative measures use numerical assessments such as questionnaires (Buglear, 2015:1).

This research is exploratory. An exploratory study is a valuable means of finding out what is happening; it seeks new insights, asks questions and assesses phenomena in a new light (Robson, 2002:59). The research approach for the study involves a quantitative approach. The quantitative approach holds that research must be limited to what we can observe and measure objectively, that is, that which exists independently of the feelings and opinions of individuals. It explains the causes of

objectively observable and measurable behaviour. The term objective implies that people other than the researcher should agree on what is observed, such as the score that the observation should register on a measuring instrument (Welman *et al.*, 2006:6). On the other hand, a qualitative method is predominantly used as a synonym for any data collection technique or data analysis procedure that generates or uses numerical data (Saunders *et al.*, 2009:151).

The quantitative method of research is possibly less the belligerent of the two research methods, as it is relatively associated with the classical scientific paradigm. Areas in which a qualitative method can be used include the following:

- Where people's experiences, circumstances, attitudes affect their needs, and or
- Where different perspectives need an understanding.

Equally, the following characteristics of quantitative research are more commonly accepted (Babbie, 2010:23):

- There is a clearly defined research question to which objective answers are sought
- Data is in the form of numbers and can be statistically tested
- Research outcomes are based on larger sample sizes that are representative of the population
- All aspects of the study are carefully designed before data is collected, and
- Questionnaires are usually used to collect numerical data.

Following careful consideration of the different approaches and as earlier alluded to in Sub-section 1.8.5, a quantitative method was decided on. The method enabled the researcher to use numeral data collected, uncover trends in opinions as well as in thoughts of the respondents. The approach helped the researcher to meet the exploratory nature of the research study. On a foundational basis, and as documented in Chapter 2 of this study, literature emanating from sources such as journals, theses, dissertations, books and articles was reviewed to enable the achievement of the desired outcomes of the research.

A quantitative research method was found to be appropriate for this study, as it enables an organised and realistic analysis of observable occurrences through statistical techniques. Additionally, according to Welman, *et al.* (2006:7) the method has built up an extensive arsenal of checks and balances which is useful to avoid unjustified conclusions.

It is noted that other research methods, such as the mixed method or qualitative method would have enabled the researcher to probe respondents on the research topic. However, due to the lack of availability of some individuals to participate in interviews, a quantitative approach was agreed to. The researcher is content with the approach settled on, as it was relatively free from bias and data was evaluated objectively.

### **3.3 PRIMARY DATA**

The data collected for the research study was primary data. Primary data is original data collected by the researcher for the purposes of his or her study at hand (Welman *et al.*, 2006:149).

Primary data was used in this study as the problem under investigation is topical or current and secondary data may be outdated. Due to time constraints and practical considerations, a survey questionnaire was completed and used and responses collected electronically. Furthermore, open-ended questions were developed, and participants questioned to enable the researcher to answer the research question and meet the research objectives. The survey questionnaires were completed from the impressions relating to the research topic. Most of the questions were modelled on a Likert Scale, with the participants having to consider various options as they responded to statements at hand.

It was noted that it is impractical and uneconomical to encompass all the members of the population in a research project (Welman, *et al.*, 2006:55). Therefore, a randomised sample of participants from the population was taken and to preserve the reliability of the data, questionnaires were self-administered by the respondents. Wherein, the participants completed the questionnaires in the absence of the researcher. Babbie (2010:16) notes that this is the most common form of

administration of questionnaires. The responses were then sent back to the researcher. Although the sample size of 12 institutions may be considered small, seeing that the population size is 225 institutions, the sample is relative. Furthermore, within each of the institutions sampled, at least four individuals were contacted to respond to the questionnaire. This translated to a total sample of 48 respondents. However, only 39 responses on the questionnaires were received, translating into a response rate of 82%.

It can be noted that the sample is adequately representative. This is due to a response rate of over 80%, drawn from the targeted individuals qualified to provide responses. Furthermore, participants were representative of individuals from all genders and race groups within the research subjects. Welman, *et al.* (2006:55) states that the word representative implies that the sample has the exact properties in the exact same proportions as the population from which it was drawn, but in smaller numbers. Additionally, Fincham (2008:1) notes that a response rate of 80% is statistically significant to draw conclusions upon.

### **3.4 POPULATION OF RELEVANCE**

The target population for the research study were individuals participating in or responsible for the institutions' governance practices and processes. The individuals consisted of Directors-Generals, Corporate Secretariats, Compliance Officers, Risk Management personnel. These individuals were found to be relevant for the study. Therefore, the minimum estimated population size (N) for the study was estimated to be 210 people (based on the average staff establishment of 21 people, employed across the functional areas referred to above (i.e. Directors-Generals, Corporate Secretariats, Compliance Officers, Risk Management personnel).

A population is defined as the full set of cases from which a sample is taken (Saunders *et al.*, 2009:212). Bless and Higson-Smith (2004:79) on the other hand state that a population is the complete set of events, people, or things to which research findings are to be applied. Additionally, it should be noted that a population is the sum of all the cases that meet the research's definition of the unit of analysis.

### 3.5 SAMPLING METHOD AND SIZE

A sample is a segment of the population that is selected for investigation – it is a subset of the population (Bryman & Bell, 2010:182). For the research study, the sample selected was a non-probability sampling method, made up of people who are most conveniently available (Saunders *et al.*, 2009:233).

In analysing a sample, the research must be able to infer conclusions representative of the population. However, it is at times not practical to survey each unit of the population due to the size and extent of the numbers, as well as the resources that may be needed to undertake the exercise. For the researcher to make the said inferences about the population, the researcher must determine appropriate characteristics of the unit of analysis. Furthermore, an appropriate sample and its size are influenced by the purpose of conducting the research.

This study dictates that conveniently accessible units are the ones noted in 0 above (i.e. Directors-Generals, Corporate Secretariats, Compliance Officers or Risk Managers of the selected Chapter 9 institutions and SOEs) – which were chosen non-randomly. Therefore, the sample is made up of 48 individuals out of an estimated 225 (population).

As noted in Section 3.3 above, the response rate for the study was calculated at 82% (39/48 respondents). Fincham (2008:2) alludes to phenomena called a non-response bias. He states that a non-response bias of 20% on a convenient sample could be devastating to a research study. In this study a non-response bias is calculated at just of 19% (9/48). It is noted that this value is closer to the 20% suggested by Fincham. A test of reliability and validity was undertaken by the researcher as referred to in Section 3.8 below. Based on the outcome of the test, the researcher is satisfied with the sample taken and the responses thereto.

Furthermore, the researcher notes that the research subjects (particularly those that fall under the category of SOEs) are experiencing public scrutiny as a result of the scandals that have besieged the country. The research topic, therefore may not have been one the research subjected would have been keen on responding to. This therefore would have been the primary reasons for the 19% non-response bias as

earlier alluded to. Furthermore, due to the roles and responsibilities some of the targeted individuals fulfil in their organisations, non-response was expected.

It is for the above reasons that the researcher is satisfied with the sample selected as well as the responses received thereto.

### **3.6 THE QUESTIONNAIRE**

The survey questionnaire consisted of 3 parts, being Sections A, B and C. Section A deals with biographical information, Section B addresses general information about the implementation of Corporate Governance frameworks and Section C deals with challenges with the implementation of the king code on Corporate Governance. The full questionnaire can be found in Annexure A.

### **3.7 PILOT STUDY**

After the development of a measuring instrument, it is beneficial to test it out before its administration to a sample – this testing process is called a pilot study. A pilot study is administered to a limited number of subjects from the same population as that for which the final project is intended (Welman *et al.*, 2006: 148).

The pilot study is meant to evaluate the adequacy of the research design and the instruments to be used for data collection. The piloting of the instrument is necessary to guide the researcher on whether the use of questionnaires will be appropriate or not. Consequently, a pilot study was performed to validate the questionnaire. The document was circulated to 2 corporate secretariats working in the SOEs and Chapter 9 institutions for review and feedback.

The pilot study revealed some flaws in question 1 of Section B, question 2 and 7 of Section C. Consequently, based on the feedback provided, the questionnaire was amended prior to dissemination to the respondents. Listed on Table 3.1 are the observations made during the pilot study.

**Table 3.2: Observations by respondents during the pilot study**

Question	Section	Issue	Resolution
1	B	The respondent suggested that most organisations will have governance frameworks, albeit those may not be adequate. The respondent suggested that the questionnaire must acknowledge that eventuality.	An additional question, question 1 was added to the questionnaire.
2	C	The respondent notes that some organisations will not have the factors listed in question 2 existing within their environment.	An additional option “none of the above” was added into the question.
7	C	The respondent suggested that where organisations do not have any gaps/ challenges with the implementation of the King Code on Corporate Governance, they would not necessarily want to do anything to ensure alignment.	An additional option “not applicable” was added to accommodate those organisations with acceptable governance practices.

### 3.8 RELIABILITY AND VALIDITY OF DATA

Reliability is concerned with the findings of the research and relates to the credibility of the findings (Welman *et al.*, 2006:145). Validity is the extent to which the research findings accurately represent what is happening in the situation (Saunders *et al.*, 2009:157). Other scholars define reliability as “the extent to which test scores are accurate, consistent and stable, over different forms of the same instrument or occasions of data collecting” (Wagner, Kawulich & Garner, 2012:80).

In checking the reliability of the research instrument, the researcher performed a reliability test using Cronbach’s Alpha. Cronbach’s Alpha is a measure of the internal consistency of a test or scale. It is expressed as a number between 0 and 1 (Tavakol & Dennick, 2011:53). Internal consistency defines the level at which all questions in

a test, measure comparable impression. It is associated with the mutual similarity of the questions within the test.

For the quality of the test instrument, the researcher deemed it important to evaluate the reliability of the data supplied by respondents.

**Table 3.3: Cronbach's alpha generalisability theory**

Cronbach's Alpha	Internal Consistency
$\alpha = 0.9$	Excellent (High – Stakes testing)
$0.7 = \alpha < 0.9$	Good (low – Stakes testing)
$0.6 = \alpha < 0.7$	Acceptable
$0.5 = \alpha < 0.6$	Poor
$\alpha < 0.5$	Unacceptable

**Source:** (Manerikar and Manerikar, 2015:117)

Based on the above calculation, as reflected in Figure 3.1, the Cronbach's alpha equals to 0.796. In plotting the outcome against the generalisation test in Table 3.2, the measurement instrument is found to be good and can therefore be relied upon. Furthermore, since the outcome of the test shows an output that is greater than 0.70, it supports the test instrument's validity.

<b>Case Processing Summary</b>			
		N	%
Cases	Valid	39	100.0
	Excluded	0	.0
	Total	39	100.0
<b>Reliability Statistics</b>			
Cronbach's Alpha	Cronbach's Alpha Based on Standardized Items	N of Items	
.796	.824	14	

Figure 3.1: Cronbach alpha test outcomes

### 3.9 DATA ANALYSIS

The analysis of the data collected through statistical techniques enables the researcher to explore variables as well as their effect, relationship, and patterns of involvement within the population (Welman *et al.*, 2006:211). It was, therefore, necessary for the researcher to understand the type of data involved before an analysis was made. Musvoto and Gouws (2010:427) make a distinction between 3 types of data, namely:

- i. Nominal
- ii. Ordinal, and
- iii. Interval.

Nominal data is one where it is not possible to define categories numerically or to rank. With this type of data, it is advisable to just count the number of occurrences in each group of a variable (Saunders *et al.*, 2009:418). Nominal data is used where different categories can be “labelled” for example, gender characteristics classification, man or woman. Ordinal data is a more precise form of categorical data (Saunders, *et al.*, 2009:418). Ordinal data can be ordered, with the following being examples (a) strongly agree, (b) agree, (c) neither agree nor disagree, (d) disagree and (e) strongly disagree. Interval data (also known as numerical data) has values that can be measured or counted numerically as quantities (Saunders *et al.*, 2009: 418). Interval data is used where the interval between 2 points or classification can be determined, for example, a classification made on age.

The data put together for the research was both ordinal and nominal data. The responses collected (data) were then inputted in both an Excel tool and SPSS for analysis. The data was sorted to group questions according to appropriate tools under the test and analysed as such.

