THE EFFECTIVENESS OF INTERNAL CORPORATE GOVERNANCE MECHANISMS OF SOES AND LISTED COMPANIES IN SOUTH AFRICA

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Dedication

I dedicate this work to my mother Nana Msomi for the educational values she has taught me and, my dearest wife Sandra Mpele for the support she has provided to me through this journey.

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ABSTRACT

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The scope of the study focuses on the effectiveness of the board as the central structure of internal corporate governance mechanisms. The subject of this study includes a sample of four companies listed on the Johannesburg Stock Exchange (JSE) and four State Owned Enterprises (SOEs). The research findings show that there are several interrelated factors which collectively contribute to the effective functioning of internal governance mechanisms. Board failure and poor risk management were found to have been the main contributors to the ineffectiveness of internal governance mechanisms. One of the main factors which affected the effectiveness of the board, is its ability to instil a strong governance culture and value system within the organization and, with regards to SOEs especially, this has also included board stability. Boards are required to practice ethical and courageous leadership. Failure by the board to do so results in the weakening and ineffectiveness of other internal governance mechanisms.

The study investigates how the corporate governance regime and governance mechanisms within South African corporations, have been influenced by the country's unique political and socio-economic history and its need to attract foreign investors to

uplift the economy and enhance economic growth, whilst also needing to deal with social and economic instability.

Whilst South Africa's governance regime includes unique corporate governance solutions and requirements aimed at responding to the unique socio-economic challenges and to meet stakeholder expectations, this does not affect or have any influence on the fundamental governance principles. The governance solutions relate to the philosophical approach towards governance, as opposed to influencing the governance framework.

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CHAPTER I: INTRODUCTION

1.1 Introduction

South Africa has been regarded as having a robust corporate governance framework which has been developed in line with global standards (Johnson *et al.,* 2019). Despite this, corporate failures continue to be experienced. The increased media coverage of corporate scandals over the past decade has resulted in widespread public pressure from stakeholders, including government enforcement agencies, regulators in the field of corporate governance, securities agencies and those responsible for the internal oversight of corporations, to hold accountable those involved in breaches of corporate governance and ensure the effective enforcement of corporate governance mechanisms (Muzata, 2022).

This study employs qualitative content analysis, using a sample of large publicly listed companies and state-owned enterprises (SOEs) in South Africa that have experienced corporate scandals or firm failures. The aim of the study is to investigate the effectiveness of internal corporate governance mechanisms in curbing corporate scandals or corporate failures.

The correlation between corporate scandals and corporate governance can be explained by various theories, but most studies have used the agency theory (Panda and Leepsa, 2017). However, within the context of South Africa, an emerging economy with a unique socio-economic and political history that has influenced the evolution of corporate governance, this study incorporates the stakeholder theory perspective alongside the dominant agency theory. Central to the stakeholder theory is the idea that corporations have a corporate responsibility to act in the interest of stakeholders. Stakeholders include any individual or groups of individuals who can either effect or are affected by the corporation as it works to achieve its objectives (Mason et al, 2007).

1.2 Research Problem

Following the global corporate scandals of 2008 and 2009, involving corporations such as Enron, WorldCom, Lehman Brothers and Parmalat, interest in corporate governance has increased globally, particularly regarding how the competence and behaviour of directors impacted these scandals. Collusion, corrupt business practices, fraud, excessive executive management control, passive investors, company mismanagement, a lack of board independence and poor oversight by boards over executives, were found to have contributed to these scandals and governance failures (Hlobo *et al*., 2022).

A similar situation has existed in South Africa within corporations such as the mining company JCI-Randgold, financial services companies Fidentia and VBS Mutual Bank, the sugar company Tongaat Hulett, the health care company MacMed and, most notably, the global furniture and household goods company Steinhoff. The corporate failure of Steinhoff, which had a dual listing in Germany and South Africa, led to losses of over ZAR200 billion, resulting in the eventual total collapse of the corporation because of financial misstatements, manipulation of earnings and tax evasion (Hlobo *et al*., 2022). The CEO of Steinhoff, Markus Jooste committed suicide after being notified of his imminent arrest due to his role in the corporate governance failures at Steinhoff (Alexander and Acharya, 2024).

Several SOEs in South Africa have also experienced similar governance challenges. Some SOEs have been implicated in state capture, which has resulted in an estimated loss of ZAR4.9 trillion (Hlobo *et al*., 2022).

1.3 Purpose of Research

The primary purpose of this study is to investigate the effectiveness of the internal corporate governance mechanisms within South African corporations and SOEs.

The secondary objective of the study is to understand the level of compliance by South African corporations with corporate governance guidelines and principles in general.

Refakar and Rayaonorohanta (2020) indicate that whilst many best practices in corporate governance have emerged over the past two decades, many of the internal and external governance mechanisms that have been studied, address challenges faced in developed markets, and not necessarily those in emerging markets. Traditional governance mechanisms, such as board structure and independence may be more effective in developed markets, but alternative mechanisms could be more suitable in emerging markets facing different political, social, regulatory, and economic challenges.

The third objective of this study is therefore, to determine whether any socio-economic, political, or cultural characteristics unique to South Africa, have influenced corporate governance and how this might have influenced the effectiveness of internal governance mechanisms, within South African.

1.4 Significance of the Study

There is limited literature investigating the effectiveness of internal corporate governance mechanisms and their relationship to corporate failures, within the context of South Africa. This research seeks to fill this gap and add to the existing body of knowledge in this area. The research aims to provide recommendations for possible solutions that could improve the effectiveness of internal governance mechanisms and contribute towards curbing corporate failures.

1.5 Research Purpose and Questions

This study seeks to examine the effectiveness of the internal governance mechanisms of SOEs and listed corporations within the context of South Africa as a developing economy. Based on the research findings, recommendations will also be made on how the effectiveness of internal corporate governance mechanisms can be improved upon.

The following research questions will be addressed:

1. What is the state of development of internal corporate governance mechanisms within South African publicly listed corporations and SOEs?
2. How effective are internal corporate governance mechanisms within South African listed corporations and SOEs?
3. What is the relationship between internal corporate governance mechanisms and corporate failures within the context of South Africa?
4. What influence does the country's socio-political history, national and organisational values and societal culture have on corporate governance within South African publicly listed corporations and SOEs?

The study will focus on a selection of large publicly listed corporations that have prominently experienced corporate failures in South Africa, between the years 2010 and 2019. In addition, the study will incorporate selected SOEs that have experienced governance failures over the same period.

CHAPTER II: REVIEW OF LITERATURE

2.1 Theoretical Framework

South Africa's corporate governance framework

South Africa has been recognised for having a corporate governance framework that has been developed in line with best practices. The website of the European Corporate Governance Institute (ECGI), states that South Africa is one of the first countries, after the United Kingdom (UK), to develop a corporate governance code. The code, referred to as the King report on Corporate Governance for South Africa (King Report), was initially developed by a committee led by Mervyn King, a retired South African judge. The first version of the code (King I) was developed in 1994, soon after South Africa become a democratic country. Mervyn King was appointed as the chairman of international governance bodies, such as the International Integrated Reporting Council and the Global Reporting Initiative. According to the ECGI, South Africa has taken a global lead in the adoption of integrated reporting and disclosure and has been involved, as a member of the G20, in the implementation of international best practice in financial market regulation (Locke, 2023).

Definitions of corporate governance

Corporate Governance has been defined in different ways by various scholars. The definitions have depended mostly on the theory being postulated, as well as the perspectives, world views and interests of those interested in the subject of corporate governance (Yusof, 2016).

The most widely used definition of corporate governance is that of Sir Adrian Cadbury, who developed the Cadbury report. He defines corporate governance as the entire system of controls, both financial and non-financial, through which a company is directed and controlled. This definition makes the board of directors the focal point of corporate governance, which explains why most studies on corporate governance have focused on the board (Mans-Kemp et al., 2016).

From a shareholder's perspective, corporate governance has been defined as a set of institutional and market mechanisms that motivate managers to maximise shareholder wealth, as opposed to acting in their own interest. From an investor perspective, corporate governance is defined as the processes put in place by those who provide finance to corporations, to ensure they receive a return on their investment. From the perspective of board composition, corporate governance is defined with reference to the functioning of the board, which has the responsibility of directing, governing, guiding, monitoring, overseeing, supervising, and ensuring compliance of the organisation. The board is viewed as establishing the link between managers and investors for the success of the business (Kharuddin and Basioudis, 2022).

Corporate governance definitions are generally formulated using either a narrow definition, by focusing on the monitoring and control responsibility that shareholders have over executives of a corporation, or, a broader definition, which focuses on the broader responsibilities of corporations to also act in the interest of other internal and external stakeholders. The narrow definition describes corporate governance as the mechanisms that are put in place to reduce agency costs, which arise because of the separation of management and the owners or shareholders of the corporation (Stijn, 2006). This narrow definition is in line with the Berle and Means (1932), Jensen and Meckling (1976) and Fama and Jensen (1983) agency theory perspectives. The narrow definition places an emphasis on the primacy of ownership and property rights. It is based on the view that the firm is a legal entity which serves as a complex nexus, through which different individuals are contractually linked to the firm and have divisible claims to the assets of the firm. This nexus creates a framework through which the conflicting objectives of individuals are brought into equilibrium within a structure of contractual relations (Jensen and Meckling, 1976).

The narrow definition of corporate governance assumes that the shareholders, who have the right of ownership over the corporation, have a contractual claim over the corporation and are entitled to receive a return from the corporation (Weinstein, 2012). This definition also places a focus on the systems and processes by which the corporation is controlled and through which agency costs are reduced, to ensure that investors can assure themselves of a return on their investment (Rossouw, 2009).

In contrast, the broader definition of corporate governance is based on the stakeholder theory, through which corporate governance regards the corporation as an institution that has a social obligation to align the various potentially competing stakeholder interests within the corporation. The broader definition of corporate governance, therefore, assumes that the corporation has societal accountability to a wider range of stakeholders beyond just the shareholders. This includes government, civil groups, employees, management, social communities, and business partners. These stakeholders may either have a contractual or a non-contractual relationship with the corporation and are affected by the corporation in several diverse ways (Rossouw, 2009).

South Africa's approach to corporate governance is aligned to the broader definition of corporate governance. The King IV Report on Corporate Governance indicates that the governance codes aim to reach a balance between the interests of the shareholders and those of the broader group of internal and external stakeholders of the corporation. (IoDSA, 2016).

Viewing corporate governance beyond how it impacts the organisation but also how the organisation impacts society, appears to be the corporate governance approach also adopted by some European countries. The G20 Organisation of Economic cooperation and Development (OECD) principles of corporate governance (2015) define corporate governance as the variables which involve the relationship between a corporation's executives, the board, shareholders, and other stakeholders, in meeting the objectives of the corporation and monitoring its performance. The OECD principles were first issued in 1999 and have been endorsed by the G20 as a standard for providing guidance on good corporate governance to stock exchanges, investors, corporations, and other institutions (Kaur, 2018).