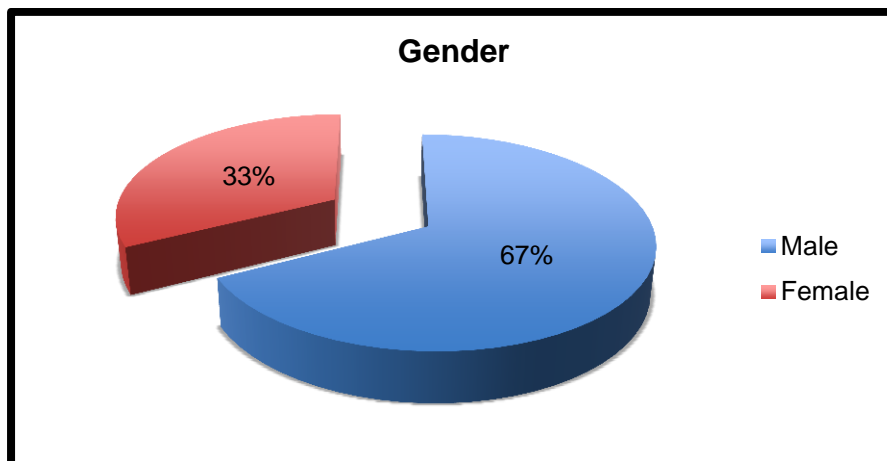
### 3.10 EMPIRICAL RESULTS AND ANALYSIS

#### 3.10.1 Section A: Respondents' biographical data

For the purpose of this study, biographical information relates to the gender, population group, age, educational qualification, role in the research subject and the current position of the respondent. This statistical data aided the researcher in evaluating if the information had any effect on the research outcomes. The analysis of data is presented using tables, figures, and graphs or histograms.

##### 3.10.1.1 Gender

A total of 48 individuals were approached to complete the questionnaire. All were employed or fulfilling some governance role. In certain instances, questionnaires were forwarded (by the targeted respondent) to a colleague working within the entity to complete the document. It should be noted that follow-ups were made to those that had not completed the questionnaire by the deadline initially agreed on. These follow-ups resulted in a total of 39 responses, yielding a response rate of 82% on the questionnaires sent out.



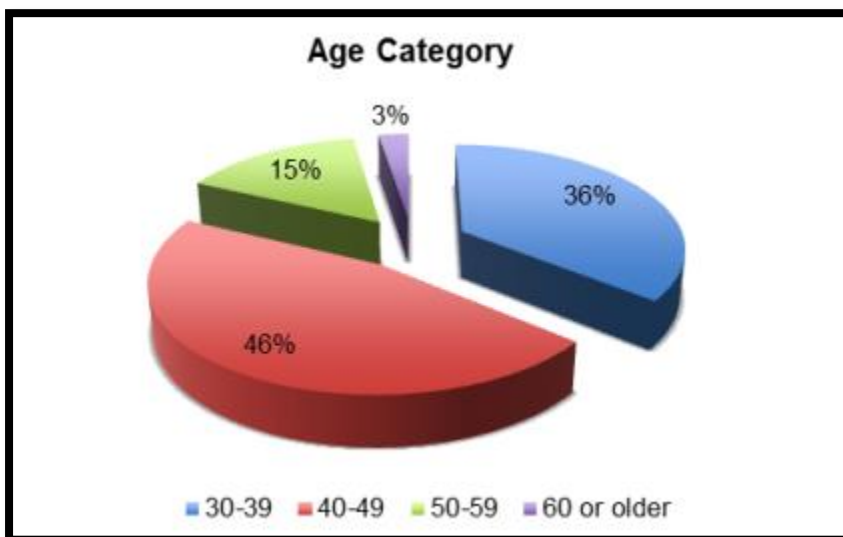
**Figure 3.2: Gender of research participants**

Consequently, 67% of the respondents were male, while 33% were female (Figure 3.2). This indicates that the majority of persons fulfilling or supporting governance functions is predominantly male.

The gender proportion is inconsistent with the demographics presented in the country's Community Survey by Stats SA (2016:6), where the total population reflects that there are more women than men – including economically active persons. Additionally, most of the entities surveyed have gender proportions of more women than men. For example, with the AGSA, its workforce profile by gender reflects that women represent 55% of the workforce, while 45% is represented by men (AGSA, 2017:63).

### 3.10.1.2 Age category

Most of the participants, constituting 46% are between the ages of 40 and 49, and the least number of participants between ages 60 years or older at 3% (Figure 3.3).



**Figure 3.3: Age category of participants**

In view of the research subject of Corporate Governance, the researcher interprets the age distribution of the participants to demonstrate that most are older and therefore, potentially have a good working knowledge of the subject. In analysing the least number of participants within the age group of 60 years or older, indications are that these individuals are oversight structure members, sitting in the boards or audit committees of the research subjects.

### 3.10.1.3 Race group or ethnicity

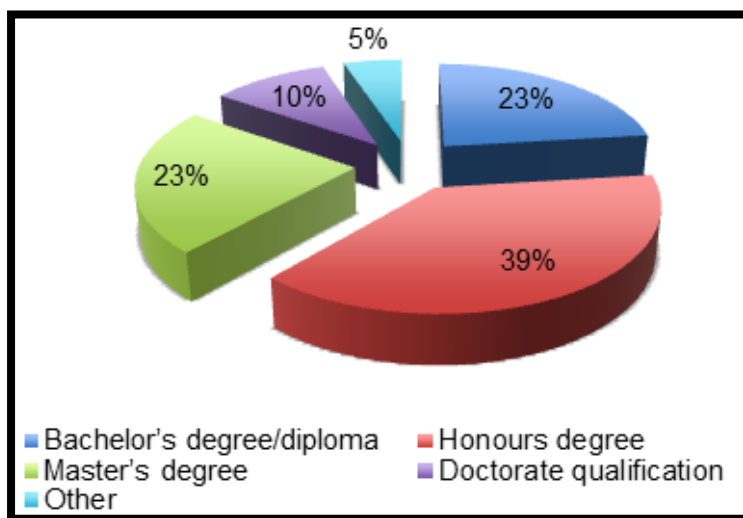
Table 3.3 reveals that 49% of the participants are black or of African origin, and 21% are Indian, with White and Coloured represented by a total of 30% of respondents. The researcher notes that the role of Corporate Secretariat is predominantly held by individuals of Indian origin and almost all the white persons hold senior positions (i.e. Director-General and member of the oversight structure level).

**Table 3.4: Frequency Table – Race Group**

Population Group	Frequency	Percentage (%)
Black	19	49%
Coloured	6	15%
Indian	8	21%
White	6	15%
Total	39	100%

### 3.10.1.4 Education level

Almost all the respondents have some educational qualification with the majority at 62% (Figure 3.5) having a Bachelor's degree or diploma or an honours degree. With this level of education, the researcher is of the view that there was an appropriate understanding of the questionnaire and the questions contained therein.

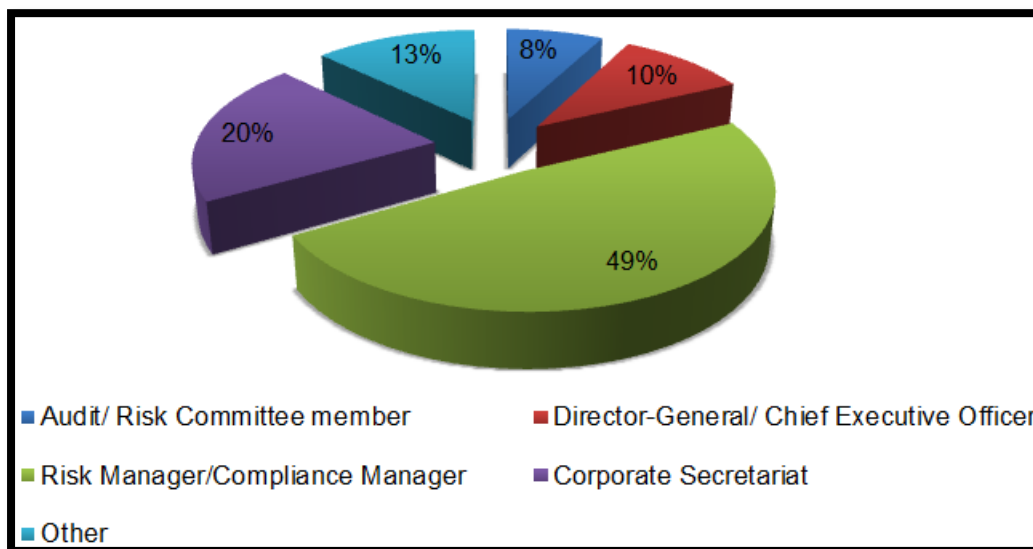


**Figure 3.4: Education level**

It should be noted that in two instances, the participants asked for clarity on one of the questions from the researcher. It is therefore worth noting that, if there was ambiguity on the questions, the respondent would have sought for clarity from the researcher

### 3.10.1.5 Current job role of respondents

A significant number of respondents, at 49%, fulfil the roles of either Risk Manager or Compliance Manager at the research unit (Figure 3.6), while 20% of respondents are Corporate Secretariats. To get perspectives from individuals that are not responsible for operations, audit or risk committee members were also approached through the research subjects, where at least 13% of respondents represented by this category.



**Figure 3.5: Current job level**

The majorities of respondents work in risk or compliance management and are therefore directly involved with operationalising the Corporate Governance framework. In this case, the results are the opinions of people with hands-on experience in as far as implementation of the Corporate Governance framework is concerned.

The advantage of having such a majority of responses from the managers is that, although boards have the accountability for overall oversight of the Corporate Governance process, the management of an organisation has a responsibility for

operationalising the policies and procedures through which governance is conducted. In developing an effective governance operating model, “the board is responsible for understanding and for advising management on the processes through which governance occurs within the organisation and is accountable for the results of those processes (Deloitte, 2013:1). Management is responsible for the governance processes, their workings and for their results”. Thus, the study is therefore satisfied with the quality and calibre of respondents to the questionnaires.

### **3.10.2 Section B: Information about the implementation of a governance framework**

This section presents the consolidated outcomes of the research questionnaires. In analysing responses, the researcher followed a descriptive statistical analysis approach to classify and summarise the responses. This is a method endorsed by (Crowder, Kimber, Smith. & Sweeting, 2000:37). This analysis was done to provide an outline, as well as an impression of the information collected.

The information gathered from the respondents is condensed in percentage format and analysis provided thereon. However, where appropriate and where statistical calculations such as the mean, standard deviation tests are meaningful. These are included on the analysis, as well as the test for reliability of data utilizing Cronbach’s Alpha.

#### ***3.10.2.1 Adoption of a Corporate Governance framework (i.e. a structured manner in which decisions are made)***

On a question of whether the research subject has adopted a Corporate Governance framework, all respondents agreed or strongly agreed that their organisations adopted a Corporate Governance framework (Table 3.4). Such a unanimous response implies that in general, SOEs and Chapter 9 institutions have governance frameworks in place despite whether it is appropriately implemented or not. Therefore, the assumption is that governance processes are in place to enable appropriate decision-making. This implies that these entities should be continuously improving their performance while meeting governance obligations and compliance with legislative requirements. In reflecting on the definition of governance as noted in

Chapter 2 of this study, Corporate Governance is a system by which companies are directed and controlled' (IODSA, 2009:1). This then implies that where there is a management and or organisational structure, there would be some form of Corporate Governance, as these structures would enable the entities to be directed and controlled.

**Table 3.5: Responses to Section B, Questions 1 (Implementation of governance framework)**

		Five-point scale						
Scale legends:		Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree		
Implementation of a governance framework and the alignment to King IV								
No.	Statement	1 %	2 %	3 %	4 %	5 %	Mean	Standard Deviation
1	My organisation has adopted a corporate governance framework (i.e. a structure manner in which decisions are made).	12	88	0	0	0	1.872	0.3387

Table 3.4 demonstrates the descriptive statistics for question 1. The mean for the data is 1.872 and the standard deviation is 0.3387. The standard deviation, a measure of the variance measure, affords us with a signal of how far responses vary from the mean. The outcome of the calculation shows that the responses are closer to one another as the number is closer to a "0".

**3.10.2.2 Organisation's Corporate Governance framework alignment with the King Code on Corporate Governance (King IV report).**

About 54% of the respondents agreed or strongly agreed that their organisation's governance framework is aligned to the King IV Code on Corporate Governance while 38% disagreed or strongly disagreed and the other 8% did not know if there is an alignment or not.

Rigorous principles of Corporate Governance are the basis for the integrity of an organisation, and King IV (IODSA, 2016) recommends the main features of Corporate Governance from an international standards perspective. Such principles are vital in developing the reputation of an organisation devoted to superior performances and honesty. In their report, Iskander and Chamlou (2000:7) state that "Corporate Governance facilitates fairness, accountability, responsibility and transparency across organisations". It is thus of concern that at least 46% of respondents did not agree or know whether their governance frameworks align to the King IV report. This may, therefore, imply that more work needs to be done to reinforced governance frameworks and policies, reaffirmed governance roles, establish and clearly outlined the responsibilities of relevant committees and strengthened the independence of structures set up to support the oversight functions.

It is important to note that proper governance remains central in the public sector as it is in the private sector because investors would not be interested in putting their money in institutions where it would not be secured. Therefore, good Corporate Governance and its elements should be observed within the public sector – as its absence has the potential of hampering economic growth and the administrative system of governance. Siswana (2007:181) points out that poor governance manifest itself when the relevant systems or structures do not function or do not exist. Conversely, good governance is found where those systems or structures function as intended.

The outcome of the questionnaire is an exciting observation which is contrary to theory reviewed. The theory states that the public sector is inefficient and ineffective in governing SOEs and Chapter 9 institutions as opposed to shareholders' stewardship of private entities. The inefficiency in the public sector is blamed on the objectives pursued. Mihaiu *et al.* (2010: 133) argue that the objectives pursued by the public and private sectors are usually different. More often, the private sector seeks to obtain economic benefits, showing a reduced concern for social and environmental issues. While the public sector aims to obtain social benefits and improve the welfare of its citizens.

**Table 3.6: Responses to Section B, Questions 2 (Implementation of governance framework)**

		Five-point scale						
Scale legends:		Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree		
Implementation of a governance framework and the alignment to King IV								
No.	Statement	1 %	2 %	3 %	4 %	5 %	Mean	Standard Deviation
2	My organisation's corporate governance framework aligns to the King Code on Corporate Governance (King IV).	10	44	8	33	5	2.795	1.1738

Table 3.5 demonstrates the descriptive statistics for question 2. The mean for the data is 2.795 and the standard deviation is 1.1738. It is noted that the standard deviation is deviating far away from the mean or alternatively, from “0”. This implies that there was a high degree of disagreement by respondents on how they view their organisations. Indications are that the disagreement between respondents is almost 50/50 in relation to the alignment of their Corporate Governance frameworks to the King IV report.

### **3.10.2.3 Ease of implementation or adoption of the King Code on Corporate Governance in the organisation.**

Only 31% of the respondents agreed and strongly agreed that implementing the King Code on Corporate Governance in their organisations was easy. About 43% disagreed and strongly disagreed that it was easy with the other 26% saying that they did not know if it was easy or not. Most of the respondents are risk or compliance managers directly involved with operationalising the Corporate Governance framework. These managers are responsible for the day to day management of their organisations. They provide sound inputs, advice and recommendations on the organisational structure, objectives, strategies, plans and policies to enable their oversight structures or governing boards to make informed decisions. Several deductions could be made from these responses.

The 26% of respondents who did not know whether it was easy to implement the King Code on Corporate Governance in their organisations could be a signal of lack of awareness, the absence of sound governance frameworks in their organisations or negligence. The complexity of governance frameworks in these organisations may be one hindrance for these employees to understand the implementation processes.

Such complexities and the vast number of linked processes and other tools in these institutions may signal a need for a Corporate Governance operational model. It may be that the components of such a model exist within the organisations, but such components may not have been linked, rationalised, and structured to give the consistent guidance and motivations that officials, risk managers, and business unit leaders need. A Corporate Governance operational model has the possibility of addressing this requirement and therefore improves the institution's leadership capacity to implement and operationalise the Corporate Governance framework.

Those who found the implementation to be easy could signal the effectiveness of the risk management system including the various policies, strategies, processes, procedures and tools for identifying, measuring, monitoring, managing and reporting of all material risks to which their organisations are exposed.

For respondents who found the implementation difficult, it could signal the absence of clear guidelines, ineffective policies, strategies, processes, procedures and tools for implementing the governance framework. The culture in these organisations might not be allowing for the development of concrete, practical recommendations for action-oriented policies and strategies.

**Table 3.7: Responses to Section B, Questions 3 (Implementation of governance framework)**

		Five-point scale						
Scale legends:		Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree		
Implementation of a governance framework and the alignment to King IV								
No.	Statement	1 %	2 %	3 %	4 %	5 %	Mean	Standard Deviation
3	Implementing/ adopting the King Code on Corporate Governance in my organisation was easy.	8	23	26	23	20	3.256	1.2506

Table 3.6 demonstrates the descriptive statistics for question 3. The mean for the data is 3.256 and the standard deviation is 1.2506. Similar to the previous question, respondents were not in agreement on how they had experienced the implementation of the King IV report within their organisations, as demonstrated by a mean which is far from “0”.

#### **3.10.2.4 Organisation's executives and or board's familiarity with the King Code on Corporate Governance and its principles.**

The respondents overwhelmingly (90%) agreed or strongly agreed that their organisations' executives and or oversight structures are familiar with the King Code on Corporate Governance and its principles. The board of directors has the full and effective control with ultimate accountability of an organisation's performance and supported by senior management and various committees. It is imperative that the governing board, as the custodian of the Corporate Governance framework, is well versed with the code on Corporate Governance and its principles to ensure sound decision-making and general oversight of the performance of the organisation.

It may also be important to note that a correlation can be drawn between the relationship the executives have with the oversight structures and the oversight structure's familiarity with the King Code on Corporate Governance. Where there is a good relationship, there is better familiarity by the oversight structure.

As can be noted in Table 3.7 below, the difference of margin of the standard deviation is small at 0.5620, which is almost similar to that of questions 4. This indicates that the related research outcomes are closer to the mean of respondents who either agree or strongly agree with the statements laid out.

**Table 3.8: Responses to Section B, Questions 4 (Implementation of governance framework)**

		Five-point scale						
Scale legends:		Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree		
Implementation of a governance framework and the alignment to King IV								
No.	Statement	1 %	2 %	3 %	4 %	5 %	Mean	Standard Deviation
4	My organisation's executives and/ boards is familiar with the King Code on corporate governance and its principles.	13	77	8	2	0	2.000	0.5620

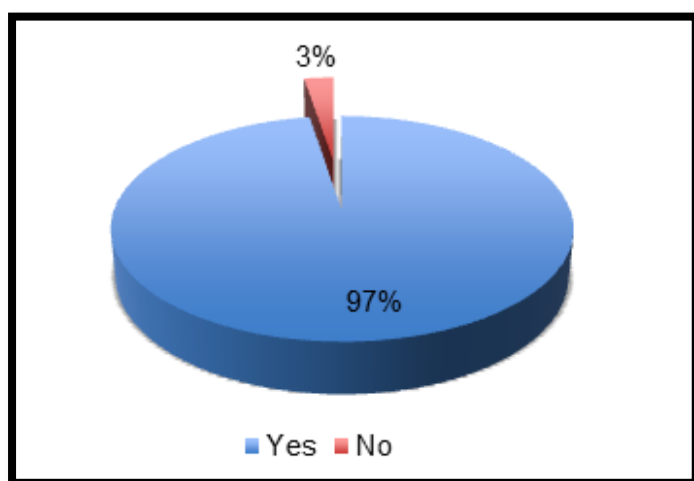
In the analysis of this section, of concern are responses to questions 2 and 3 wherein there were disparaging views on the statements laid out. Significantly, on the statement “*Implementing or adopting the King Code on Corporate Governance in my organisation was easy*”, the researcher expected that the research subject would have not found it easy to implement the provisions of the King Code on Corporate Governance.

The responses on question 3 may also very well imply that the respondents were not certain whether they have all the relevant information in order to make an informed decision or to adequately respond to the question.

The standard deviation for statement “*My organisation's Corporate Governance framework aligns to the King Code on Corporate Governance (King IV)*” is 1.1738, which demonstrates a wide distribution of responses – almost 50/50. It is also however, interesting to note that SOEs that are governed under the Companies Act, 71 of 2008 have their Corporate Governance frameworks aligned to the King IV report.

### 3.10.2.5 Existence of oversight committee (board of directors, audit committee, risk committee, etc.)

As demonstrated in Figure 3.6 below, almost all respondents (97%) agree that their organisations have oversight committees. Even though the governing boards have full and effective control with final accountability of organisational performance, senior management and various committees provide the supporting role to the board. The various committees typically have clearly defined terms of reference, staffed with suitably qualified members, supported by senior management and have access to expert advice whenever needed.



**Figure 3.6: The existence of oversight committees**

It is interesting to note that respondents that count amongst the 3% have responded to the statement “*rate the relationship between your organisation's executives and the board of directors (or any relevant oversight structure) within your organisation*” as average- which implies that there are oversight structures within their respective entities.

It, therefore, seems that most SOEs and Chapter 9 institutions have oversight committees, which would effectively help the board in handling many issues instead of utilising external experts for training in specific areas. The findings of the study suggest that most organisations have committees that can deal with particular tasks as delegated by the board, thus allowing the boards to spend time efficiently.

However, these results still show a compelling case as theoretical views argue that South African SOEs are inefficient.

**3.10.2.6 Rating of the relationship between organisation's executives and the board of directors (or any relevant oversight structure) within the organisation.**

About 18% of respondents said that there is either a poor or fair relationship between the research subject's executives and the board of directors. A poor relationship between these two groupings may be an indication of challenges faced by these SOEs in implementing the governance framework. The executive is supposed to provide comprehensive information, advice, support and recommendations on the structure, objectives, strategies, plans and policies that would enable the board to exercise their oversight responsibilities.

**Table 3.9: Responses to Section B, Questions 6 (Implementation of governance framework)**

		Six-point scale							
Scale legends:		Poor	Fair	Average	Good	Excellent	N/A		
Implementation of a governance framework and the alignment to King IV									
No.	Statement	1 %	2 %	3 %	4 %	5 %	6 %	Mean	Standard Deviation
6	Relationship between your organisation's executives and the board of directors.	3	15	36	36	10	0	3.359	0.9594

A relationship an oversight structure has with its executive is paramount for Corporate Governance generally. Therefore, a correlation calculation was undertaken to determine the relationship between the different variable as specified in the questions 1 to 6 of Section B (of the questionnaire – refer to Annexure A for the complete questionnaire).

**Table 3.10: Correlation calculations (relationship between questions)**

		Q1	Q2	Q3	Q4	Q5	Q6
Q1	Pearson Correlation	1	.395*	.390*	.553**	.201	.227
	Sig. (2-tailed)		.013	.014	.000	.220	.165
	N	39	39	39	39	39	39
Q2	Pearson Correlation	.395*	1	.808**	.319*	.825**	.817**
	Sig. (2-tailed)	.013		.000	.048	.000	.000
	N	39	39	39	39	39	39
Q3	Pearson Correlation	.390*	.808**	1	.337*	.622**	.590**
	Sig. (2-tailed)	.014	.000		.036	.000	.000
	N	39	39	39	39	39	39
Q4	Pearson Correlation	.553**	.319*	.337*	1	.244	.285
	Sig. (2-tailed)	.000	.048	.036		.134	.079
	N	39	39	39	39	39	39
Q5	Pearson Correlation	.201	.825**	.622**	.244	1	.933*
	Sig. (2-tailed)	.220	.000	.000	.134		.000
	N	39	39	39	39	39	39
Q6	Pearson Correlation	.227	.817**	.590**	.285	.933*	1
	Sig. (2-tailed)	.165	.000	.000	.079	.000	
	N	39	39	39	39	39	39

\*. Correlation is significant at the 0.05 level (2-tailed).

\*\*. Correlation is significant at the 0.01 level (2-tailed).

According to Levine (2014:167) the coefficient of correlation measures the relative strength of a linear relationship between two numerical variables. Additionally, Hinkle, Wiersma and Jurs (2003:1) present an interpretation of a correlation coefficient as demonstrated in Table 3.10 below.

**Table 3.11: Interpreting the size of a correlation coefficient**

Size of Correlation	Interpretation
.90 to 1.00 (-.90 to -1.00)	Very high positive (negative) correlation
.70 to .90 (-.70 to -.90)	High positive (negative) correlation
.50 to .70 (-.50 to -.70)	Moderate positive (negative) correlation
.30 to .50 (-.30 to -.50)	Low positive (negative) correlation
.00 to .30 (-.00 to -.30)	Little if any correlation

Source: Hinkle *et al.* (2003:1)

Based on the interpretation guideline provided by Hinkle *et al.* (2003:1), the following observations have been made:

- There is a very high positive correlation between questions 5 and 6 at “.933”, which relates to the existence of an oversight structure within the organisation and the relationship between the oversight structure and the executive management of the organisation.

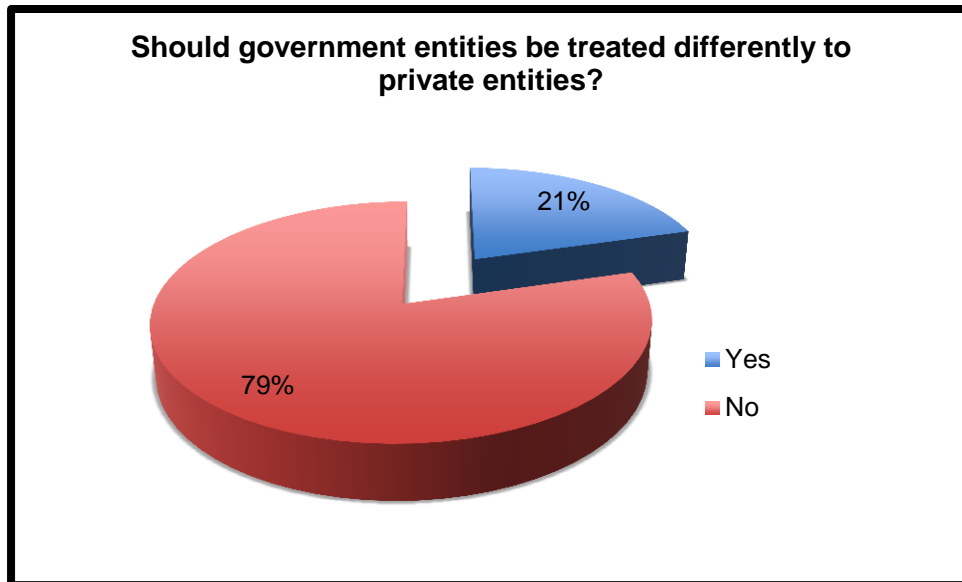
It is therefore concerning that respondents stated that their organisations have oversight structures. But the relationship between the oversight structure and the executive management is not satisfactory at a rating of 18% (18% being a combination of either poor or fair). As noted earlier, the relation between these two structures is paramount for effective Corporate Governance, in our instance, the King IV Code on Corporate Governance.