2.2 Studies on Corporate Governance

There is a view by some scholars that there are certain factors which act as the incentives or pressures that drive misconduct within corporations. These might include poor or ineffective monitoring and control mechanisms, complex organisational structures, or an ability to deliberately circumvent the controls within a corporation. The consensus is that corporate governance mechanisms are by their nature monitoring mechanisms. If these are effective, it is expected that they should limit the chances or incentives for opportunistic behaviour and misconduct through effective enforcement (Habib et al., 2021).

Several studies have been undertaken across the globe, examining the relationship between a failure of corporate governance and firm performance (Zhang et al., 2018, Cardoso et al., 2019 and Chaudhary, 2020). According to Belkir (2009), Dey and Chauhan (2009) and Bhagat and Bolton (2008), most of the corporate governance studies have focused on the relationship between boards and the financial performance of corporations. Other characteristics of board members, which also affect the governance and performance of the corporation, have tended to be overlooked.

A literature review study was conducted by Batra et al. (2022) to examine the impact of corporate governance on firm risk. These firm risks include fraud, corruption, and other unethical practices. The aim of the study was to determine the corporate governance variables that are associated with the decrease or increase of governance risk. The study found that, whilst researchers have studied several different variables associated with firm risk, most have been in relation to internal governance mechanisms. This has included examining the role and behaviour of independent directors, the size of the board, the number and roles of female directors, the dual role of CEO and chairman and corporate ownership structures. The results of the studies have, however, varied. For example, some studies have found that the role of independent directors can reduce firm risk, whilst others have found this not to be the case. Some studies have found that the dual role of CEO and Chairman is directly associated with firm risk, whilst others have found either a negative correlation between these two variables, or no correlation at all. Some scholars have found gender diversity to be negatively related to firm risk, whilst others have found no association. Some studies have found an association between firm risk and the number of members on the board, whilst others have found no association between the size of the board and firm risk. Studies on the association between the existence of institutional investors in a firm and firm risk has also yielded mixed results. The Batra et al. (2022) study concludes that there is a need to consider other corporate governance variables, to better understand the impact of corporate governance on firm risk. Other variables such as the age of board members, their personal characteristics, their attitudes, and experiences, may all have an impact on firm risk and have an influence their behaviours.

There are other studies on various areas of corporate governance, which have yielded mixed results. Mathew et al. (2016,2018) found that independent directors can reduce firm risk, as external members tend to make impartial decisions. Zhang et al. (2018) found this not to be the case. Akbar et al. (2017) found that an independent board and the dual role of the CEO are associated with lower levels of firm risk, in other studies larger boards were shown to reduce firm risk (Haider and Fang, 2016; Wang, 2012). A study conducted by Hatane et al. (2019) showed that board size and gender diversity did not have a significant impact on firm risk. Lenard et al. (2014) found that increasing the number of women on boards helps to reduce stock return variability and stabilises firm performance. Fauzi et al. (2017) found that female CEOs and CFOs tend to be associated with lower firm risk. Mastella et al. (2021) did not find any correlation between gender diversity and firm risk.

The research that has been conducted on corporate governance in emerging economies has focused on three main streams. These include studies on corporate governance mechanisms from an agency perspective, focusing on the role of ownership structures and shareholders, and their relationship with the directors and executives of the firm, as well as their impact on firm performance. The other stream of research focuses on corporate governance codes, standards, and practices of developed economies, particularly the Anglo-Saxon economies. The last stream of research investigates the intervention of government in corporate governance either through regulation of, or participation in corporate governance. It has been argued that the adoption of Anglo-Saxon codes by emerging markets, such as South Africa, may have led to the development of inappropriate governance policies in these regions. This is because emerging markets face vastly different challenges. They generally have weaker economies and market structures, weaker regulatory and governance institutions and may lack the ability to implement and monitor the various governance codes and requirements (Yussoff and Alhaji, 2012).

It is argued that the agency theory, which may be applicable in the European or U.S.A. environment, assumes that managers are driven by self-interest with firms being owned by weak and dispersed shareholders. This assumption is not always applicable in emerging economies where there is often a concentration of ownership and dominant shareholding. In such instances, the challenge may not be the agency problem, but rather the principal-to-principal conflict between the majority shareholders who dominate the board and have more influence over the organisation, and the minority shareholders (Yussoff and Alhaji, 2012).

A study conducted by Rashid and Islam (2010) on corporate governance mechanisms in Malaysia found that the high level of shareholder concentration, a weak regulatory framework, an illiquid market, high debt levels and low levels of transparency affects the effectiveness of internal and external corporate governance mechanisms. The external governance mechanisms comprise of regulatory authorities, the reserve bank, and the securities commission, amongst others. The weakness of these external institutions places an increased responsibility on shareholders to monitor the affairs of the firm and strengthen internal governance mechanisms. The internal mechanisms include the role, composition and functioning of the board and sub-committees, as well as the internal auditing and compliance functions. If these functions were strengthened, they could compensate for the weak external governance mechanisms.

Within the context of South Africa specifically, most of the studies on corporate governance relate to the relationship between corporate governance and the financial performance of corporations (Ntim et al, 2013; Pamburai et al., 2015; Rena and Sibanyoni, 2020) as well as corporate governance and environmental and social governance and sustainability (Johnson et al., 2019). Studies have also focused on board characteristics and frameworks, including CEO pay, board structure and board practices, such as disclosure, risk taking and whistle blowing (Nwoke, 2019; Tshipa et al., 2018b).

A study conducted by Muzata (2022) examines the extent of financial and socio-economic costs incurred by shareholders and broader stakeholders within the economy, including the government, due to corporate governance failures. The study was conducted on twelve of the top 40 listed companies on the JSE. It reviewed reports published by regulatory agencies, including the Stock Exchange News agency, between 2008 and 2016. The study found that substantial financial and socio-economic losses have been incurred due to corporate governance failures. It concluded that whilst South Africa might have sound corporate governance laws and regulations and a well-regulated financial market that promotes transparent disclosure and the protection of shareholders, there is a need to improve the enforcement of corporate governance mechanisms. There is also a need for external oversight agencies such as auditors to exhibit more diligence in detecting deviations from corporate governance. The study further noted that, whilst most corporate governance studies have been undertaken from the perspective of agency theory and examining agency costs. There is a need to go beyond evaluating agency costs, to also consider socio-economic costs, which are of a higher magnitude and affect a broader external stakeholder grouping, including government.

There have been several studies on different aspects of corporate governance. A study by Pamburai et al. (2015) examines the association between corporate governance mechanisms and the performance of the corporation. The study, which involves 158 companies on the Johannesburg Stock Exchange (JSE) found that companies with smaller boards perform better that those with larger boards. It also revealed that boards with a larger number of non-executive directors (NEDs) seem to perform better than those with a lower number of NEDs. In addition, companies that have fewer board meetings show a higher level of performance. The study further found that larger companies perform better than smaller companies and companies with less debt perform better than companies with higher levels of debt.

Mugobo et al. (2016) conducted a study to investigate the relationship between ownership structures of South African firms and how this influences firm performance. The study found that there was a significant positive correlation between ownership concentration, government ownership and firm performance.

Endrikat et al. (2021) indicate that whilst most studies on corporate governance focused on financial performance, recent studies have emerged with a focus on the association between board characteristics and corporate social responsibility (CSR). Most of the studies have shown a positive association between CSR and financial performance, finding that CSR increases the competitive advantage of companies.

Studies have been conducted on corporate governance within SOEs in South Africa, although they have not been extensive. Many of these studies have explored the appointment of directors of SOE boards and their conduct (Hlobo et al., 2022), whilst others have investigated the relationship between executives and board compensation (Marimuthu and Kwenda, 2019), and the impact of corporate governance and the financial performance of SOEs (Thabane and Van-De Venter, 2018).

2.3 Corporate Governance theories and concepts

Over the years, the concept of corporate governance has evolved, and several theories have been put forward by scholars to improve corporate governance practices and enhance the accountability of corporations. The main theme of the corporate governance proposals or theories emphasises the control and monitoring of corporations to maximise profits for the companies and their shareholders. The dominant theory on corporate governance is the agency theory. Proponents of the agency theory played a significant role in developing corporate governance frameworks and models (L'Huillier, 2014).

Whilst there are several corporate governance theories, there are three main theories that underpin most corporate governance models. Firstly, there is the principal / agent model put forward by Jensen and Meckling (1976, cited in Mostovicz, et al., 2011 p. 614) or the agency theory by Berle and Means (1932, cited in Mostovicz, et al., 2011 p. 614). These theories relate to the division of the corporate property between the principal or shareholder and, the agent, or management. The second model is the shareholder's view of the corporation, which is linked to the principal / agent model. This theory distinguishes between the shareholders as the suppliers of finance and those entrusted with the proper management of the finances, as managers of the corporation. A third view is that of the stakeholder theory, which suggests that financial performance and maximisation of shareholder wealth should not be the sole focus of the corporation. The interests of other stakeholders such as employees, suppliers, customers, and society at large, should also be considered by the corporation as they all contribute to the corporation's success (Mostovicz et al., 2011).

Agency Theory

Agency theory seems to be the dominant corporate governance theory, and has been the main theoretical framework upon which most of the work on corporate governance has been influenced or further developed (Muzata, 2022). Agency theory is premised on the ideology of shareholder primacy. The advocates of shareholder primacy suggest that corporations can attain social welfare if the managers are accountable solely to the shareholders. This neoliberal ideology stems from the contract-based theories upon which the agency theory is premised. This ideology has been incorporated into explaining the basis of the contractual economic relations within a free-market system between shareholders, as providers of capital, and managers, as the agents of the shareholder. Jensen and Meckling (1976, cited in Weisnstein, 2012) set out the theory of the firm based on (a) property rights, (b) agency and (c) finance, opposing previous neo-classical theories which suggested that the objective of management should be maximizing the growth of the firm.

The agency relationship, in which the shareholders mandate and entrust the managers, by contract, to make certain decisions on their behalf and in their interest, is linked to the theory of property rights. Agency theory legitimises shareholder primacy, not because the shareholders are the owners of the enterprise, but because of the contractual relationship which affords the shareholders the right to be claimants of the firm. These contracts specify the rights of the agent, the basis for performance evaluation, and the criteria for remuneration (Weisnstein, 2012).

The challenge of measuring the performance of the agents is created by the weakness of accounting and market-based performance measurements, as corporations do not operate within a perfect market system. Accounting returns relate to the historic performance of the firm. This performance is sensitive to various external market and financial factors which are beyond the control of management. Meanwhile the market returns of the firm are derived from market expectations, and management may manipulate the performance of the firm to align with these expectations (Rebeiz, 2015).

Agency theory is built on the premise that the relationship between a principal, or owner of the corporation, and an agent, or management of the corporation, is governed by a contract in which the principal engages the service of an agent, through which the principal delegates some of the decision-making authority to the agent to act on behalf of the principal. This then creates a separation between the principal and the agent, who is then voluntarily controlled for reward, resulting in the agent's dependence on the principal (L'Huillier, 2014).

The proponents of the agency theory suggest that governance measures and controls are put in place to ensure that the agents, who are provided with a high amount of discretionary power, can be held accountable to act in the best interest of the owners, even when this conflicts with the self-interest of the agent (Panda and Leepsa, 2017). Agency theory, therefore, assumes that executives and managers need to be monitored and controlled as they cannot be trusted to behave ethically since they are driven by their selfish interests and seek profit maximisation (Mostovicz et al., 2011).