- There is a positive correlation between question 2 and 3 (at .808), question 2 and 5 (at .825) and question 2 and 6 (at .817). Question 2 sought to determine alignment of the organisation’s existing Corporate Governance framework to the King IV report and the other questions were developed to
  - Test the amount of effort involved in implementing King IV (question 3),
  - Determine whether there is an oversight structure at the organisation (question 5), and
  - Rate the relationship between the oversight structure and executive management (question 6)

### ***3.10.2.7 The treatment of government entities (including SOEs) in relation to private entities with regard to adherence to Corporate Governance principles.***

Figure 3.7 below shows that most respondents (79%) said government entities (including SOEs) should not be treated differently to private entities with regard to adherence to Corporate Governance principles. To enable the government to achieve its key objective of service delivery to its people, SOEs must be able to attract capital to fund development programmes. The recent credit downgrades showed that SOEs' ability to attract capital at reasonable rates have been affected by the decline in how government and internal governance has been eroded within the

entities. It is therefore essential that an entity that is required to attract investment needs to be governed competitively to allow for flexibility to compete for such capital in the capital markets.



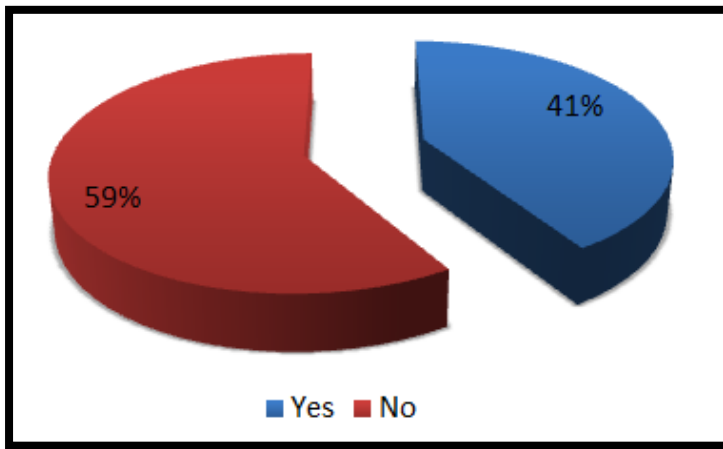
**Figure 3.7: Treatment of government entities**

The objectives of entities that compete for capital are evident to be primarily stakeholder focused. Since it is expected that SOEs are governed flexibly to be able to compete with the private sector for resources, therefore the finding is in support of the view that government entities should not be treated differently to private entities with regard to adherence to Corporate Governance principles. Unlike the earlier codes, the latest King codes apply to all organisations without limiting to the form of incorporation or whether private, public or not for profit sectors. The King IV report encourages all organisations to apply the principles and the best practice recommendations.

#### ***3.10.2.8 Observance of gaps between the King Code on Corporate Governance (King IV report) requirements and organisation's adopted governance principles.***

Of the respondents who answered the questionnaires, about 59% indicated that they do not notice any gaps between the King Code on Corporate Governance

requirements and their organisations' adopted governance principles, while about 41% noticed some gaps.



**Figure 3.8: Gaps in the organisation's adopted governance principles**

The results imply that the majority of public institutions have their Corporate Governance frameworks aligned to the King code. As indicated earlier, this finding reveals that most SOEs and Chapter 9 institutions have rigorous principles for Corporate Governance as the basis for integrity and performance. To adhere to international standards, aligning the entities' governance framework to the King IV report should be a priority for these entities. Corporate Governance principles are key to enhancing the reputation of an organisation devoted to superior performances and honesty. Iskander and Chamlou (2000:7) states that "Corporate Governance facilitates fairness, accountability, responsibility and transparency across organisations". It, therefore, appears to suggest that boards and the leadership of most SOEs and Chapter 9 institutions have reinforced governance frameworks and policies, reaffirmed governance roles, established and clearly outlined the responsibilities of relevant committees and strengthened the independence of structures that support Corporate Governance.

It is important to note that good governance remains central in the public sector, as it is in the private sector because investors would not be interested in putting their money in institutions where it would not be secured. However, this is an interesting finding which is contrary to theory reviewed. The theory states that the public sector is inefficient and ineffective in governing state-owned institutions as opposed to

shareholders' stewardship of private entities. The inefficiency in the public sector is blamed on the objectives pursued by the entities, these being to obtain social benefits and improve the welfare of its citizens. Meanwhile, the private sector seeks to obtain economic benefits, showing a reduced concern for social and environmental issues.

However, those who noticed some gaps between the King Code on Corporate Governance requirements and their organisations' adopted governance principles indicated:

- transparency in decision-making, and
- the revision of legislations applicable to them (for Chapter 9 institutions); since this prohibits them from being completely aligned to King IV.

Alternatively, respondents from Chapter 9 institutions indicated that there should perhaps be a supplement specifically dedicated to them. Lastly, it should be noted that some respondents indicated that they would like to perform a gap analysis within their entities in order to determine whether there are gaps that exist within their environments.

### **3.10.3 Section C: Information about the challenges to implementation of the King Code on Corporate Governance**

This section presents the consolidated outcomes of the research questionnaires with respect to the challenges to implementation of the King Code on Corporate Governance.

Respondents were requested to rank the factors in Table 3.11 in order of importance, with 10 being the least important factor and 1 being the most important. "Adherence to the Rule of Law", "Excellent leadership", "Good ethical principles and behaviour" and "Rational decision-making" were ranked the factors that are most important – with at least 10 out of 39 respondents ranking these at numbers 1, 2, 3 and 4 respectively. It is worth noting that finances and the cost of implementing good Corporate Governance was ranked the lowest – with 26 out of 39 respondents ranking it at 10. Lastly, Corporate Governance expertise was also ranked the lowest

at number 9. The other rankings are spread across all the other factors at an average of number 4 for each of them.

**Table 3.12: Factors that influence Corporate Governance: Ranking**

No.	Ranking of factors in order of importance	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39		
1	Adherence to the rule of law	1	2	2	3	3	3	2	2	2	1	1	2	3	2	1	7	1	4	1	1	1	1	6	2	4	2	3	3	1	2	2	3	4	3	6	3	1	2	3		
2	Excellent leadership	3	7	3	4	2	1	3	4	4	2	2	5	2	7	8	2	8	3	7	3	2	2	9	5	3	1	2	1	8	3	3	2	3	4	2	1	2	7	1		
3	Good ethical principles and behaviour	5	6	4	5	4	4	4	5	6	4	3	1	4	3	2	3	2	8	8	2	8	4	5	4	5	3	1	2	2	4	6	6	5	5	8	4	3	3	2		
4	Rational decision-making	6	5	5	6	5	5	7	9	5	6	8	9	8	8	9	8	7	9	5	7	7	6	8	7	8	5	6	6	9	7	5	5	1	8	7	5	8	8	6		
5	Accountability – the assignment of roles and responsibilities at appropriate levels	4	3	6	7	6	6	6	1	8	5	4	3	10	1	6	1	3	5	3	4	9	10	7	8	1	7	5	4	3	5	4	1	7	9	3	6	4	1	4		
6	Transparency in how organisational activities are undertaken	7	9	7	8	7	7	8	8	9	8	7	8	5	9	7	6	4	6	4	5	5	5	3	6	9	6	4	10	4	6	8	9	8	6	9	7	7	9	10		
7	The identification of common goals across the organisation	2	8	1	1	1	2	5	3	7	7	10	7	6	4	5	9	5	7	10	6	6	7	2	9	2	4	8	5	5	1	9	8	6	7	5	2	10	4	5		
8	Finance/cost of implementing good governance practices	10	10	8	10	10	10	10	10	10	10	9	10	9	5	10	4	10	10	9	10	10	8	1	10	10	9	10	9	10	10	10	10	10	10	10	10	10	10	9	5	9
9	Corporate governance expertise/knowledge	9	1	9	9	8	8	9	6	3	9	5	6	1	6	4	5	6	2	6	9	3	9	4	3	6	10	7	7	6	8	7	4	9	2	4	8	5	6	7		
10	Willingness from those that are charged with governance, to adopt/ implement corporate governance practices	8	4	10	2	9	9	1	7	1	3	6	4	7	10	3	10	9	1	2	8	4	3	10	1	7	8	9	8	7	9	1	7	2	1	1	9	6	10	8		

### 3.10.3.1 Factors respondents believe lacks in their organisations.

Respondents cited ethical principles and behaviour, accountability and transparency as absent within their organisations at an average of 14% for each of the factors. It should also be noted that 18% of the respondents stated that they do not have the deficiencies listed in Table 3.11 above.



**Figure 3.9: Factors lacking in organisations**

The King IV report (IODSA, 2016:26) advocates for implementation of a governance structure which supports leadership, sustainability and corporate citizenship. Therefore, lack of accountability and transparency in organisations implies a weaker governance framework. Parallels should be drawn between these observations and those in Sub-section 3.1.3.8 above, wherein respondents identified lack of transparency as one of the gaps within their environments.

The King code further recommends ethical leadership based on ethical foundation. Good Corporate Governance is about effective, responsible leadership and responsible leadership is categorised by ethical values of responsibility, accountability, fairness and transparency. Therefore, the unwillingness from those charged with governance, to adopt or implement Corporate Governance practices

mean weak or no Corporate Governance which leads to weak performance and lack of integrity.

### **3.10.3.2 Factors that suffers the most from a Corporate Governance failure in SOEs and or Chapter 9 institutions.**

Respondents indicated that failure of Corporate Governance in SOEs and Chapter 9 institutions will lead to problems in the areas of finances, entity specific reputational damage, and the inability to achieve set goals – thus about 72% agree that all the factors listed in Figure 10 will suffer when governance fails.



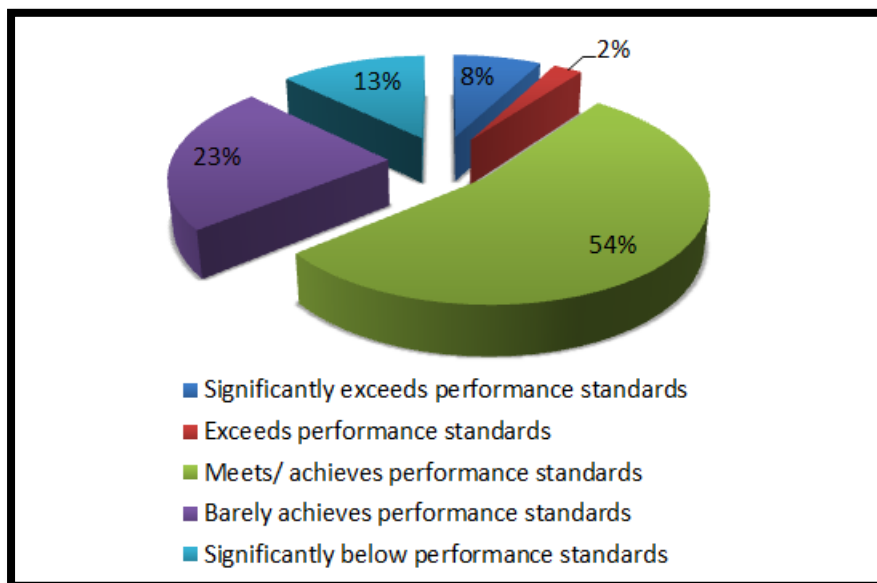
**Figure 3.10: Factors that suffer the most when governance fails**

Although the majority of respondents listed finances and reputation as the factors that would be most affected in the event of Corporate Governance failure, it should be noted that reputational damage may be the cause of financial loss and the inability of the entity achieving its goals. Reputation damage or risk is a factor of a change in perceptions by stakeholder (including funders, customers, etc.), which is negative and detrimental to the entity. In the event of a change in perception as a consequence of corruption, fraud, inefficiencies, amongst others, an institution may lose its reputation before it suffers any financial losses. Farha, Sekeris & Hermansson (2017:4) identify reputational damage as a multiplier that amplifies the direct impact of an event through the loss of future revenue due to the reputational impact of such an event.