The emergence of the agency theory can be traced as far back as 1776, when Adam Smith, through his publication of The Wealth of Nations indicated that if the management of an organisation has been delegated to a person or group of persons who are not the owners of the organisation, then such person will not work in the interest of the owner. This results in a conflict between the managers of the organisation and the owners. This conflict has become known as the agency problem (Panda and Leepsa, 2017).

Jensen and Meckling (1976) were instrumental in the further development of the agency theory. Drawing from the theories that had been developed by other scholars on property rights, agency and finance, Jensen and Meckling (1976) developed their theory of the ownership structure of the firm. They indicate that whilst the agent may not always act in the best interest of the principal, the agency problem can be minimised by providing incentives to the agent to align their interests with those of the owner or principal. The agency problem is minimised by incurring monitoring or agency costs, which are the expenses associated with implementing mechanisms and control measures aimed at monitoring and controlling the actions and decisions of the agent. In certain instances, it might also be worth incurring bonding costs. These costs arise when the principal puts in place measures to ensure compensation for any harm that may arise due to the agent's divergence from protecting the interests of the principal.

Jensen and Meckling (1976) indicate that their work on agency theory differs from that of other scholars in that, other scholars explain the agency relationship by focusing on the structure and contractual relationship between the agent and the principal. This includes focusing on the compensation and incentives that are put in place to encourage the agent to act in the best interest of the principal. This is in recognition of the fact that monitoring and control measures are deficient and, will not always be adequate on their own, to ensure that the agent will act in a manner which maximises the interest of the principal. Jensen and Meckling (1976) on the other hand, see the agency relationship beyond focusing internally on the agent and principal. They see the agency relationship from the viewpoint that the firm is not an individual, but a separate legal body whose actions are regulated by the contractual relationships the firm has with multiple stakeholders and beneficiaries, including employees, customers, suppliers, government agencies and shareholders. The firm serves as a central point or nexus of contractual relationships between several stakeholders with competing interests and objectives, within which the competing interests are brought into equilibrium. The firm should not be viewed as a natural person with its own vices and personal characteristics, but rather like the economy or the market, whose behaviour is driven by a complex set of equilibrium processes.

Agency theory has been applied in several different disciplines, including accounting, finance, economics, law, political science, strategy, and organisational psychology, (Zogning, 2022) and, more recently, it has been stretched and used in education to explain the factors that contribute to the U.S.A. having a high number of leading research universities (MacLeod and Urquiola, 2021).

Some scholars have commented on the need for agency theory to evolve. At the centre of the agency theory is the subject of delegation, which entails shareholders handing power over to managers who are potentially more capable and better able to achieve the desired results. At the same time, shareholders are required to hold management accountable for their actions and to impose sanctions, if necessary, particularly as they have unrestricted access to advantageous information. It has been suggested that to address this conflict, managers could be incentivised to increase shareholder wealth, as opposed to being controlled. This could include providing compensation structures which almost entirely consist of the company's stock, paid to the managers based on the company's performance. Whilst this would possibly have the effect of significantly reducing the agency costs, it could increase bonding costs. This solution is proposed on the basis that shareholders cannot possibly put in place mechanisms to monitor and control every conceivable aspect of the actions and decisions carried out by the managers. To create a balance between these two extremes, it is suggested that there could be a combination of monitoring and control as well as incentivisation. This could possibly be achieved by ensuring that incentivisation based on the firm's performance is coupled with an element of control and monitoring, to ensure that managers remain accountable (Zogning, 2022).

This compromise is in line with behavioural research which suggests that individuals are not only selfish and opportunistic, but they are also motivated by recognition and self-fulfilment. This means that non-monetary incentives may also be effective in reducing the agency problem. Within a changing world where behaviours are driven by various socioeconomic factors, it is argued that the agency theory needs to evolve from assuming that human behaviour is homogeneous and easily controlled. To create mechanisms simply focused on guarding against opportunistic behaviour, could diminish creativity, entrepreneurship, and innovation (Zogning, 2022).

Agency theory has been widely used as a basis for structuring and putting in place internal corporate governance mechanisms, with a primary focus on the board. In a study comprising a literature review on governance mechanisms, Di Vito and Trottier (2021) define corporate governance as the mechanisms which are put in place to protect the interests of investors and shareholders and create alignment between the interests of management and shareholders through an effective board. Their literature review reveals that an effective board is characterised by its diversity, independence, expertise, the extent to which there is CEO-Board duality, board commitment and CEO compensation.

Agency theory assumes that proper board composition, as an internal corporate governance mechanism, will improve disclosure and ethical conduct, resulting in decreased financial misconduct (Velte, 2023).

Jensen and Meckling (1976), in discussing the principles which have been foundational to the agency theory, suggest that it is necessary to separate the two roles of CEO and board Chairperson, to reduce agency costs and improve firm performance. Another study conducted from an agency theory perspective found that CEO duality has a negative influence on board independence. Chief executive officer duality allows the CEO to have the power to influence, control and dominate the decision-making processes and restrict the flow of information between executives and the board. As a result, the CEO cannot be trusted by the shareholders to independently monitor and control their own activities (De Villiers and Dimes, 2021). This is important as one of the main roles of the board is to monitor the activities of the executives, who are led by the CEO (Li and Roberts, 2018).

Stewardship Theory

The advocates of the stewardship theory indicate that the successful performance of the firm is linked to the extent to which the managers, who have an intimate knowledge of the operations of the firm, are granted the power and autonomy to make decisions (Rebeiz, 2015).

The stewardship theory is based on principles of psychology and sociology. The theory assumes that human beings within the firm, referred to as stewards, are motivated and influenced by several different factors and gain fulfilment from being able to align their interests with those of the organisation and its principals. Even in instances where there is a divergence between the interests of the steward and that of the principal, the steward will still promote and maximise the interests of the principal and the goals of the organisation. This will be the case even if it requires them to sacrifice their own interests. This compliance behaviour reduces the agency costs associated with monitoring and controlling the behaviour of the executives (Kaur, 2018).

The theory also promotes combining the roles of CEO and Chairman within the organisation. According to the theory, CEO duality results in the more effective control and management of the organisation. It removes ambiguity and a clear unity of direction is then established, resulting in improved efficiency and productivity within the firm (Kaur, 2018).

Some critics of the stewardship theory argue that the assumption that all individuals are stewards, is flawed. Not all stewards can be perfect stewards as they do not all have the same psychological make-up. They have different personalities, and they are influenced and motivated by different things. They have different risk orientations, they have different cultural influences, and they relate to and associate with power differently. The behaviour of leaders within the organisation has an influence on the culture of the organisation. This affects the attitudes and behaviours of managers and employees within the organisation. It is therefore unlikely that every individual within an organisation will act as a steward, as some managers may possibly choose to behave opportunistically, at least some of the time (Chrisman, 2019).

Stewardship theorists place an emphasis on the measures that are put in place to empower executives. The theory is that executives will be more effective if they are given the authority and responsibility to manage the corporation, rather than being micro-managed and controlled. In doing so, management will be aligned with the interests of not only the shareholders, but other competing stakeholders. Ironically, proponents of the stewardship theory acknowledge that not everyone is motivated by money and not all individuals require coercive control to align their interests with that of the organisation. This acknowledgment negates the absolutist assumption that all people are homogenic and will all behave as similar stewards (Chrisman, 2019).

Stakeholder Theory

Stakeholder theory suggests that the aim of corporate governance is to protect the interests of all stakeholders, as opposed to operating in the exclusive interest of the shareholders. Bridoux and Stoelhorts (2022) indicate that scholars who are proponents of the stakeholder theory emphasise that the role of the firm, is to manage stakeholders by coordinating and facilitating cooperation amongst them and finding collective solutions to collective problems. This enables joint value creation. However, the challenge lies in balancing the power relationship between the internal power of the executives and managers, who have the central authority of managing the firm on behalf of the external stakeholders, with that of the external stakeholders, who have an interest in the firm, but are outside the organisation. The analogy of this interdependence is likened by the authors, to that of the relationship between a hub and the spoke on a wheel.

Stakeholders within a firm include a broad-based group comprising both individuals and various groups and types of organisations. The stakeholders are therefore not homogenous and are likely to have different interests and viewpoints. The ability to coordinate these diverse views is important to ensure that an amicable solution is reached to create value for the firm. This most likely requires a high level of negotiation, coordination, and conflict resolution skills, to solicit the trust and confidence of all the different stakeholders (Bridoux and Stoelhorts, 2022).

The stakeholder theory has been criticised, mainly by proponents of theories that are aligned with property or nexus-of-contracts models. The critics argue that the benefits derived from an organisation owned by the shareholders, should not be shared with other stakeholders who do not have an equity stake in the organisation. Instead, shareholders should be the exclusive beneficiaries. Another criticism is that the stakeholder theory attributes accountability by the corporation to a range of groups, in the form of stakeholders. Directors must be accountable to the one group that will assume the risk of failure, or benefit of success, as opposed to a range of groups that may have social, but not economic ties to the corporation. This perspective suggests that corporations should not be accountable for their social implications. This neoliberal approach implies that a group of powerful corporations could control much of social life. Social norms and interests could be subjected to the economic interests of corporations, resulting in market mechanisms dictating societal norms (Mason et al, 2007).

The Managerial hegemony theory

The managerial hegemony theory puts forward the view that managers of the corporation seek to have unfettered responsibility for making strategic decisions, resisting any interference from the board of directors. The directors become reduced to figureheads, with the CEO having unfettered power in making all the strategic decisions.

The CEO is also likely to be influential in the appointment and remuneration of board members. In instances where the board members participate in determining the remuneration of the CEO, this creates a situation where the independence of the board members could be compromised. The board members are less likely to go against the CEO and are more likely to support the decisions of the executives (L'Huillier, 2014).

Incorporating Artificial Intelligence into Corporate Governance

Most of the studies undertaken on corporate governance have focused on the impact of corporate governance on the performance of the organisation. There is limited research on the reasons why poorly led corporations fail and the causes of inappropriate behaviour in leaders (Mostovicz et al., 2011). The difficulty in determining the causes of inappropriate and opportunistic behaviour of leaders may be due to the difficulty experienced by boards and compliance officers in effectively analysing and evaluating complex organizations.

Part of the solution to this problem may be in the use of Artificial Intelligence (AI). Ricci (2020) asserts that AI technology can collect, analyse, and interpret information from various sources regarding financial or non-financial information, commercial performance, and competitor activity, amongst other things. With the fast-paced developments in AI technology, the question has arisen whether there is a possibility of accelerating the development of AI, to the point that it is incorporated into corporate governance models. This could be as an evaluation and decision-making technology, aimed at mitigating against flawed human design, or in the extreme, completely replacing human beings in the board room. Petrin (2019) indicates that AI surpasses the human brain and, has the potential of developing to an extent that it marginalises human intelligence.

Whilst AI learning technologies may assist in facilitating and augmenting the analysis of information and the decision-making process, which would reduce data dependent limitations of corporate governance, it is unclear whether it is technically possible for AI to eventually replace the human corporate overseers and players in the board room. It is unclear whether AI could eventually evolve to possess a general level of human intelligence, beyond simply being data driven and limited to predictive analytics. The ability of the human being to assess risk, for example, may be based on individual experiences and knowledge gained over time, sometimes gained from activities outside of and, unrelated to the organisation. Human board members have the capability of developing the skill and intuition that can be instrumental in identifying potential risks and based on their suspicions, this could lead them to conduct further investigations, beyond looking at data at face value (Armour and Eidemmuller, 2020).

Armour and Eidenmuller (2020) indicate that, with the increasingly fast paced development of AI technology, whilst seemingly far-fetched, corporations of the future may well be governed through AI. This eventuality would, however, require a more developed legal and regulatory system within the field of corporate governance. Armour and Eidenmuller (2020) further assert that, whilst AI technology has developed immensely over the years, it currently depends on data, to answer problems through predictive analytics. It is yet to be developed to the point where it can replace human intelligence, which is termed artificial general intelligence (AGI).

One of the challenges of AI is what is referred to as the alignment problem. Super intelligent AI may be misaligned to the human objectives. Whilst AI can be programmed to pursue social objectives by listing all the possible human values and rules we can think of, the list will never be exhaustive. Similarly, within corporate governance, the rules and guidelines can never be exhaustive, resulting in an incomplete contract between shareholders and management. Conventional corporate governance seeks to address this problem through governance mechanisms such as aligning executive compensation to long term shareholder interests, the appointment of independent directors, implementing rules relating to disclosure of information and many others aimed at dealing with the agency problem and reducing firm risk. The expectation is that, where the governance rules do not provide a solution for an unexpected eventuality, managers will be guided by the governance principles. When these mechanisms are not effective, or, when the costs of having an incomplete contract are too high, shareholders may opt to integrate themselves with the organisation so that they can retain residual rights of control over the assets within the firm and manage unexpected events and situations as they arise. With AI, this residual right of control would require turning off the machine. However, if the superintelligent AI goes rogue and becomes uncontrollable, the residual rights disappear due to being uncontrollable (Tallarita, 2023).

2.4 Corporate Governance – hard law vs soft law

The most recent global financial crisis and the related corporate scandals that have arisen, have underlined the failure of existing governance mechanisms, including good corporate governance codes. Therefore scholars, civil society, and politicians have invited legislators and the financial community to reinforce both regulations (hard law) and governance codes (soft law) to increase transparency and the accountability of corporations, and to restore investor confidence and improve the damaged reputation of corporate businesses. Hard law includes binding laws and regulations such as legislation and regulations. Soft law includes formal non-binding guidelines, principles, and recommendations which corporations can voluntarily choose to adhere to. (Cuomo *et al*., 2016). The soft laws or guidelines usually require corporations to "comply or explain" which gives corporations the flexibility to choose which corporate governance structure to adopt and then explain their rationale for exercising such discretion. (IoDSA, 2016). In the case of South Africa, the country has adopted "comply and explain" (IoDSA, 2022).

Soft law is usually incorporated into the corporate governance codes. Corporate governance codes fall into three categories. These include codes issued by global institutions, such as the OECD and the International Corporate Governance Network (ICGN), which seek to promote good corporate governance practices at a global level or within a specific geographical region. Secondly, there are codes issued by individual institutions within a country, or several institutions working together. These may include government, stock exchanges, investors, associations of directors and other professional bodies. These codes aim to improve corporate governance at a micro-level, within a specific country. Whilst global and national codes are generally developed for listed corporations, some of these codes are developed specifically for organisations in specific sectors. For example, there may be codes for the financial services sector, which would include financial institutions such as commercial banks and institutional investment agencies. There may also be codes that apply specifically to state owned enterprises or even charitable organisations. The third category of codes includes those issued by specific institutions or corporations, which specifically applies to that specific organisation. These are usually used to regulate corporate governance activities within the organisation and to communicate to investors and other stakeholders, the corporate governance practices that have been adopted by that organisation (Cuomo et al., 2016).

International Corporate Governance Codes

The pressure to adhere to corporate governance codes is generally higher where the codes are issued by a global or national institution, whereas the coercive pressure is less where these are issued by professional bodies or individual corporations. The requirement for an organisation to disclose its level of compliance with governance codes differs within each jurisdiction. The requirement for disclosure may either be mandatory, or voluntary. In certain countries mandatory disclosure may be required by the listing authority, such as in Australia, Canada, Luxembourg, Russia, Singapore, and the United Kingdom, amongst others. The requirement for mandatory disclosure may also be by law in certain countries, which includes most countries of the European Union. When disclosure is mandatory, compliance with the codes tends to increase, as the external market could penalise the corporation for poor governance practices. The criticism of mandatory compliance to codes relates to corporations tending exercise such forced compliance in form and not in practice, doing just enough to escape being penalised.

Another criticism is that mandatory codes and hard laws, such as listing requirements, tend to increase the cost of compliance This could result in corporations de-listing, particularly where these are small, or poor perfuming firms (Cuomo et al., 2016).

Voluntary disclosure is prevalent in emerging markets, such as countries in Africa and the Middle East. Whilst voluntary codes have the positive effect of granting an organisation flexibility with regards to the application of the codes and disclosure requirements, there is also a negative aspect. The negative aspect is that it makes it difficult for the investment community and other stakeholders, to be properly informed on the governance practices within the relevant organisation (Cuomo et al., 2016).

Whilst the concept of corporate governance has been in existence since the formation of corporate organisations, the guidelines relating to corporate governance were only developed recently, during the 1990s, following the publication of the Cadbury Code in 1992. Over time, these guidelines have evolved to deal with the different and sometimes unique challenges faced by different corporations within different countries, resulting in different corporate governance solutions and guidelines being developed. The 2008 global economic crisis, which exposed weaknesses and failures in corporate governance, sparked a renewed focus on the subject. Several countries developed and amended their corporate governance guidelines and frameworks, based on the corporate governance gaps that had been exposed and identified, aiming to build investor confidence (van Zyl and Mans-Kemp, 2020).

Several corporate governance codes and guidelines have been developed with the aim of improving the corporate governance of corporations and reducing firm risk. In the case of the United Sates, these guidelines have been incorporated into legislation through the Sarbanes Oxley Act (2002), resulting in the codification and regulation of a significant part of its governance principles. Some scholars have argued that this has been an overreaction by the U.S.A. government to the corporate failures of firms such as Enron and, has the effect of stifling innovation and entrepreneurship (Chauke and Sebole, 2018). Mathew et al. (2016), on the other hand, discusses how the guidelines within the Sarbanes Oxley Act have been developed to enhance the accountability of corporations and reduce their insolvency risk. Djoutsa et al. (2018) discuss how the German Corporate Governance Code was developed, following the Sarbanes Oxley Act, which Germany developed in the same year, to improve corporate governance. France adopted the Financial Security Law. The Netherlands adopted the Code Tabaksblat in 2013, and in India, the India Clause 49 required an increased transparency in the reporting and disclosure of Indian corporations. Canada adopted the Canadian Coalition for Good Governance and, many other governments have adopted similar guidelines across the globe (Prasanna, 2013).

Corporate Governance Codes Compliance and Firm Failure

There has been an increased interest in the relationships between failure to comply with corporate governance codes and causes of corporate failures. Bravo - Urquiza and Morena-Urebo (2021) conducted a study on Spanish corporations to determine the extent to which non-compliance to the Spanish corporate governance code has contributed to financial failures. The study examined three levels of compliance. These were overall compliance, compliance with recommendations relating to boards of directors and compliance with recommendations relating to board sub-committees. The results indicated that compliance with the recommendations regarding the board of directors leads to a reduction in financial distress. The study was conducted within the Spanish context, where most corporations have a high level of ownership concentration, which tends to result in higher levels of conflict between majority shareholders and minority shareholders.

Humphries and Whelan (2017) conducted a study to investigate the extent to which national culture may impact the level of compliance with national corporate governance codes. The variables investigated included aspects relating to board independence, gender composition, board leadership and meeting frequency. These variables were measured against Hofstede's cultural dimensions comprising power, distance, individualism vs collectivism, masculinity versus femininity and uncertainty avoidance. The study was conducted against the codes of fifty-five countries. It found a significant relationship between Hofstede's cultural dimensions and the extent of compliance with characteristics of the board. It also concluded that culture has an influence on board characteristics and therefore, compliance with governance codes, which mitigates corporate failure.

These studies suggest that there may well be several factors that are unique to a country or region, which could influence noncompliance with corporate codes and consequently, corporate failures. This may be an important consideration, and the investigation of this assertion was considered during the research and data analysis of this study.

Most governance codes focus on the role and composition of the board. The board plays a pivotal role in the monitoring and control of corporations and in ensuring that sound corporate governance practices and frameworks exists within corporations. There are several factors that are measured when evaluating the effectiveness of the board as an internal corporate governance mechanism. These factors include board size and composition, board independence, committee size, board diversity, board independence and meeting frequency (De Villiers and Dimes, 2020). Cuomo et al. (2016) indicate that, the recommendations contained in most codes encourage the boards of directors to have a higher number of independent non-executive directors, than non-independent directors, the splitting of the role of CEO and Chair, the creation of board committees, such as audit, risk, remuneration, nomination and remuneration committees and several other practices aimed at improving the board's effectiveness in monitoring and controlling the organisation.

Veldsman (2012) highlights the importance of ensuring that boards adhere, not only to the letter of corporate governance codes and principles, but also the intended outcome, or spirit of the codes and principles. Following the letter of the codes in a tick box fashion impedes the effectiveness of corporate governance. There is, therefore, a need for codes to include guidelines on the enablers that need to be present, so that the codes are adhered to in content and in process as well as in letter and in spirit. The author further argues that board members need to reach consensus on the fundamental core behavioural values and principles to which they will be held accountable. These values could include stewardship, integrity, protecting the interests of others, honesty, trustworthiness, fairness and equity, transparency, accountability, and openness, amongst others. Once the board agrees on these values, these then form the basis upon which the codes are operationalised and prevents a situation where the behaviour and conduct of board members is mechanically evaluated through a tick box exercise. This also allows the board to effectively deal with unanticipated matters that may arise in the present or the future, which are not explicitly covered by the codes. The board members can then be guided by their ethical, conscious, or agreed core values which form the board's culture. In instances where there is a diverse board with members that have different values systems and cultural backgrounds, it is even more important to ensure that there is a shared value system that is embedded within the board, so that there is a clear understanding of what is acceptable and what is unacceptable. Failure to undergo the intense and robust process of value sharing could result in the board engaging in endless and intense soul-destroying debates on what is appropriate or inappropriate. This could result in the board focusing on the symptoms of corporate governance and addressing these in a checklist-like manner. This could result in an ineffective governance process in which the codes lose their effectiveness.

South Africa - Corporate Governance Codes

In South Africa, the corporate governance guidelines were mainly encompassed within the King reports. The global economic and financial challenges, global technological advancements, the need to address environmental factors, as well as the socio-economic challenges of inequality and social tension within South Africa, gave rise to the revision of the King reports, finally resulting in the publishing of the current King IV report.

The development of corporate governance in South Africa has followed the evolution of corporate governance in Europe. To intensify compliance with corporate governance and raise corporate governance standards, a committee led by Adrian Cadbury published a report in the UK in 1992, commissioned upon a request by the Financial Reporting Council, the London Stock Exchange and the accounting profession.