It is therefore important for SOEs and Chapter 9 institutions, as subjects of this study to protect their reputation. Protection of reputation will include the entities regularly evaluating the suitability of the stakeholders they engage with.

### **3.10.3.3 Rating of organisation's performance in relation to the King Code on Corporate Governance.**

The majority of respondents (about 64%) indicated that their organisations meet or achieve performance standards, exceeds performance standards, and or significantly exceeds performance standards. It should be noted that all King Code of Corporate Governance principles have universal applicability – with King IV being no exception (IODSA, 2016:6). This is so because of the fundamental principles of ethical and effective leadership. Performance in relation to the King Code on Corporate Governance entails entities evaluating themselves against the core principles as reflected in King IV.



**Figure 3.11: Organisation's rating with respect to performance against King IV**

36% of respondents reflected that their organisations' performance either barely achieves performance standards or the performance is significantly below performance standards. If these outcomes are contrasted against the gaps noted by some of the respondents on the statement "*Have you noted any gaps between the King Code on Corporate Governance (King IV) requirements and your organisation's*

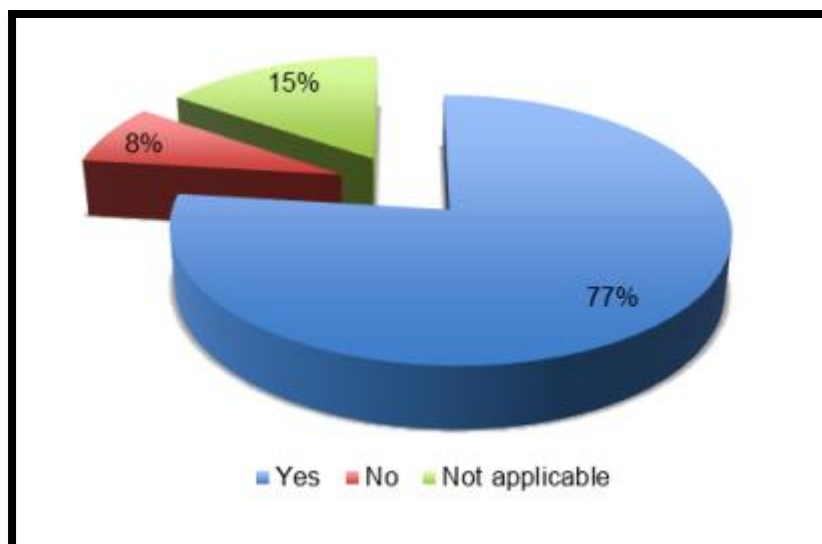
*adopted governance principles*” and on *“Failure of Corporate Governance has been on the news recently, what do you believe is the major cause of the failure”* – a deduction can be made on why respondents would have rated their organisations in the manner they have.

Key amongst the observations are the contradiction between the founding legislation of some of the entities (these being the Auditor-General and the Public Protector) and the principles espoused on the King Code on Corporate Governance. One of the examples provided by respondents and related to this contradiction is the appointment of governing board members. With respect to Public Audit Act 25 of 2004 and the Public Protector Act 23 of 1994, the appointment of governing board members is done by the accounting officers, while the King Code on Corporate Governance suggests that governing board members should be appointed by the governing board itself – following a proper nominations process (IODSA, 2016:51).

Additionally, respondents stated that they are concerned with accountability and transparency in the decision-making process within their organisations. Yet again, these two factors are crucial for an effective Corporate Governance framework.

Lastly, on the statement *“Failure of Corporate Governance has been on the news recently, what do you believe is the major cause of the failure?”* respondents stated that corruption, greed and failure to adhere to the law are the contributors to Corporate Governance failure. It is therefore important for entities to implement policies and procedures that will continuously ensure that they adhere to good governance principles and test themselves against the set principles to enable continuous improvement in relation to the King Code on Corporate Governance.

**3.10.3.4 Responses to whether respondents believe that the challenges faced by their organisation in relation to the implementation of the King Code of Corporate Governance can be diminished, lessened or reduced.**



**Figure 3.12: Challenges faced by the organisation**

77% of the respondents believe that challenges in implementing the King Code of Corporate Governance within their organisation can be minimised. The respondents noted factors such as the organisational culture, mentality and the system of ethical values as essential in overcoming challenges associated with the implementation of the code.

Some of the respondents even suggested that the governing bodies must take overall accountability for ensuring adherence to the King code recommendations and have a clear plan of how each principle will be implemented within the organisation and by who (delegation). Further suggestions were that the implementation should be done in the form of a project that remains a standing agenda in governing bodies meetings until all deliverables are completed. After the full implementation, some of the outputs of the project will be incorporated into various business units' reports to the governing bodies. This suggestion of implementation guidelines may be an indication that the implementation road map provided by the King Code of Corporate Governance, as part of the sector supplements (IODSA, 2016:78) may not be

known, sufficient or understood by those responsible for implementing the principles contained in the code.

**3.10.3.5 On the statements: Organisational culture and ethical behaviour are the drivers of good Corporate Governance and I see a clear link between ethical behaviour and good Corporate Governance.**

All respondents indicated that they could see a clear link between ethical behaviour and good Corporate Governance while about 97% of them agree or strongly agree that organisational culture and ethical behaviour are the drivers of good Corporate Governance. 3% of the respondents stated that they did not know if culture and ethical behaviour are drivers of good Corporate Governance.

**Table 3.13: Organisational culture and ethical behaviour**

		Five-point scale						
Scale legends:		Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree		
Challenges to implementation of the King Code on Corporate Governance								
Qtn No.	Statement	1 %	2 %	3 %	4 %	5 %	Mean	Standard Deviation
11	Organisational culture and ethical behaviour are the drivers to good corporate governance	51	46	3	0	0	1.513	0.5559
17	I see a clear link between ethical behaviour and good corporate governance	49	51	0	0	0	1.513	0.5064

It should be noted that a strong governance framework will usually shift toward a single corporate culture for the whole entity and strive to resolve conflicts between local customs, rules and regulations and business processes.

Petersen (2013:8) rightly describes ethics as a set of principles of right conduct or a system of moral principles. He further defines it as the “principles, norms and standards that guide an organisation’s conduct of its activities, internal relations and interactions with external stakeholders”. The definition shows that a code of ethics is

neither rules nor regulation, but guidelines seen to direct corporations towards accountability and transparency. It is simple attributes that instinctively enable one to do right rather than wrong and control of conduct. Bose (2004:40) suggests that "Ethics applies to any and all aspects, from boardroom strategies and how companies treat their suppliers to sales techniques and accounting practices.

Business ethics applies to the conduct of individuals and the conduct of the organisation as a whole, relating to how any company conducts its business to make the profit". Ethics are important to a corporation as they create a solid foundation for Corporate Governance, ensuring business sustainability and good corporate reputation.

A Corporate Governance framework of ethical principles builds on a culture of trust, transparency, competence and integrity thus playing a key part in preventing fraud and corruption which further becomes a shared responsibility amongst the stakeholders of an entity. Desai (2012:61-65) also defines "business ethics as a process for integrating values such as honesty, trust, transparency and fairness into its policies, practices and decision making". He further alludes that business ethics is inherently linked with Corporate Governance". Organisations that make use of ethical practices will in return anticipate being treated ethically. Such an anticipation and subsequent espousal of ethical practices generate chain effects concerning endorsing ethical practices. Governing bodies and executives of SOEs and Chapter 9 institutions are responsible for strategic and operational governance and ethical codes and practices. However, there are varied views on the effectiveness of such governance codes and frameworks in improving practices within these state entities.

As noted in the literature review, a culture of greed and self-interest, particularly within the public sector, impairs the ability of entities to achieve their goals and objectives as well as their ability to adhere to good governance principles. Greed and self-interest manifest into corruption. Therefore, combatting corruption and instilling an environment of integrity is the most significant challenge for governance in South Africa (McGregor, 2014:57). Corruption vitally conflicts with accountability and the Rule of Law because it undermines governance, diminishes public trust in the credibility of the state, and threatens the ethics of government and society. This assertion of corruption impacting on the effectiveness of Corporate Governance was

confirmed by the literature review and the outcomes of the empirical study, where adherence to the Rule of Law and Good ethical principles and behaviour were ranked as the important factors that will enable good Corporate Governance. It was therefore noted that corruption goes against these two core factors of good Corporate Governance.

It is therefore unlikely for the country to achieve its developmental agenda (earlier referred to) if lack of ethical principles continues to be perpetuated.

**3.10.3.6 On the statements: The Rule of Law is the cornerstone of Corporate Governance and I see a clear link between the Rule of Law and good Corporate Governance.**

An overwhelming 92% of respondents believe that the Rule of Law is the cornerstone of Corporate Governance and about 97% of these respondents said they see a clear link between the Rule of Law and good Corporate Governance. This finding agrees with the recommendations of the code.

**Table 3.14: The Rule of Law and Corporate Governance**

		Five-point scale						
Scale legends:		Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree		
Challenges to implementation of the King Code on Corporate Governance								
No.	Statement	1 %	2 %	3 %	4 %	5 %	Mean	Standard Deviation
10	The rule of law is the cornerstone of corporate governance	38	54	5	3	0	1.718	0.6863
15	I see a clear link between the rule of law and good corporate governance	46	51	0	0	3	1.615	0.7475

It is noted that a good governance code must not operate separation from the law, and it may not be appropriate to separate governance from the law. Directors and officers of an organisation have an obligation to discharge their legal duties. These are "the duty of care, skill and diligence, and the fiduciary duties". According to the

Companies Act and other pieces of legislation that apply to companies, governance include developing policies, structures and processes that will support directors in performing their responsibilities and oversight of legal compliance. Good governance is further linked with the establishment of appropriate codes of conduct for directors. Once certain governance practices are established and known to be the norm, courts are likely to accept such practices as required standard of care. According to the quick guide to Corporate Governance and the King IV report, Corporate Governance practices, codes and guidelines, lift the bar of what is regarded as appropriate standards of conduct.

Consequently, any failure to meet a recognised standard of governance, albeit not legislated, may render a board or individual director liable at law". The King IV report further recommends that organisations develop Corporate Governance models that achieve compliance with several, but at times conflicting needs. Such models should reconcile business needs, public or social needs with territorial regulations. Organisations should also align legislative compliance with risk management to solve conflicting interests in an integrated, internationally coordinated way.

**3.10.3.7 On the statement: I see a clear link between leadership and good Corporate Governance.**

**Table 3.15: Leadership and Corporate Governance**

		Five-point scale						
Scale legends:		Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree		
Challenges to implementation of the King Code on Corporate Governance								
No.	Statement	1 %	2 %	3 %	4 %	5 %	Mean	Standard Deviation
16	I see a clear link between leadership and good corporate governance	49	51	0	0	0	1.513	0.5064

All respondents expressed that they see a clear link between leadership and good Corporate Governance. This finding concurs with the literature reviewed on the

importance of leadership in governance. Leadership is defined as “the lifting of people’s vision to a higher sight, the raising of their performance to a higher standard, the building of their personality beyond its normal limitations”. According to Isaacs (2016:3), leadership is a social stimulus relevant to the achievement of organisational goals. Leaders foster an environment within their companies that encourages risk-taking, recognition and rewards, and empowerment allowing other leaders to emerge. Notwithstanding, their giving guidelines and facilitation of the reduction of unethical behaviour by those charged with governance and control of SOEs, the South African population still believe there is lack of obligation and effective leadership amongst executives to comply with codes. The meddling by politicians in decision-making makes codes and frameworks operationally less effective.

ACCA (2010:6) conducted a survey on leadership and governance and made recommendations that “Government, public and private sector organisations should ensure there is a common understanding among governing body members and senior executives, of governance and ethical standards”. Their recommendation requires of individuals and board members charged with governance to put in place codes of governance or frameworks that are proper and relevant to facilitate novelty and enhancement in practice and such codes to be flexible and adjustable to organisational requirements to ensure optimal gains. Effective leadership ensures roles and responsibilities for strategic and operational governance and ethical practices are clear to both governing body members and employees. Good and effective leadership and governance are pivotal to the success of any organisation, sector or economy.

**Overall analysis on Section C:** The descriptive data of significance from the tables 3.12 to 3.14 is the standard deviation. A Standard Deviation provides an indication of how far the respondents’ responses to questions vary from the mean (Sullivan & Artino, 2013:541). The outcomes reflected in tables 3.12 to 3.14 illustrates that there was a degree of variability on the responses for questions 8 and 9 (as demonstrated by the standard deviation of 1.1522 and 1.1503 respectively. This, in essence, means that the respondents largely had deferring views about the statements they needed to respond to. For the other questions/ statements, the margins of standard

deviations were closer to “0”, which suggests responses were focused nearer to the means of each of the statements/ questions.