The recommendations of the commission, entitled Financial Aspects of Corporate Governance, mainly focused on the control and reporting functions of boards and the role of auditors. Following these developments, in 1992, the King Commission was appointed in South Africa, led by Mervyn King. The first King Committee Report was published in 1994, named the King I Report. The report was mostly aligned to the Cadbury report with an emphasis on board characteristics and the protection of shareholders. The report sets out recommendations on corporate governance standards for listed entities, banks and most SOEs. Following the development of the King Codes, The Companies Act 71 of 2008 was passed into legislation and set out the legal responsibilities of boards of directors and circumstances under which directors could incur personal liability (Rena and Sibanyoni, 2020).

The King II codes of corporate governance introduced a social and stakeholder perspective to corporate governance whilst also seeking to protect the rights and interests of shareholders in the interest of uplifting the economy. The King II codes indicate that directors are required to consider various factors as they carry out their duty of monitoring and controlling corporations. These factors may include laws and regulations, the behaviours of customers and consumers, the attitudes of employees, investors, public interest groups, political opinion, and public confidence. This inclusive approach recognises stakeholders, within the community in which the corporation operates, as having an influence in the strategy of the corporation. The corporation is therefore expected to define its purpose and share its values with its stakeholders, so that is develops a mutually beneficial relationship that will assist the company in achieving its objectives and goals. At the same time, it must be borne in mind that the commercial and financial aspects of the company are also important and are required to exist for the corporation to succeed and the economy to develop. Without acceptable levels of profitability, the shareholders will look for alternative investments and, other investors and stakeholders will not be interested in being associated with the company (IoDSA, 2002).

The King II codes indicate that the key challenge for good corporate governance and good corporate citizenship, is striking the balance between meeting the requirement of the maximisation of shareholder wealth, whilst maintaining the responsibility of considering the interests and expectations of other stakeholders of the company. The underlying values of the King II corporate governance codes are influenced by the countries' socio-economic history. The co-existence between corporations and other stakeholders, is required by the codes to exist within an environment where certain racial groups were legally excluded from social and economic benefits. Given this background, South African corporations have the fundamental business imperative of balancing economic growth and economic success. Corporations need to support the achievement of the countries socio-economic development objectives by understanding the cultural perspectives and interests of the broader society. These include (a) understanding the spiritual collectiveness of the community where community development is placed ahead of individualism, (b) where the loyalty towards leadership is based on the inclination towards consensus, rather than dissention, (c) where non-discrimination, justice, fairness, and reconciliation is placed ahead of prejudice, (c) where respect is important to the cordial co-existence within communities. These values are embedded within the African culture and political ideology and are expressed through the concept of Ubuntu (IoDSA, 2002).

The King II codes introduced the requirement for corporations to disclose, in their annual reports, how they have complied with the requirements of the codes and, where there has been non-compliance with the codes, explain how and why there has been such non-compliance. This level of disclosure allows stakeholders to be informed on the governance issues within the entity and be able to challenge and comment on the quality governance practices. King II introduced the concept of “apply or explain”, as opposed to making it compulsory for entities to simply comply with the codes. This was done to provide organizations with the flexibility to not comply with aspects of the codes where they feel that they have a legitimate reason for not complying or believe it is not in their business interest to do so. It allows entities to justify why they have not complied and how the interest of the entity and its stakeholders has been best served by such non-compliance. The codes require that entities should apply their minds in considering and explaining what they have done to comply to the principles of the codes, as opposed to simply indicating that they comply (IoDSA, 2002).

The “comply or explain” requirement of the King II South African governance codes is different to “comply or else”, which provides for sanctions for non-compliance. An example of this approach can be found in the U.S.A. codes, which are codified within the Sarbanes-Oxley Act (SOX). The criticism of the “comply or else” approach is that it seeks to treat all entities as though they conduct business and operate in the same way.

The cost of compliance can be high and burdensome, and the entity may be focused on compliance at the expense of the economic value of the entity, without evaluating the reward and benefits to the entity from compliance, against the risks that may exist because of non-compliance. The countries within the Commonwealth and the EU have adopted the “comply or explain” principle within their governance codes. The question whether entities should “comply or explain’ or “comply or else” was debated at the time the United Nations Governance Code was being developed. Most countries expressed their opposition towards the “comply or else” principle on the basis that it removed flexibility (IoDSA, 2002).

The King III codes were developed to align the corporate governance codes with the new Companies Act 71 of 2008 and, to keep up with the global changes in corporate governance trends. In contrast to the King I and King II codes which were applicable to companies, King III increased the scope of the governance codes to all entities irrespective of their nature of incorporation (IoDSA, 2009).

King III introduced the concept of integrated reporting. This concept is an extension of the board’s obligation to act in the best interest of both the company and its broader stakeholders, as well as the environment. The philosophy of integrated reporting is centred around sustainability and corporate citizenship. The codes indicate that good governance and corporate citizenship is essentially about effective leadership, characterised by ethics, accountability, transparency, and high moral values, in line with the concept of Ubuntu. Effective leadership directs the entity towards the attainment of sustainable economic, social, and environmental goals. The interconnectedness of nature, society and business requires companies to adopt a governance approach which considers the importance of sustainability. These matters are required to be reported upon in the integrated report. (IoDSA, 2009).

Sustainability matters have attracted growing interest globally, with the United Nations publishing the Global Compact and the Principles for Responsible Investment. In the EU the European Union Green Paper for Corporate Social Responsibility (CSR) and the OECD Guidelines for Multinational Companies have been developed. Sweden has required its SOEs to follow the Global Reporting Initiative's (GRI) G3 guidelines. Countries such as Norway and Denmark have put in place policies encouraging companies to apply the GRI G3 guidelines. In Norway the government has required corporations to report on their sustainability performance. In 2007 the U.K. Companies Act introduced a section on CSR, which requires directors to consider the protection of the environment and the long-term sustainability of the corporation, when making decisions. Within the context of South Africa, the JSE launched the SRI index in 2004, which is a tool that can be used by investors to identify companies which have incorporated sustainability practices within their business activities. The challenge for organizations is to incorporate sustainability matters within their business strategy as they plan the successful and sustainable economic growth and development of the organization. This requires an integrated approach in managing the strategy, risks and performance of the corporation. Through the integrated report the company evaluates its ethics, values, governance practices, and sustainable business performance in an integrated manner. Stakeholders can have a more wholistic and informed assessment of the company's economic value and how the company has dealt with environmental, social and governance issues (ESG). Included in integrated reporting is a view on how the board believes the company will sustain its performance by providing a future perspective on how the positive aspects can be improved upon and the negative aspects corrected (IoDSA, 2009).

King III places an emphasis for companies to adopt a risk-based approach to governance. This is different to the traditional compliance-based approach which merely assesses the extent to which the company complies with governance policies, procedures, and processes and assess the existence of internal controls. This is carried out through the internal auditing function. The risk-based approach, on the other hand, is a more considered approach. This approach allows the internal audit function to determine the adequacy and effectiveness of internal controls in managing risks, based on an evaluation of the strategic direction that the board of the company may have decided to take. The internal audit function is expected to conduct this risk assessment annually. The results on the internal control systems and their effectiveness should be shared with the board and the audit committee. This risk-based approach gives credibility to the information provided in the integrated report as it will have been properly considered and deliberated upon by the board (IoDSA, 2009).

The latest King Code, King IV Report, published in 2016, emphasises that it is important to make a shift from financial capitalism to inclusive capitalism. This shift is due to the view that the long-term value of corporations cannot be measured by financial performance alone. The management of resources, which value is not measured exclusively by traditional accounting practices, is equally important for long term corporate sustainability. For a developing country, this management of resources includes placing a focus on internal and external stakeholder relationships and social development. If this is managed correctly, it will result in the development of the country's economy, which will in turn benefit the long-term development of the corporation (IoDSA, 2016).

The King IV report provides a set of 17 principles or guidelines which organisations are encouraged to adopt. Whilst the previous code, King III, had 75 principles and guidelines, organisations were required to either apply the guidelines, or explain why they chose not to apply the guidelines. King IV on the other hand, requires organisations to both "apply and explain" the details of how the guidelines have been applied. The rational for this shift is that it allows stakeholders to better assess whether the intended outcomes of good corporate governance have been achieved and, for those external to the organisation to have a basis upon which they can assess the extent to which the four corporate governance outcomes set out in the code, i.e., ethical culture, performance in a sustainable manner, effective controls and legitimacy, have been achieved (IoDSA, 2016).

The outcomes-based approach of King IV is in line with the views expressed in some studies which indicate that corporate governance needs to be embedded within the culture of the organisation, to be effective and to facilitate a mindful and deliberate application of good corporate governance in the interest of the organisation and stakeholders (Agyemang et al., 2019; Demidenko and McNutt, 2010).

The King IV defines corporate governance as the exercise of ethical and effective leadership by the board of directors, aimed at the effective control and performance of the organisation, whilst also ensuring that there is an ethical culture and legitimacy through ethical and effective leadership of the organisation. The main area of focus of King IV was placed on the structuring and functioning of the board of directors as well as stakeholder inclusivity. The King IV report is outcome based and is focused on encouraging the optimisation of good corporate governance through the mindful consideration and application of the principles of the guidelines, as opposed to mindlessly reporting on compliance with the guidelines as a tick box exercise (IoDSA, 2016).

In this study an outcomes-based approach was used, to ascertain the extent to which good corporate governance practices exist within the organisation, beyond what is disclosed and reported upon by the corporation. There have been several corporate scandals that have been attributed to unethical leadership (Guiso et al., 2015). Ethical leadership plays a significant role in setting the tone of the corporate culture and institutionalising good corporate governance. Corporate culture can be regarded as part of the framework of internal governance mechanisms. However, measuring and isolating the direct causal relationship between ethical leadership and good corporate governance may be difficult to achieve (Endrikat et al., 2021).

If the principles of corporate governance are not incorporated into the culture of the organisation, organisations may choose to adopt a risk management approach to just do enough to get by, to protect themselves from blame. Despite evidence from research that suggests that good corporate governance alleviates firm risk, this has not proven to be a good enough incentive for voluntary compliance with corporate governance principles within many organisations, including those in South Africa.

2.5 Corporate Governance Mechanisms

Di Vito and Trottier (2021) explain that corporate governance monitoring and control mechanisms can either be external or internal to the corporation. External governance mechanisms include monitoring and control measures which are imposed externally on the corporation. This can either be through regulatory and legal compliance requirements, pressure imposed by shareholders and other stakeholders and activists, or financial disciplinary measures brought about through market and economic dynamics. These mechanisms discourage opportunistic behaviour by management and may result in agency costs such as financial risks, retribution, or reputational damage. Internal governance mechanisms are explained as the monitoring and control measures which constitute the corporation's internal governance framework, such as the board of directors. This includes the activities and functioning of the board, how it is constituted and its level of effectiveness in monitoring the activities of management and aligning the interests of management and stakeholders. Other internal mechanisms include CEO compensation and executive director shareholding. The conclusion reached by the study undertaken by Di Vito and Trottier (2021) was that, whilst knowledge on governance mechanisms has evolved over time, more work is required to better understand the effectiveness of both internal and external corporate governance mechanisms. The study also concluded that, due to corporations facing different challenges and operating under different socio-economic environments, there cannot always be a single blanket corporate governance solution that can be applied to all corporations faced with similar governance challenges. There is therefore a need to expand the research on corporate governance and find different governance solutions.

The board of directors as an internal corporate governance mechanism

Boards of directors constitute an important corporate governance mechanism, as the highest decision-making authority within the corporation, with the power to determine the strategic objectives of the corporation. The board is central to the monitoring and control of the organisation and ensuring that measures and controls are in place to detected and avoid firm risks, in the interest of all stakeholders. It is for this reason that most corporate governance codes place an emphasis on the structure and functioning of the board, strengthening the independence, diversity, skills and other characteristics of the board. This enables the board to effectively carry out its oversight role, in the interest of the corporation (Alonso-Pauli, 2022).

The numerous studies that have been undertaken on boards of directors, do not produce an integrated single model or theory which wholistically explains the full role of boards of directors and their relationship with the corporation and its various stakeholders. In the various works, studies and academic articles that have been published, there have been several roles of the board of directors, that have been prominent. This includes linking, coordinating, controlling, acting strategically, and providing support to the corporation. These roles are reflected in the different theories, including the resource dependency theory, stakeholder theory, agency theory, stewardship theory, institutional theory, and managerial hegemony. Each of these theories focuses on an aspect of corporate governance and the role of the board. Agency theory sees the board as playing a controlling and monitoring role over the decisions made and implemented by those managing the organisation and, who have a divergent interest to that of the owners of the organisation. However, there are other equally important roles. Resource dependency theory focuses on the use of and, apportionment of resources within the organisation. Stakeholder and institutional theories focus on the sociological aspects of the organisation, particularly the interaction between the organisation and the internal and external environment. Managerial hegemony focuses on the dominance of management-based organisations. The stewardship theory focuses on the harmonious human relations amongst those managing the organisation. Depending on the purpose or point being advanced, scholars on corporate governance tend to modify and adopt these various theories depending on their compatibility with the deduction they are seeking to achieve, or the extent to which the theory is in support of the argument being put forward (Hung, 1998).

Board Structure and composition

Board composition is a key factor for effective performance of the corporation through good corporate governance. Board composition includes the main board variables such as independence of the board members, expertise and knowledge, diversity, and even social networks. It also includes the board sub-committees and the internal audit function (Velte, 2023). The board structure has been identified as having an influence on board effectiveness.

Scholars often distinguish between a single and dual or two-tiered board structure which has both a management board as well as a supervisory board that accounts to the shareholders. The purpose of the dual board structure is to ensure that there is a separation of powers between the executives who manage the day-to-day running of the organisation and the independent directors who supervise the executives. Usually, extra checks and balances are built into the dual board structure. Some scholars have argued against the dual Board structure, promoting a single board structure. They indicate that a single board structure, comprising both executive and independent board members sitting together, results in a more effective management of the corporation as this facilitates a free flow of information and communication, allowing for a better-informed board which is not far removed from the day-today operations of the corporation (Getler and Siems, 2021).

An argument against the single tier board is that, due to CEO duality being a common feature, in such instances there is no second chairperson to play the role of an objective monitor over the firm's activities (Krause et al., 2014). In dual or two-tier board systems the supervisory board can objectively advise the CEO and executive board on the management of the firm in the interests of all stakeholders (Van Veen and Elbertsen, 2008).

The single board structure is most common in Western Europe, with the two-tiered or dual board structure being more common in the USA, UK and South Africa (Naude et al., 2018).

<u>Board size</u>

The size of the board is an important variable in determining board effectiveness. The views that are held in relation to the role of the size of the board in firm performance, are generally either from an agency theory perspective or a stewardship theory perspective. Agency theory suggests that larger boards tend to make irrational decisions that have a negative effect on shareholder value. Larger boards tend to be fragmented, resulting in costly and slow decision making. Some board members may escape their monitoring and oversight responsibility, relying on the stronger board members to carry the weight of the work, effectively getting a "free ride". From a stewardship theory perspective, it is suggested that a larger board usually has a wider knowledge base, has a higher level of expertise and is more diverse. This allows board members to exchange ideas and engage with each other more effectively, thereby improving shareholder value (Rashid and Islam, 2010).

The board size may provide an indication of the depth of knowledge and expertise of the board. From a resource dependency perspective, the corporation may also benefit from having a larger board, due to the broader network of connections that the board members may have with various stakeholders (Endrikat et al., 2021).

Some studies have shown, however, that large boards with too many directors may be inefficient. They may form coalitions and increase conflict and, they may slow down the decision-making process and make the flow of information and co-ordination of activities more difficult (Di Vitto and Trotter, 2021). Pizetta and Costa (2013) also assert that, within the context of Brazil, a large board has a negative effect on the board's ability to make decisions quickly and confidently.

It may well be that the ideal size of a board and the optimal number of directors could be influenced by characteristics of the organisation such as its ownership structure, the size of the organisation, the complexity of the organisation and the nature of the activities being carried out by the organisation (Di Vitto and Trotter, 2021). This is supported by Boone et al. (2007) who indicate that studies have not been able to conclusively show what effect board size has on corporate governance, due to other interrelated factors, which may influence the characteristics of individual board members.

Board Diversity

The role of board diversity in corporate governance can be viewed from the perspective of the resource dependency theory. From this perspective, board diversity brings resources into the board, based on the diverse knowledge and skill base, it enhances legitimacy, and provides access to key connections. These heterogenous connections allow for more effective problem solving and decision making as well as improved strategy implementation (Khan et al., 2022).

In evaluating the characteristics and functioning of the board, board diversity has been a subject of much research, as a means of reducing corporate governance risks. One of the most frequently studied aspects of board diversity is gender diversity, particularly the extent to which women are represented on the board. Some countries have gone to the extent of adopting quotas and targets for female representation, which has increased the levels of women directors. There have been studies suggesting that the participation of women on boards increases board effectiveness, as women have a higher attendance rate, which also positively influences the attendance rate of males. Some studies have also shown that the presence of women on boards has a positive effect on firm performance and the quality of reporting. Gender diverse boards may therefore compensate for other weaknesses within the board (Di Vito and Trotter, 2021).

Studies that have been undertaken on the relationship between gender diversity and firm performance have yielded mixed results. Whilst some studies suggest that women bring unique skills and perspectives to the boardroom and are more collaborative than their male counterparts, other studies argue that women are often discriminated against and are not provided with the opportunity to flourish, despite the skills, knowledge, and experience that they might have. There have been suggestions that women generally do not invest in acquiring the skills and knowledge required to make them competent directors and, they lack business expertise (Gyapong et al., 2016).

Gul et al. (2011) conducted a study on U.S.A. listed firms, in which they found that gender diverse boards have improved disclosure through better monitoring, which has the effect of protecting uninformed investors. This transparency in reporting encourages firm specific information to be incorporated into the drivers of stock prices, instils confidence in the firm and encourages investment in the stock of the firm. The authors further indicate that the quality of discussions held by gender diverse boards tends to be higher and more constructive, due to low levels of divisiveness. This improves the board's ability to have a better oversight of the firm's disclosures and reports, thereby improving the board's effectiveness.

In a study conducted by Velte (2023) which consisted of archival research of 98 studies on the impact of corporate governance and the misconduct of corporations, the author found that whilst many studies had inconclusive results on corporate governance and a firm's financial misconduct, there is evidence that gender diversity amongst board members and the presence of female CEOS, decreases financial misconduct.

Some studies have found that having independent female directors in the audit committee improves disclosure and reduces the negative impact of having to re-state the financial performance of the organisation (Oradi and Izadi, 2020; Felix et al., 2021).

Mahedeo et al. (2012) investigated diversity based on age, gender, education and board independence within listed firms in an emerging economy, Mauritius. Whilst the authors found that diverse boards contribute to a higher return of assets of a firm, they also indicated that the education of board members is negatively associated with value creation. They also found that the diverse views and perspectives generated by board diversity have a positive association with firm value. The varied factors of diversity impact the firm's performance differently. The authors highlight the fact that social norms and religious beliefs may have an impact on the extent to which diversity is encouraged within firms, particularly regarding gender diversity, which could explain why this was found to be low amongst the studied firms.

Within the context of South Africa, the governance codes encourage board diversity in terms of race and gender, and recommends that diversity targets should be set and reported upon by the organisation. The guidelines also emphasise that boards of directors should include members with the relevant skills, knowledge and experience required to fully discharge their governance roles and responsibilities (IoDSA 2016). Given the shortage of skills in South Africa, there is a risk of a small pool of directors being appointed to serve on several different boards, limiting their effectiveness. Alternatively, directors who may not be suitably qualified could be appointed purely to meet the set diversity targets (van Zyl and Mans-Kemp, 2020).

Board diversity may be pursued from a social perspective or an economical perspective. Studies have shown that appointing female, ethnic minority, and foreign directors brings different talents, skills, perspectives, and experiences into the boardroom. It also enhances board independence and improves the board's monitoring role, thus improving the performance of the board, and improving the performance of the firm from an economical perspective. From a social perspective, diversity allows for equal opportunity and social equity to reflect a fair institution that is representative of its stakeholders. Several countries around the globe have put in place measures, aimed at advancing board diversity. In Europe some countries have implemented affirmative action policies; some Scandinavian countries have put in place hard law to advance gender diversity by stipulating quotas for female directors on publicly traded corporations and state-owned corporations. Other jurisdictions such as Japan, Australia, Israel, and Canada have also put in place hard or soft laws aimed at improving the diversity of boards. In Africa, countries such as Kenya, Malawi, Nigeria and South Africa have included board gender requirements within their codes of good governance. In the Middle East, countries such as the UAE, Kuwait, Tunisia and Saudi Arabia have started reforms to include women in senior management positions (Sarhan et al., 2019).

A study conducted by Gyapong et al. (2016) on 245 JSE listed South African corporations found that there is an increase in firm value where the board has three or more female directors. The authors outline the context of the history of South Africa and how this has affected the diversity of boards. The historical legalised racial segregation resulted in the majority racial group being deprived of opportunities such as quality education, opportunities to participate in the economy and business. Many South Africans within the previously marginalised group, are currently functionally illiterate and this group of people is under-represented on boards. The traditional cultural customs and practices in South Africa reinforce the inferiority of women whilst uplifting the superiority of men. These circumstances have had an effect of the competency gap within ethnic groups, which includes women being within the majority group in South Africa.

Diversity has also been studied from an ownership perspective, with findings concluding that the presence of institutional investors increases firm performance through enhanced innovation. Phan and Yu (2022) conducted a study on U.S.A. firms and found that boards with female representation, effective audit committees, a higher presence of independent directors and a higher proportion of ethnic minorities, is beneficial in fostering innovation within firms, thus enhancing firm performance. Institutional investors are attracted to such firms and become active in enhancing innovation effectiveness. The increase in globalisation and technological advancement requires corporations to be innovative to have a competitive advantage and long-term growth and sustainability. Innovation requires, not only a broad range of skills, knowledge and perspectives, but also capital. Investment in innovation requires a long-term stable capital structure. Capital is much more accessible through institutions. Institutional ownership is therefore an important mechanism that can facilitate efficient investment into innovation to maximise firm value.