### **3.11 RESEARCH LIMITATION**

Limitations are potential weaknesses in a research study and are usually out of the control of the researcher (Simon, 2011:2). Where a sample of convenience is used similar to the one used in this study, the results can thus not be generally applied to a broader population – but can only be advocated. In the study, the extensity was limited to a total of 12 institutions and the sampling method not randomised. Given the constraint of time and resources, the research could have been extended to all SOEs listed in schedules 2 and 3 of the PFMA and all constitutional institutions listed in Chapter 9 of The Constitution.

Additionally, due to the use of a survey questionnaire which provided for open responses by the respondents, there may have been an element of biasness – due to respondents providing insights that they believe the researcher potentially wants to hear. This biasness was, however, mitigated by the independent completion of the questionnaires based on the respondent's initial/natural thought to the question/ on what their first natural response to the item laid out.

### **3.12 RESEARCH RESULTS**

The research results are a culmination of the consolidation and analysis of the responses collected from the research subjects by means of a questionnaire. The purpose of the questionnaire was to initiate links with participants, to present and arouse their interest in the study and to analyse their insights regarding the fundamental points of the concept of Corporate Governance, in an attempt to identify the challenges to implementing King IV in SOEs and Chapter 9 institutions. The questionnaire covered points on the availability and implementation of the Corporate Governance framework within these entities.

The study was conducted as a qualitative type of research which was a repetitive process, involving data collection, data recording, data analysis and the generation

of new questions as part of continuous efforts to achieve the primary and secondary objectives of the study.

The study was done on a selected number of SOEs and Chapter 9 institutions to answer the research questions.

### **3.13 ETHICAL CONSIDERATIONS**

Ethical considerations have become a vital aspect of research, including ensuring the safeguarding of the researcher, the research participants and the reputation of the institution (Myers, 2013:48). Ethics is the study of the right behaviour and addresses the question of how to conduct research in a moral and responsible manner (Blumberg *et al.*, 2008: 154). In the conduct of research, the researcher has a moral obligation as suggested by ethical principles to inform research subjects of the role they will be playing in the research study. Thus, the researcher must make sure that the research subject and the selected participants fully understand their role in the research and that their participation is entirely voluntary.

It was, therefore, crucial for the researcher to ensure that deception about the nature of the research was eliminated throughout the research. Deception occurs when a research is represented as something other than what it is (Bryman & Bell, 2010: 141). Noted below are ethical considerations taken into account during the research study, these were formed on the suggestions of (Blumberg, *et al.*, 2008:156) and (Bryman & Bell, 2010:132):

- i. There should be no harm to participants – reverent relations were formed with participants. Including informing them of their rights and a commitment to protect them made.
- ii. Informed consent – the purpose of the study was explained to the participants and the research subject and they consented.
- iii. Privacy – the anonymity of the participants was promised and has been protected throughout the research study. Additionally, the data collected during the research was processed fairly based on the consent obtained from the research subject and will be safeguarded.

- iv. Elimination or minimisation of deception – the risk of deception was guarded against throughout the research. The researcher made every effort to ensure that the quality of the research is excellent. Additionally, matters relating to ethics (with the aim of managing the risks) were factored into most documentation utilised during the research. These included the questionnaires and the questions themselves. Copies of the questionnaire and a letter to one of the research subjects are included herein as Annexures A and B respectively.

### **3.14 CONCLUSION**

In this chapter, the research methodology applied for the purposes of this study was described and operationalised. Therefore, the purpose of the chapter was to describe the research methodology. The method of obtaining answers to the research question/ objective is outlined. This included the description of the research scope, the research design, the population of the research and the sample sizes amongst others. The researcher also articulated the instruments utilised for the collation of the data, as well as the methods applied to preserve the reliability and validity of the data and instrument.

A quantitative survey design, with both closed and open-ended questions, was utilised for the research. The researcher self-administered the questions and collected the data from a convenient sample of 39 research subjects out of a targeted total of 48.

It should be noted that consent was sort and obtained from the research subject before the commencement of the study. The researcher is confident that the research outcomes will be representative of the feedback received from the research subject.

Conclusions and recommendations from the empirical results and analysis are expanded upon in Chapter 4. However, a synopsis of the results indicates that the majority of SOEs have implemented and experience little challenges with regard to their Corporate Governance frameworks – including its alignment to the King Code on Corporate Governance. Conversely, entities classified as Chapter 9 institutions

experience Corporate Governance differently. In that their founding legislations contradict some principles of the King Code on Corporate Governance.

It is worth noting that respondents reflected that corruption, self-interest by those that are charged with governance and lack of respect for the Rule of Law undermines the effectiveness of Corporate Governance frameworks. This observation is concentrated in the SOEs. On a question relating to the factors that are absent in their entities, a significant number of respondents stated their concerns with the following factors:

- Absence of good ethical principles and behaviour,
- Absence of accountability, and
- Lack of transparency in the decision-making processes.

Although not in the majority, at least 43% of respondents stated the above items. This observation may be at the core of challenges experienced by entities selected for this study – primarily because these are crucial for an effective Corporate Governance framework.

The purpose of conducting research on this subject was to “evaluate the current King Code of Corporate Governance for South Africa (IODSA, 2016), the implementation challenges experienced by public sector entities (with specific reference to Chapter 9 institutions and a selected number of SOEs)”. To achieve the primary objective of the study, the secondary objectives to be realised included the following:

- i. The investigation of the extent to which the principles contained in the Code are practised and adopted by Chapter 9 institutions and public-sector entities.
- ii. The investigation of whether there is a conflict between legislation that gives rise to Chapter 9 institutions and SOEs and the Code.
- iii. Investigate the practicalities of meeting the expectations of the Code and analyse the responses received during the research and contribute to the body of knowledge around public sector governance expectations (i.e. those that are beyond legislation).
- iv. Evaluate whether King IV is relevant for entities who are already directed through specific legislation.

- v. The exploration of the research should also assist to engrain the principles of the Code into public sector's way of directing its business.
- vi. Evaluating the implications of the failure of governance on management.

All the above elements of the primary and secondary objectives were formulated into questionnaire to enable the researcher to answer the research question.

The empirical results and analysis have assisted with answers to the research question, particularly with reference to the overall question of whether the King Code of Corporate Governance is an appropriate governance framework for SOEs and Chapter 9 institutions.

As suggested earlier, for entities whose founding legislation is the Companies Act (these would be entities classified as SOEs), King IV is an appropriate framework and all these entities have adopted it. However, there are challenges with the effectiveness of the framework because of lack of accountability, transparency in the decision-making processes and the behaviour of some that are charged with governance.

For entities classified under Chapter 9 institutions, challenges in respect of alignment with the King Code on Corporate Governance have been experienced. The cause is the contradiction between their founding legislation and the principles espoused by the King Code on Corporate Governance. Respondents provided an example of the appointment of governing body members as one of the contradictions. It may however be important to state that King IV (IODSA, 2016:35) acknowledges that conflicts may arise between legislation and King IV, and in the event of such a conflict, now or in the future, the law prevails. It should however be noted that the conflict though perpetuates misalignment between the two.

The researcher is comfortable with the research outcomes and how the respondents were treated during the collation of the questionnaires. All ethical considerations were observed, which gives the researcher the confidence to rely on and confirm the credibility of the information contained herein.

### **3.15 CHAPTER SUMMARY**

A research method applied to fulfilling the objectives of the research was to ensure that the problem statement is addressed. Consequently, the purpose of this chapter was to ensure that the methodology determined at the beginning of the study was appropriately applied in the conduct of the research.

In this chapter, the researcher motivated for the research method, provided the rationale for the sample size determined and selected for purposes of conducting the empirical study. Furthermore, the research design, data collection tools and research limitations were discussed.

Due care was also taken in the treatment of research subjects and, in the conducting of the research. This was primarily to ensure that risks relating to the research, such as ethical risks which were sufficiently mitigated throughout the period of the research study.

This chapter presented the results of the empirical study conducted to test the research questions and the problem statement outlined in Chapter 1. The chapter provided the results of the research and findings observed from responses to the questionnaires.

The research results contained in this chapter are a culmination of the consolidation and analysis of the responses collected from the research subjects. The intention with the questionnaire was to initiate links with participants, to present and arouse their interest in the study, to get their insights on the subject and analyse them to form a comprehensive understanding of their experiences as well as how their organisations are impacted by the King Code on Corporate Governance.

The results of the empirical study show that different organisations and persons experience the King Code on Corporate Governance differently. However, themes have emerged from their responses which provided the researcher with some answers to the research question. Significantly, almost all the organisations sampled have adopted a governance framework. However, as deduced from the definition of a governance framework (i.e. Corporate Governance is a system by which

companies are directed and controlled' (IODSA, 2009:1)), the existence of a governance framework does not entail that an entity has implemented or adopted the King Code on Corporate Governance.

A fair number of respondents stated that their governance frameworks align to the King Code on Corporate Governance. This however raises concerns about those entities that are not aligned. Respondents provided reasons why they believe their entities are not aligned – some of the reasons referred to the contradiction between their founding legislation and the principles espoused by the King Code on Corporate Governance.

It was interesting to note from the empirical study that “Finance/cost of implementing good governance practices” and “Corporate Governance expertise/ knowledge”, were not the factors rated as important to enable an effective and efficient Corporate Governance framework. This observation is in contrast to other leading frameworks such as the Sarbanes Oxley Act, where practitioners complained about the cost of compliance with the framework.

In reflecting on the objectives of the study, both primary and secondary, the researcher is satisfied with the research outcomes and how the respondents were treated during the collation of the questionnaires. The outcomes and the related recommendations will be expanded upon in Chapter 4.

## CHAPTER 4

### CONCLUSIONS AND RECOMMENDATIONS

#### 4.1 INTRODUCTION

The purpose of this chapter is to provide conclusions on the research study, based on the literature reviewed and empirical investigation of the objectives laid-out in Chapter 1. Furthermore, the chapter also presents recommendations to address the observations made throughout the research.

The primary objective of the study was “to evaluate the current King Code of Corporate Governance for South Africa (IODSA, 2016) and the implementation challenges experienced by public sector entities (with specific reference to Chapter 9 institutions and a selected number of SOEs). Additionally, the study sort to identify the contributing factors to the challenges encountered by these entities in the implementation of the King IV report”.

The secondary objectives of the research were:

- i. The investigation of the extent to which the principles contained in the Code are practised and adopted by SOEs and Chapter 9.
- ii. The investigation of whether there is a conflict between legislation that gives rise to Chapter 9 institutions and SOEs and the Code.
- iii. The investigation of the practicalities of meeting the expectations of the Code and analyse the responses received during the research and contribute to the body of knowledge around public sector governance expectations (i.e. those that are beyond legislation).
- iv. The evaluation of whether the King IV report is relevant for entities who are already directed through specific legislation.
- v. The exploration of the research should also assist to engrain the principles of the Code into public sector’s way of directing its business.
- vi. Evaluating the implications of the failure of governance on management.

In view of the research objectives revisited above, the chapter presents the outcomes of the study, and a determination of whether the outcomes initially expected have been achieved or not. In this chapter, a comprehensive discussion ensues to establish if the literature reviewed and the questionnaires overseen contributed towards responding to the objectives and consequently answering the research questions.

The elucidation of the research outcomes is informed by the analysis undertaken in Chapter 3 and the understanding obtained from the literature review. Based on the literature reviewed and the analysis performed, it is noted that Corporate Governance remains central in the public sector, as it is in the private sector. Furthermore, the research results confirm that good governance improves the decision-making process, enables entities to adhere to the Rule of Law and enables them to achieve their goals, amongst other benefits. Good governance is found where systems and structures set-up to enable decision-making operate as intended (Siswana, 2007:178). In the literature review, it was noted that SOEs (as a representation of the public sector), have similar needs to that of private sector entities, such as the need to attract capital in order to achieve its objective of service deliver to its people (Curristine *et al.*, 2007:15). Consequently, the performance of SOEs in their governance practices will determine whether they succeed in attracting capital.

Similarly, Chapter 9 institutions, as the guardians of constitutional democracy, are expected to demonstrate and lead by examples in matters of governance as well as assist SOEs to be accountable for the resources they have received. This demonstration is likely to have a positive impact in the performance of the entire public sector environment.

It is without doubt that governance structures in public and private entities are set-up differently, but they have one feature in common, being the setting and the drive towards the achievement of objectives. The environment in which these two categories of institutions operate, play a significant role in how their governance structures are set-up and work, including their overall effectiveness. These include the legal framework under which they operate and the relevant stakeholders to which

they are predominantly accountable to (i.e. employees, social communities, shareholders, management, among others) (Sonnenfeld, 2002:5).

Lastly, to drive good governance, SOEs and Chapter 9 institutions need to demonstrate effective leadership. Effective leadership improves societal development and influences the activities of organised formations and groups towards the attainment of goals (Kehinde *et al.*, 2016:38).

It can be noted through the review of literature and analysis of questionnaires that there is a strong relationship between an effective leadership and good governance. These two would then drive implementation and the effectiveness of the other causal factors of:

- Adherence to the Rule of Law
- Accountability
- Appropriate decision-making
- Demonstration of transparency in all decisions made
- Trust-based ethical behaviour and practices, and
- A drive towards common goals.

Several deficiencies were observed in the literature and during the analysis of the responses to the questionnaires. The primary observations which will be expanded upon in the recommendations section are:

- a) The contradictions between the key principles of the King Code on Corporate Governance and legislation governing Chapter 9 institutions.
- b) The definition of Corporate Governance, which could be misleading with respect to expectations in the implementation of good governance principles.
- c) The fact that cost and finances are not major factors that influence implementation of Corporate Governance frameworks, and
- d) Corruption and self-interest being the main causes of Corporate Governance failure.

## 4.2 RECOMMENDATIONS

Rigorous principles of Corporate Governance are the basis for the integrity and reputation of an organisation, and the King IV report (IODSA, 2016) recommends implementation of Corporate Governance principles regardless of the form of the institution. This expectation implies that the principles contained in the King IV report should be applied by the entities that were the subject of this study.

Good governance principles are vital in enhancing the reputation of an organisation devoted to superior performances and honesty. In their report, Iskander and Chamlou (2000:7) state that "Corporate Governance facilitates fairness, accountability, responsibility and transparency across organisations". It was thus of concern that almost 45% of respondents did not agree or know whether their governance frameworks align to King IV. This therefore, suggests that more work needs to be done to reinforced governance frameworks and policies, reaffirmed governance roles, establish and clearly outlined the responsibilities of relevant committees and strengthen the independence of structures set up to support the oversight functions.

It should be noted that attempts were made in the 2016 Report on Corporate Governance for South Africa to introduce sector supplements to support public sector entities in complying with the principles contained in the code (IODSA, 2016:116). It is, however, noted that there are no sector supplements for Chapter 9 institutions. The current sector supplements only relate to the following entities:

- Municipalities,
- Non-profit organisations,
- Retirement funds,
- Small and medium enterprises, and
- State-owned entities.

In light of the above gap, a sector supplement specifically dedicated to Chapter 9 institutions must be developed to guide these entities in the implementation of Corporate Governance principles as suggested by the King Code of Corporate Governance in South Africa.

Additionally, observations were noted both from the literature review as well as the analysis of the questionnaires that there are some contradictions between King IV report and the founding legislation for Chapter 9 institutions. Examples of the contradictions are:

- The appointment of governing board members. To drive good governance, these entities have formed structures such as audit and risk committees. However, instead of the committee members being appointed by governing board members, the members are appointed by the institution's accounting authority.

This appointment process has the potential of disempowering the committees from exercising their oversight responsibilities and thus making the governing board ineffective.

Therefore, a legislation review, to align to best practice must be undertaken for the Public Audit Act and the Public Protector Act. This will ensure that leading principles are updated and made applicable to these two entities.

Asmal *et al.* (2007:15) found that internal tensions have been experienced in most of the Chapter 9 institutions. This was because of the absence of clear lines of authority between the members of the institution, its head and the secretariat. The report stated that the tensions impacted on the efficiency and effectiveness of the institutions. What is paramount, is financial independence from the state – especially for the Public Protector.

To address the challenge of funding and consequently, the limiting of the scope of investigations and audits conducted by Chapter 9 institutions, these institutions must be self-funding. Currently, the AGSA charges its auditees fees for the performance of the audits. Similarly, the Public Protector must earn revenue from the penalties and fines issues by the institution and not rely on National Treasury to fund its operations.

As noted in the literature, recent controversies in South Africa necessitated a review of the literature on the role of Chapter 9 institutions. Calland and Pienaar (2016:67) noted that Chapter 9 institutions are the guardians of constitutional democracy. They

are a system of checks and balances primarily provided by the Constitution of South Africa – and conduct their activities for the benefit of citizens. It is for this reason that their independence (especially financial) is protected to free them to fulfilling their mandate.

In the analysis of the responses during the evaluation of the empirical results, it was noted that there were respondents who did not know whether it was easy to implement the King Code on Corporate Governance in their organisations. This observation could be a signal of lack of awareness, the absence of sound governance frameworks in their organisations or negligence. Furthermore, the complexity of governance frameworks in these organisations may be one hindrance for these employees to understand the implementation processes. Such complexities and the vast number of linked processes and other tools in these institutions may signal a need for a Corporate Governance operational model. It may be that the components of such a model exist within the organisations, but such components may not have been linked, rationalised, and structured to give the consistent guidance and motivations that officials, risk managers, and business unit leaders need.

Corporate Governance operational models have the possibility of addressing Corporate Governance requirements and therefore improve the institution's leadership capacity to implement and operationalise a Corporate Governance framework.

Additionally, most respondents strongly agree or agreed that their organisations have adopted Corporate Governance frameworks. In analysing the definition of Corporate Governance, it is noted that it is “a structured manner in which decisions are made”. It was therefore observed that this definition is simplistic in that more is required for an entity to have implemented, for it to have effective governance structures. The definition of Corporate Governance should be expanded to incorporate the causal factors of an effective Corporate Governance system – these being:

- i. Adherence to **the Rule of Law**
- ii. **Accountability** by all those that are charged with governance

- iii. Strong **leadership**
- iv. Demonstration of **transparency** in all decisions made
- v. Trust-based **ethical behaviour and practices**, and
- vi. The drive towards **common goals**.

Ethical principles and behaviour, accountability and transparency, were cited as the factors that are primarily absent within the respondents' organisations. Good Corporate Governance is about effective, responsible leadership and responsible leadership is categorised by ethical values of responsibility, accountability, fairness and transparency. Therefore, the unwillingness from those charged with governance, to adopt/ implement Corporate Governance practices mean weak or no Corporate Governance, which leads to weak performance and lack of integrity. It should be noted that reputational damage may ultimately lead to financial loss and the inability of the entity to achieving its goals.

Poor ethical behaviour, lack of accountability and transparency in the decision-making process manifest in corruption, greed and failure to adhere to the law were cited by respondents as the primary contributors to Corporate Governance failure.

Combatting corruption and instilling an environment of integrity is the most significant challenge for governance in South Africa (McGregor, 2014:57). Corruption vitally conflicts with accountability and the Rule of Law because it undermines governance, diminishes public trust in the credibility of the state, and threatens the ethics of government and society. It is therefore unlikely for the country to achieve its developmental agenda (earlier referred to) if lack of ethical principles continues to be perpetuated.

It is therefore, essential for entities to implement policies and procedures that will continuously ensure that they adhere to good governance principles. Entities must regularly test themselves against the set principles to enable continuous improvement in relation to adherence to the King Code on Corporate Governance principle. This they can do by subjecting themselves to independent external evaluations by governance experts. In terms of how they are structured, the appropriateness of the decisions made and the impact of the decisions to the organisation. It is important to state that the independent external review should not

be undertaken by the auditors of the entity (both internal and external auditors) as they are part of the organisation's internal control mechanism.

It was also observed that within SOEs, there exists a conflict between the role of the governing board (more specifically, the chairperson of the board) and the executives within that SOEs. The observation, including that which emanates from the analysis of questionnaires, is that chairpersons of some SOE boards assume management responsibilities and therefore take executive decisions. It is therefore critically important for a clarification of roles and responsibilities to be made and strictly enforced across SOEs to improve this misdemeanour.

Factors such as the organisational culture, mentality and the system of ethical values are essential in overcoming challenges associated with the implementation of the code. It is recommended that governing boards take overall accountability for ensuring adherence to the King code recommendations and have a clear plan of how each principle will be implemented within the organisation and by who (delegation). Further suggestions are that the implementation should be done in the form of a project that remains a standing agenda in governing bodies meetings until all deliverables are completed. After the full implementation, some of the outputs of the project will be incorporated into various business units' reports to the governing boards.

During the literature review, it was noted that bureaucracy is a necessity for SOEs and Chapter 9 institutions. This is on the basis that bureaucracy is part of the internal control mechanism employed in these entities to guide them to make informed decisions. The observation on the necessity of bureaucracy in SOEs and Chapter 9 institutions created an opportunity for a discussion around what bureaucracy entails in its positive form and how, if not applied appropriately may result in inefficiencies. It is thus suggested that more studies be undertaken in this regards to further explore this phenomenon.

In the literature, an observation was made that bureaucracy embodied a rationalisation of transactions and events, presenting a predictable and systematic means to realize organisational objectives. Therefore, it is necessary for public-sector entities to guard against bureaucracy making them less efficient.

Consequently, it is recommended that a management approval framework, aligned to the organisation's risk appetite be developed in order to encapsulate the objectives of the organisation, the risks to the achievements of the objectives and provide autonomy to the different layers of management within SOEs and Chapter 9 institutions. This autonomy will remove the red-tape, which has already been defined as a negative form of bureaucracy and allow these organisations to make decisions more efficiently and effectively.

The management approval framework referred to above, must be approved by National Treasury (for SOEs) and parliament (for Chapter 9 institutions).

In light of the number of observations made above and the related recommendations, it is necessary for a summary of observations and recommendations to be outlined capturing the key issues. Presented on table 4.1 below is a summary of the recommendations discussed above.

**Table 4.1: Summary of observations and recommendations**

Observation	Recommendation	Public sector entity impacted by the recommendation
<b>No defined governance framework for Chapter 9 institutions other than their enabling legislations</b>	A sector supplement (similar to that of SOEs and municipalities) must be developed in order to provide guidance in the implementation of Corporate Governance principles as suggested by the King Code of Corporate Governance in South Africa.	Chapter 9 institutions
<b>Lack of knowledge on whether respondents' governance frameworks align to king IV</b>	Appropriate governance frameworks must be articulated by each of the entities that formed part of this study. Subsequently, awareness campaigns must ensue to provide employees (particularly those that either work or support governance structures) with knowledge on the subject of governance and how it relates to their specific environment.	Chapter 9 institutions and SOEs
Contradictions were noted between King IV and the founding legislations for Chapter 9 institutions (in particular the PAA and the PPA)	A legislative review needs to be undertaken in order to align the PAA and the PPA to best practice. This will ensure that leading principles such as the strengthening of oversight structures occurs.	Chapter 9 institutions
Unclear lines of authority between	To ensure that Chapter 9 institutions eradicate the	Chapter institutions, more

Observation	Recommendation	Public sector entity impacted by the recommendation
members of Chapter 9 institutions and their secretariat, impacting on efficiency and effectiveness of the institutions	influence of their secretariats (i.e. committees of parliament), the institutions must be self-funding. Therefore, the founding legislations for Chapter 9 institutions must be amended to allow for the entities to recover costs directly from the government entities they investigate (i.e. charge for services renders instead of getting appropriations from National Treasury).	specifically the Public Protector)
Difficulties in understanding and operationalising corporate governance	Development of Corporate Governance operational model, supported by policies and procedures, in order to improve the capacity of organisations to implement and operationalise Corporate Governance Framework.	Chapter 9 institutions and SOEs
Conflict between SOE chairperson of boards and executive management	A role clarification matrix needs to be developed and institutionalised within SOEs to clarify the roles and responsibilities of the different stakeholders within these entities. Additionally, it should be mandatory that prior to commencement of board or executive terms, the incumbent must undergo an induction so that there are alert to what is expected of them.	SOEs

Observation	Recommendation	Public sector entity impacted by the recommendation
The definition of corporate governance is found to be simplistic, in that it only refers to “a structured manner in which decisions are made”.	The definition of corporate governance should be expanded to include the causal factors of an effective corporate governance system such as “adherence to the rule of law”, “accountability”, “strong leadership” and “transparency” amongst others.	Chapter 9 institutions and SOEs

### **4.3 LIMITATIONS**

A few conflicting responses on the questionnaires analysed were noted. Although the test of reliability and validity (in Chapter 3) was found to be acceptable, the researcher is concerned about the integrity of some of the responses received. For example, some respondents were proud with their adopted Corporate Governance framework, but they had earlier stated that they had gaps on their frameworks without highlighting the actual gaps. The researcher, however, acknowledges that the root cause of these conflicting responses may have been as a result of the specific entities being on the news in terms of the “State-Capture” phenomenon.

### **4.4 CONTRIBUTION OF THE RESEARCH**

The literature on Corporate Governance is rich for entities that are not state-owned entities. There is an acute lack of content on the accountability matrix of SOEs compared to private entities. The consideration for the accountability matrix is important as it impacts on the effectiveness and efficiencies within these entities.

Additionally, very little literature was available on the governance of Chapter 9 institutions, except for their roles as guardians of constitutional democracy. The researcher thus notes that opportunities exist to further contribute towards literature and the body of knowledge in the specific area of the governance of Chapter 9 institutions.

Lastly, an interesting observation was made on the true definition of the word bureaucracy. There is a negative connotation attached to the word than its real true meaning. Therefore, further research on bureaucracy may be a necessity to fully clarify its meaning and the related implications.