Board Independence

One of the most important and primary functions of the board is the effective monitoring of the activities of management (Endrikat et al., 2021). For the board to discharge this obligation effectively, it needs to have the skills, knowledge and experience to do so. It also needs to be independent from management, so that it is not influenced by management and does not develop any bias as it oversees the activities of management. Having a formal evaluation process on the board's ability and independence is an important mechanism to give assurance that the board can carry out its roles and responsibilities effectively and independently (De Villiers and Dimes, 2020).

Board independence has become an important aspect of corporate governance, with some studies showing that a higher representation of independent directors increases shareholder protection through a positive association with the corporation's enhanced stock returns and reduced volatility (Aloui and Jarboui, 2019).

The King IV codes of South Africa, require all executive, independent and non-independent directors to exercise independence whilst acting in the best interest of the organisation. The guidelines further recommend that the independence of directors and their performance should be evaluated every two years. Directors who have served for a period more than nine years, should undergo an annual assessment, to evaluate whether their independence has not been compromised (IoDSA 2016).

Muchemwa et al. (2016) conducted a qualitative study on JSE listed corporations to examine the relationship between board composition and firm performance. The study found that there was no significant relationship between board composition and firm performance. The study also found that having a higher number of independent directors is not related to higher levels of firm performance. The authors indicate that their findings may be influenced by other related factors. For example, it may be possible that some directors who are classified as independent may not be truly independent. They may also not have adequate knowledge of the business and could be overly reliant and supportive of the CEO. It may also be that the value of independent directors is limited or constrained due to their appointed to the wrong committee structures.

Linked to board independence is CEO duality. CEO duality refers to arrangements where the CEO also assumes the role of chairperson of the board.

CEO Duality

Studies on CEO duality have shown varied results. A study conducted by Dey et al. (2011) found that corporations that separate the two functions show lower stock market returns, whilst an earlier study by Baliga et al. (1996) found that financial markets do not react significantly to a change in the dual position of the CEO. Jarboui (2018) found that the dual role of the CEO is positively associated with firm risk. In contrast, Akbar et al. (2017) found a negative association between CEO duality and firm risk. Nguyen (2021) showed no association between CEO duality and firm risk.

Within the context of South Africa, the King IV guidelines indicate that the CEO should not assume a dual function as Chair of the board, and the retired CEO should not assume the role of Chair. The Chair should be an independent non-executive director. In addition, the CEO should not be a member of the remuneration, audit, or nomination committee (IoDSA, 2016).

CEO duality has an impact on the reporting and disclosure of the firm's financial and governance activities, particularly where there is an expectation that the disclosures are made independently without bias (Nel et al., 2022).

It has been argued that the reporting of the business and financial affairs of a publicly listed corporation, by the Chairperson and CEO, allows them to optimistically discuss the financial performance of the organisation and provide an exaggerated outlook of a positive future performance, using much of their own discretion and without mandatory constraints. This is because, the role of the external auditors is limited to ensuring that the message and disclosures made by the CEO and Chairperson, is consistent with the audited financial statements, without necessarily providing a general context for the performance of the organisation and providing a moderated opinion on the outlook and prospects of the organisation. This potentially allows the CEO and Chairperson to influence the public by managing perceptions and deliberately creating a more favourable impression about the organisation. The expectation, consequently, is that the Chairperson should be an independent non-executive director and should be trusted to hold an objective viewpoint when disclosing the financial and governance performance of the firm. The CEO, who is part of and is the leader of the executive, with an intimate knowledge of the organisation, may be more prone to influence shareholders and other stakeholders by under-playing failures and emphasising successes to enhance the image and legitimacy of the organisation they lead (Nel et al., 2022). It may therefore be assumed that, where the CEO is also the Chairperson, the opportunity to guard against these risks does not exist.

However, in a study of Fortune 500 firms, conducted at the advent of the global economic crises by Patelli and Pedrini (2013), it was found that under difficult economic times, CEOs tend to strategically engage more transparently with stakeholders, as opposed to seeking to portray an overly optimistic perception of the firm's past and future performance. The authors do warn however, that the manipulation of information by organisations through impression management, should always be guarded against.

Some studies have found that there is a correlation between CEO duality with enforcement actions and fraud (Khoufi and Khoufi, 2018; Yang et al., 2017), whilst others have found an insignificant correlation between these variables (Salleh and Othman, 2016; Tan et al., 2017; Inya et al., 2018).

Uwuigbe et al. (2014) conducted a study investigating the effects of corporate governance on earnings management in Nigeria. The study was undertaken on forty corporations listed on the Nigerian stock exchange, that had experienced corporate failures. The study found a significantly positive effect between CEO duality and earnings management, whilst board size and board independence were found to have a significantly negative effect on earnings management. Earnings management is defined as engaging in fraudulent accounting irregularities and the misstating or misreporting of the financial affairs of the company, resulting in stakeholders being misled on the performance of the firm or the manipulation of contractual outcomes. The conclusion of the study was that larger boards with more independent directors and a group of members with diverse knowledge including corporate and financial expertise, are more likely to be effective in constraining earnings management, than smaller boards.

Bassiouny (2016) conducted a study on a sample of 60 firms listed on the Egyptian stock exchange, to investigate the relationship between earnings management and firm characteristics. The author indicates that, whilst Egypt has made reforms aimed at improving the transparency in financial reporting, to improve the confidence of stakeholders, firms in Egypt continue to manipulate financial reports through earnings management. The legal system in Egypt does not classify earnings management as a fraudulent or illegal act, if it falls within the flexibility allowed by the accounting standards. Abdulrahman and Ali (2006, cited by Bassiouny, 2016) indicate that the practice of earnings management does not deviate from the accounting standards followed by Egypt, which standards include the Generally Accepted Accounting Practices (GAAP). This flexibility creates opportunities for opportunistic behaviour, such as the accounting manipulations of earnings management. Whilst not regarded as fraudulent, it has the effect of misleading stakeholders and providing shareholders with inaccurate information about the firm and its performance. The study by Bassiouny (2016) found that the interrelated characteristics of firm size, firm age, and a firm's audit quality have an insignificant relationship with earnings management, within the context of Egypt.

In a study conducted by Bowen et al. (2008) on a broad range of international firms, the authors indicate that GAAP provides managers with the latitude to exercise judgement in preparing financial statements. Whether the managers exercise this judgement opportunistically, or efficiently, has been a point of debate and has been a subject of research in positive accounting. The question that arises is whether managers will act in their self-interest and abuse the accounting discretion allowed under GAAP, or whether they will use this discretion in the interest of the organisation to maximise shareholder wealth.

Frequency of Meetings

There are different views regarding the impact of the frequency of board meetings on good corporate governance and firm performance. The commitment of the board may be determined by measuring the frequency of meetings and the attendance of meetings by the directors. The meetings provide the opportunity for directors to share information and engage in decision making (Di Vitto and Trottier, 2021).

The King IV guidelines require corporations to report on the frequency of meetings as well as the attendance by directors. In addition to this, the guidelines indicate that, when a director is to be re-elected, consideration must be given to the director's meeting attendance record, as part of determining the performance of the director (IoDSA, 2016).

Board meeting frequency is regulated in some countries such as U.K., U.S.A., India, and China, to enhance board effectiveness of listed corporations. There is a view that the prescription of a minimum number of meetings each year does not necessarily result in improved board performance. This is because during board meetings several complex matters are discussed. These include CEO compensation, business strategy, risk assessments as well as the appointment and dismissal of the CEO. The quality of the meetings is more important than the quantity of meetings. The board has limited access to information and relies on supplementary information provided by the corporation, to make sound decisions relating to the monitoring and control of the firm, firm control transactions, changes in equity structures and growth strategies, amongst others (Ji et al., 2020).

There is also a view that a higher frequency of meetings can result in the improved monitoring of the firm and give the directors more time to consider and assess the information brought before them for decision making and to effectively deal with critical and complex issues A higher frequency of meetings enables the board to be more informed about the activities of the corporation. An alternative view is that meeting frequency should not be used as a measure of board effectiveness as most of the time spent by directors tends to be on presentations and management reports and not on meaningful engagements, debates, and exchange of ideas (Vafeas, 1999).

Jensen (1993, cited by Ntim and Osei, 2011, p88) indicates that boards within properly functioning corporations should not have the need to meet frequently. Rather, boards should meet depending on the need to be responsive to specific challenges or decisions that need to be made. For example, meeting frequency can be increased where there is a need to dismiss or appoint a CEO, or deal with a hostile takeover.

Executive Compensation

Executive compensation has attracted much attention amongst shareholders. Excessive compensation, or poor pay for performance compensation systems, could affect shareholders negatively if they result in an increase in compensation whilst the corporation's performance decreases. It is therefore important that the executives are not compensated based on short term financial performance, a such performance might be unsustainable and could be masked by selective disclosure of information (Velte, 2023).

The aim of monitoring executive remuneration is to ensure that the interests of the shareholders and executives, remain aligned. Increased compensation is not necessarily linked to better corporate governance or increased firm performance (Di Vitto and Trottier, 2021).

Frydman and Saks (2010) conducted a data analysis study of executive compensation of large United States firms, from the period 1936 to 2005. The authors found that compensation was flat from the end of World War II to the mid-1970s, despite firms growing rapidly during this period. However, after this period, corporations used compensation to incentivise the growth in firm value. During the 1980s and 1990s, compensation paid to CEOs of large publicly listed firms increased significantly. The increased levels of compensation have been attributed to the need to compensate executives and incentivise them for managing the increased business risks and increased business complexity.

Jensen and Murphy (2010) conducted a data analysis study of 1 668 CEOs listed in the Forbes Executive Compensation Survey, from 1974 to 1986. The authors found that there was no direct correlation between the extent to which executive compensation is increased, versus an increase in shareholder wealth. Based on the weak correlation between executive pay and firm performance, the authors conclude that executive compensation cannot, in isolation, be identified as a contributor to better corporate governance and better firm performance.

Studies have also been conducted to examine compensation within SOEs. Such a study was conducted by Marimuthu and Kwenda (2019), to determine the relationship between executive remuneration and the financial performance of SOEs. The study included 33 SOEs in South Africa and found that there was an inverse relationship between executive remuneration and the financial performance of SOEs. The remuneration of executives was found to continue to be high, even where the performance of the SOE was low.

Another study on the corporate governance of SOEs was conducted by Emuron and Yixiang (2020), with the purpose of examining the impact of the King III code on non-executive compensation, with an emphasis on financially distressed SOEs. The study found that SOEs that adopted and applied the King III code, increase the compensation of non-executive directors when the firm shows a positive financial performance, and penalise the directors when the SOEs experiences financial distress.

Determining fair and appropriate CEO compensation is not easy. Various methods have been used to determine the fairness of CEO compensation. These have included comparing the CEO's pay with their peers and other highly paid professionals in the private equity market or even to the extreme of making a comparison with entertainers and athletes. Some researchers have shown that the increase in CEO remuneration can be associated with the growth in the size of the corporation, but this does not suggest that the determined pay is indeed fair. The views relating to CEO remuneration generally follow either the rent extraction view of pay, or the pay for performance view. The rent extraction view suggests that executives are determined to ensure that they can extract as much remuneration as possible, even if this is beyond what is merited. The pay for performance view suggests that the board evaluates and negotiates a fair level of compensation through an objective arms-length process, and then puts in place mechanisms to prevent rent extraction. The research supporting these views has been found to be contradictory. A challenge arises in determining the performance metrics and economic factors which need to be taken into consideration in determining the remuneration structure and how this is linked to the performance of the corporation (Larcker and Tayan, 2023).