### **4.5 CONCLUSION**

Decisions made by executive leadership and those that are charged with governance can possibly extinguish organisations and their institutional mandate. Factors that cause implementation challenges and failure in Corporate Governance must be upper most on the definition of the concept of Corporate Governance. In the review of the literature and results of the empirical study, the researcher observed

deficiencies in how governance is exercised by both SOEs and Chapter 9 institutions.

The deficiencies experienced by Chapter 9 institutions are primarily as a result of contradictions between their founding legislation compared to King IV. What contributes to the deficiencies is the absence of a sector supplement for Chapter 9 institutions.

From an SOE perspective, Corporate Governance challenges, both from implementation and the effectiveness of the Corporate Governance are because of corruption and self-interest by those that are charged with governance and the executive leadership.

The challenges experienced by the two groupings of SOEs and Chapter 9 institutions are not insurmountable. To address them, there is a need for decisive leadership and a resolve to adopt principles that are applicable to SOEs and Chapter 9 institutions.

#### **4.6 CHAPTER SUMMARY**

The purpose of this chapter was to provide conclusions on the research study, based on the literature reviewed and empirical investigation of the objectives laid-out in the preceding chapters and to provide recommendations to address some of the observations made throughout the research.

The chapter needed to respond to both the primary and secondary research objective and answer the research question.

It is without a doubt that governance structures in public and private entities are set-up differently, due to the environments in which these two categories of institutions operate. However, to drive good governance in SOEs and Chapter 9 institutions requires effective leadership. This will then provide for confidence in the attainment of organisational goals. The researcher noted that there is a strong relationship between an effective leadership and good governance.

In the review of the literature and the analysis of the questionnaire, the researcher made the following primary observations:

- The contradictions between the key principles of the King Code on Corporate Governance and legislation governing Chapter 9 institutions.
- The definition of Corporate Governance, which could be misleading with respect to expectations in the implementation of good governance principles.
- Corruption and self-interest being the main causes of Corporate Governance failure.

The researcher made recommendations in an attempt to address the implementation gaps noted. The primary recommendation is for a sector supplement, specifically dedicated to Chapter 9 institutions to be developed and the revision of founding legislation for Chapter 9 institutions.

Other recommendations, to address ineffective governance frameworks include the role-out of a Corporate Governance framework to be undertaken as a project and implemented using project management principles.

The researcher noted potential limitations on the study, albeit insignificant, that may have been impacted by the current prevailing phenomenon such as State-Capture.

In conclusion, there appears to be little theory on the governance of Chapter 9 institutions other than in their roles as the guardians of constitutional democracy. The researcher is pleased to contribute towards this body of knowledge in the area of the King Code on Corporate Governance in South Africa.

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## **ANNEXURE A: SURVEY QUESTIONNAIRE**

### **Corporate Governance Survey Questionnaire**

Dear sir/madam

I am a third year student reading for an MBA at the North-West University's School of Business and Governance. This questionnaire is being conducted as part of my mini-dissertation in Corporate Governance; with the title "Identifying the challenges to implement King IV in Chapter 9 and public sector institutions".

I would appreciate it if you could kindly spare some few minutes to answer the questions set-out herein. Your opinions and input are important for the success of this dissertation.

Kindly note that your answers and related input will be used only for academic purposes. Additionally, your responses will be kept anonymous.

I hope you will find the questionnaire interesting. On completion of the survey, kindly return to me. If you have any question regarding the dissertation and or any question contained herein, please do not hesitate to contact me on [eugene.modiha@gmail.com](mailto:eugene.modiha@gmail.com).

Thank you in advance and best regards,

Eugene Modiha

## BACKGROUND INFORMATION ABOUT THE QUESTIONNAIRE

This questionnaire has three (3) sections to be answered. In completing the questionnaire, please follow the instructions given under each section. Kindly email back the completed questionnaire to the researcher, Eugene Modiha on the following email address [eugene.modiha@gmail.com](mailto:eugene.modiha@gmail.com).

- ✓ Answer each question by circling the number that fits your choice.
- ✓ Multiple answers are allowed where indicated
- ✓ Provide Yes/No answers and please expand in case of a Yes answer.

Do note that I may request clarity or more information on the responses you provide on the questions.

Once again, I would like to thank you for your time and valuable input.

## SECTION A: BIOGRAPHICAL INFORMATION

1. What is your gender?

**Male**

**Female**

2. Which age category do you fall under?

**29 or younger**

**30-39**

**40-49**

**50-59**

**60 or older**

3. About how long have you been in your current position?

**Years**

**Months**

4. Which race/ethnicity best describes you? (Please choose only one.)

**Black**

**Coloured**

**Indian**

**White**

**Other**

5. What is your highest level of education?

**Some high school, but no diploma**

**Bachelor's degree/diploma**

**Honours degree**

**Master's degree**

**Doctorate qualification**

**Other**

6. Which of the following best describes your current job level?

**Audit/ Risk Committee member**

**Director-General/ Chief Executive Officer**

**Risk Manager/Compliance Manager**

**Corporate Secretariat**

**Other**

**SECTION B: GENERAL INFORMATION ABOUT THE IMPLEMENTATION OF A CORPORATE GOVERNANCE FRAMEWORK**

No	Question	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
1.	My organisation has adopted a Corporate Governance framework (i.e. a structure manner in which decisions are made).					
2.	My organisation's Corporate Governance framework aligns to the King Code on Corporate Governance (King IV).					
3.	Implementing/ adopting the King Code on Corporate Governance in my organisation was easy.					
4.	My organisation's executives and/boards are familiar with the King Code on Corporate Governance and its principles.					

5. Does your organisation have oversight committee (board of directors, audit committee, risk committee, etc.)?

**Yes**

**No**

If yes, how are they established? Are they established through legislation or through the adopted governance framework?

---

6. On a scale from poor to excellent, please rate the relationship between your organisation's executives and the board of directors (or any relevant oversight structure) within your organisation.

1. **Poor**

2. **Fair**

3. **Average**

4. **Good**

5. **Excellent**

6. **Not applicable**

7. Should government entities (including SOEs) be treated differently to private entities with regard to adherence to Corporate Governance principles?

**Yes**

**No**

If "yes", why?

---

8. Have you noted any gaps between the King Code on Corporate Governance (King IV) requirements and your organisation's adopted governance principles?

**Yes**

**No**

**Not applicable (no adopted Corporate Governance framework)**

---

If "yes", please name your major gaps?

---

SECTION C: CHALLENGES TO IMPLEMENTATION OF THE KING CODE ON CORPORATE GOVERNANCE

1. In order of importance, please rank (*from 1 to 10; with 1 being high and 10 being the lowest ranking*) the following factors that impact good Corporate Governance

**1. Adherence to the Rule of Law**

**2. Excellent leadership**

**3. Good ethical principles and behaviour**

**4. Rational decision-making**

**5. Accountability – the assignment of roles and responsibilities at appropriate levels**

**6. Transparency in how organisational activities are undertaken**

**7. The identification of common goals across the organisation**

**8. Finance/cost of implementing good governance practices**

**9. Corporate Governance expertise/ knowledge**

**10. Willingness from those that are charged with governance, to adopt/ implement Corporate Governance practices**

Of the factor listed as the most important (above), why do you believe it is so?

---

2. Which of the following factors do you believe lacks (or is absent) within your organisation?

**Adherence to the Rule of Law**

**Excellent leadership**

**Good ethical principles and behaviour**

**Rational decision-making**

**Accountability – the assignment of roles and responsibilities at appropriate levels**

**Transparency in how organisational activities are undertaken**

**The identification of common goals across the organisation**

**Finance/cost of implementing good governance practices**

**Corporate Governance expertise/ knowledge**

---

**Willingness from those that are charged with governance, to adopt/ implement Corporate Governance practices**

None of the above

3. Failure of Corporate Governance has been on the news recently, what do you believe is the major cause of the failure?

4. In your view, what are the implications (to both an organisation and its management) in the event of Corporate Governance failure?

5. What/Who do you believe suffers the most from a Corporate Governance failure in SOEs and or Chapter 9 institutions?

1. **The finances of the organisation**

2. **The reputation of the organisation**

3. **The achievement of organisational goals**

4. **The economy of the country**

5. **The reputation of the country**

6. **Management**

7. **All the above**

8. **I don't know**

6. Please rate your organisation's performance in relation to the King Code on Corporate Governance.

1. **Significantly exceeds performance standards**

2. **Exceeds performance standards**

3. **Meets/ achieves performance standards**

4. **Barely achieves performance standards**

5. **Significantly below performance standards**

7. Do you think that the challenges faced by your organisation in relation to the implementation of the King Code of Corporate Governance can be diminished/lessened/reduced?

Yes

No

Not applicable

If “yes”, how?

No	Question	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
8.	I am proud of my organisation's adopted Corporate Governance framework					
9.	I am satisfied with how my organisation performs in relation to the principles espoused in its Corporate Governance framework					
10.	The Rule of Law is the cornerstone of Corporate Governance					
11.	Organisational culture and ethical behaviour are the drivers to good Corporate Governance					
12.	My role contributes towards an effective Corporate Governance framework					

No	Question	Strongly Agree	Agree	Don't know	Disagree	Strongly Disagree
13.	I understand the King principles on Corporate Governance					
14.	I know what should be done to ensure good Corporate Governance					
15.	I see a clear link between the Rule of Law and good Corporate Governance					
16.	I see a clear link between leadership and good Corporate Governance					
17.	I see a clear link between ethical behaviour and good Corporate Governance					

## ANNEXURE B: CONFIRMATION OF MBA STUDIES



NORTH-WEST UNIVERSITY  
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Email: [Wilma.pretorius@nwu.ac.za](mailto:Wilma.pretorius@nwu.ac.za)

17 October 2017

To whom it may concern

**RE: Master of Business Administration - Mini Dissertation**

Confirmation is hereby given that mr E Modiha (University No 26744465) is a registered MBA student at the North-West University.

In order for him to complete his dissertation, he is required to conduct research.

The information gathered will be treated as strictly confidential and will be used for research purposes only. The study will be approved by the ethical committee of the North-West University and thus have to satisfy the conditions of ethical research.

Assistance with the above-mentioned gathering of information for research will be highly appreciated.

Kind regards,

Ms Wilma Pretorius

## ANNEXURE C: CERTIFICATE OF VERACITY



NORTH-WEST UNIVERSITY  
YUNIBESITHI YA BOKONE-BOPHIRIMA  
NOORDWES-UNIVERSITEIT  
MAFIKENG CAMPUS

Department of Academic Literacy

---

15<sup>th</sup> March 2018

Private Bag X2046

Mmabatho

2735

### CERTIFICATE OF EDITING A MINI-DISSERTATION

TO WHOM IT MAY CONCERN

This serves to confirm that I have read and edited Mr. E. Modiha's mini-dissertation titled: **Identifying the challenges to implement King IV in Chapter 9 and public sector institutions.** The candidate corrected the language errors identified. The document is of an acceptable linguistic standard.

Thank you

Yours Faithfully

A handwritten signature in black ink, appearing to read 'J.R. Moletsane'.

.....  
J.R. Moletsane (Subject Head Academic Literacy)

Accr. No. 1002708

[joel.moletsane@nwu.ac.za](mailto:joel.moletsane@nwu.ac.za)

# ANNEXURE D: SOLEMN DECLARATION AND PERMISSION TO SUBMIT



COMMISSIONER OF OATHS  
Mmakgabo Hilda Mphahlele  
Business Unit Admin Manager  
RISK AND ETHICS BU  
AL: FOR - GENERAL SOUTH AFRICA  
300 Middel Street  
New Muckleneuk  
Pretoria, SA  
0001 Higher Degrees Administration  
*Hilda Mphahlele*  
09/05/2018

## SOLEMN DECLARATION AND PERMISSION TO SUBMIT

### 1. Solemn declaration by student

I, **Eugene Modiba**

declare herewith that the thesis/dissertation/mini-dissertation/article entitled (exactly as registered/approved title),

Identifying the challenges to implement King IV in Chapter 9 and public sector institutions

which I herewith submit to the North-West University is in compliance/partial compliance with the requirements set for the degree:

Master of Business Administration

is my own work, has been text-edited in accordance with the requirements and has not already been submitted to any other university.

**LATE SUBMISSION:** If a thesis/dissertation/mini-dissertation/article of a student is submitted after the deadline for submission, the period available for examination is limited. No guarantee can therefore be given that (should the examiner reports be positive) the degree will be conferred at the next applicable graduation ceremony. It may also imply that the student would have to re-register for the following academic year.

Signature of Student

University Number 26744465

Signed on this 09 day of May of 2018

### 2. Permission to submit and solemn declaration by supervisor/promoter

The undersigned declares that the thesis/dissertation/mini-dissertation complies with the specifications set out by the NWU and that:

- the student is hereby granted permission to submit his/her mini-dissertation/ dissertation/thesis:  
 Yes  No
- that the student's work has been checked by me for plagiarism (by making use of Turnitin software for example) and a satisfactory report has been obtained:  
 Yes  No

Signature of Supervisor/Promoter

Date

11 May 2018