Ownership concentration

Studies have been conducted on the impact that the concentration of firm ownership has on firm performance. Often, the ownership of a public limited company is jointly held by several parties in different proportions. Sometimes, this ownership is found to be diffused in all kinds of investors, but often, it is concentrated in the hands of a few large investors, particularly in less developed economies such as India and Malaysia (Panday and Sahu, 2019). According to Obembe et al. (2010), studies on the impact of ownership concentration on firm performance have generally followed two streams. The first is the monitoring hypothesis, which is associated with the agency costs arising due to the asymmetric information between the principal and agent, because of the separation of ownership from control. This is in line with the theory of Berle and Means (1932) who view ownership concentration as a governance mechanism. The concentrated shareholders, through their voting rights, can have an influence on the activities of the corporation. The hypothesis advocates that it is important for the large shareholders to act as an internal governance mechanism to alleviate the divergence of interests between principals and agents, particularly where shareholder protection is diminished through a weak legal and regulatory environment (Panday and Sahu, 2019).

Obember et al. (2010) indicates that in the 1980s there was a shift from the monitoring hypothesis to the expropriation hypothesis. According to the expropriation hypothesis ownership concentration results in a conflict of interests between the majority and minority shareholders (Panday and Sahu, (2019). The majority shareholders can use their power to expropriate value from the minority shareholders. The majority shareholders may redistribute the expropriated value efficiently, or they may use this value to engage in activities that are value reducing and are divergent from the objectives that the firm should be pursuing in maximising its value.

There is a view that, where there is a concentration of ownership, dominant shareholders are generally active in the monitoring and control of the organisation by being part of the board or executive team. These shareholder representatives have a vested interest in ensuring that the organisation creates wealth and value. Many studies have shown a positive relationship between ownership concentration and firm performance. It is assumed that the shareholders will prioritise the attainment of good corporate governance, because they understand the link between good corporate governance, ethical leadership, and the positive performance of the organisation (Di Vitto and Trottier, 2021).

Board Committees

The existence of board committees, as part of the composition of the board, allows the board to delegate certain responsibilities to a smaller group of independent directors, who then have an increased focus when dealing with specific governance matters (IoDSA 2016). The various board committees that may be established include the audit committee, risk committees, nomination and remuneration committees and various committees dealing with non-financial and ESG matters such as sustainability, environmental and social issues. The committees all play a role in assisting the board to discharge its duties of monitoring and control (De Villiers and Dimes, 2020).

One of the board committees is the audit committee. The audit committee is an effective corporate governance mechanism. It provides independent oversight of the financial reporting processes of a firm and monitors the relationship and exchange of information between external auditors, directors, and management. Studies have found that competent audit committees, that carry out their functions effectively, are associated with improved earnings and reduced accounting and reporting irregularities. This results in improved corporate governance (Carcello et al., 2011).

Whilst most studies have focused on the effectiveness of the audit committee in improving corporate governance and reducing firm risk, the other committees are also collectively important in reducing agency conflicts, increasing board independence, ensuring that the board is qualified to carry out its duties, ensuring alignment of executive compensation and shareholder interest and ensuring that the strategic actions of the executive are properly monitored, thereby enhancing the quality of the board and its governance structures (Bravo-Urquiza and Moreno-Ureba, 2021).

Chariri and Januarti (2017) conducted a study to examine the effect that audit committee characteristics, which include the expertise of committee members, frequency of meetings and independence of the committee, have on integrated reporting. The study was conducted by applying a multiple regression analysis with a total of fifty-eight companies listed on the JSE, using information derived from their integrated reports. The study found that the sampled firms had a high level of disclosure. The findings indicated that audit committee expertise in accounting and finance and, frequency of meetings, improved disclosure through the integrated reports. The findings indicate that having the necessary skills within the audit committee enhances the committee’s ability to monitor the disclosure of financial information and the quality of the integrated report. In the study, the increased frequency of meetings allowed the committee members to engage in an intense exchange of ideas and enabled the committee to be more effective in monitoring the preparation and presentation of the integrated report. The independence of audit committees was found to have little influence on integrated reporting.

Risk Management

Worthy of mention and linked to the audit committee, although not a committee of the board itself, is the internal audit function. This internal audit function plays an important supervisory role in monitoring the affairs of the corporation and preventing financial misconduct (Zeng et al., 2021). The internal audit committee is the central monitoring body that facilitates the sharing of information between management, the board, and the external auditors, and monitors the independence of external auditors. This results in reduced conflicts of interest between management, shareholders, and external auditors, resulting in reduced financial misconduct and misstatement of information (Velte, 2023).

In explaining how large publicly listed corporations like EOH, Tongaat Hulett, Steinhoff and Aspen have been accused of financial mismanagement and misstatement of information, a view has been expressed that this is usually due to a gate-keeping failure. This allows financial mismanagement to remain undetected for extended periods of time. The three bodies in risk management that play a key role in assuring the financial statements of the corporation, include the board's audit committee, the internal audit or risk management function and the external auditors. All three bodies need to work together to ensure proper governance and limit opportunistic behaviour. The audit committee, as a sub-committee of the board, is required to elevate issues or concerns to the board and the head of the audit committee is tasked with signing off the financial statements, after satisfying themselves that proper auditing practices have been complied with. The internal audit function should have a direct link to the audit committee, to freely report on internal audit findings. The external auditors are expected to express their view on whether the financial information being disclosed is correct and unqualified. There have been several instances where external auditors have tried to shy away from this responsibility when things go wrong, by indicating that they can only work with the information presented to them by the management of the corporation (Businesstech, 2019).

Accounting Failures

Accounting failures contribute to corporate failures. In the case of Thomas Cook, for example, the auditors signed off on the company's financial statements for 2018, with no qualification, and the company became insolvent the following year. Such practices have been found to commonly arise in instances where the auditing firm has not been rotated and has been used by the company over many years. This was also found to be the case with Carillon and Enron. In both instances, the auditors were found to have been complicit in the accounting irregularities. The U.K. is putting in place measures to try to improve accounting, auditing and ethical standards. In July 2019 the Financial Reporting Council (FRC) proposed revised and improved accounting standards. The aim was to set more stringent ethical rules for auditors and to improve audit reports to increase transparency and improve the quality of the reports. This was deemed necessary because of the audit enforcement cases and due to the results of the audit inspections that had been carried out. At this time, there were several other concurrent reviews on audit quality. For example, in 2018 the government appointed Sir Donald Brydon to review the quality and effectiveness of audits. This work was finalised through the publishing of the Brydon report in December 2019 (Mujih, 2018).

The South African Institute of Chartered Accountants (SAICA), believe that the world of accounting has undergone immense change in South Africa and, the country is struggling to regain its position as one of the global leaders in corporate reporting. The reputation of the accounting profession, which has historically been characterised as a profession of integrity, has been tarnished by the widespread corporate scandals, which involve corruption, fraud and unethical conduct. SAICA believes that the answer to restoring trust in the profession will be based on the extent to which the professionals embrace joint accountability for promoting and retaining the integrity of the profession. It was on this basis that SAICA hosted a panel discussion for professionals in the field of accounting. Amongst the participants was the Chairman of the audit committee of one of the largest banks in South Africa, Nedbank. He indicated that greed was at the heart of the widespread scandals and has resulted in the trust deficit being experienced by the accounting profession. The CEO of the auditing firm KPMG agreed with this assertion and further indicated that the accountants learn the mechanics and rules but fail to grasp the fundamentals of the need to retain the integrity of the profession. The CEO of the Institute of Internal Auditors of South Africa indicated that corporations do not afford adequate recognition to the internal audit function and its oversight role. He indicated that corporations do not use the internal audit function adequately, to mitigate corporate risks. The Auditor General of South Africa indicated that, when governance problems arise, the solution tends to be sought in revising the reporting framework, trying to review internal audit processes, and focusing on technical skills and governance frameworks, whereas the root cause of the problem lies in the moral competence and integrity of managers and professionals. When things go wrong, there is a need to go beyond a tick box exercise, and investigate and understand the fundamental problems why, for example, the internal audit function is ineffective and why board structures are not functioning as they should.

She wondered whether people do not possess the courage to speak out or whether they are incentivised to behave inappropriately. She provided the example of Steinhoff, indicating that there had been a series of illicit financial transactions that worsened over a long period of time, without anyone highlighting any anomalies. She believes that somebody must have detected some indications of opportunistic behaviour, but no one spoke out. She indicated that all those involved in the accounting profession have a duty to society to meet their expectation, which includes the expectation that auditors need to be able to detect corporate risks, including financial and accounting irregularities. It may be necessary to use technology such as automation and AI. In addition, accountants, auditors, executives, and directors need to apply themselves and become more diligent when making decisions; they need to have a higher level of social consciousness and need to display a high level of integrity and ethics. The leaders within both private companies and SOEs need to develop a culture that is consistent with the values and principles of good corporate governance, and a culture that recognises that their role is to serve society and contribute to the social and economic wellbeing of the country (Brewis, 2021).

2.6 Corporate Governance and ESG

The primary objective of executives within a corporation is the maximisation of shareholders wealth, which is typically achieved by increasing the firm’s market value without undue risk exposure (Bringham and Ehrhardt, 2012). The expectation is that executives will make decisions that will increase shareholder wealth over the long term, as opposed to making decisions that will only create wealth in the short term (Madden, 2010).

From the year 2011, corporations listed on the JSE have been required to disclose both financial and non-financial performance, as an indication of the firm's overall performance for the benefit of shareholders and stakeholders that may have an interest in how the firm's performance impacts broader society. The growth in interest, regarding a measure of a firm's overall long term or sustainable performance has resulted in the development of the United Nations Principles of Responsible Investment (UNPRI). The UNPRI describes responsible investment as a strategy which incorporates environment, social and governance (ESG) factors. The incorporation of ESG in investment policies and the decision making of corporations aims to generate sustainable risk adjusted returns for shareholders by pricing in risks that would not be identified through an exclusive evaluation and analysis of the firm's financial results. The foundation of the fundamental principles of ESG came about in the 1980s, when the Socially Responsible Investment Movement (SRI) began. Since then, there have been other similar investment approaches, which include ethical investing, economically targeted investing, sustainable and responsible investing, and impact investing, which were collectively coined ESG by the advocates of SRI in the early 2000s. In February 2012, South Africa published the South African Code for Responsible Investing (CRISA), aligning with the United Nations Principles for Responsible Investing (PRI), which were launched in 2006. Both initiatives emphasise the importance of considering the triple bottom line in investment decisions, not only focusing on profit, but also how companies impact people and the planet, or environment. South Africa also developed the Sustainable Finance Initiative, which aims to facilitate the attainment of sustainable economic and industrial performance, considering environmental and societal risks, which could have an impact on the country's economy and social development (Chininga *et al.,* 2023).

The motivation for a firm to adopt ESG principles is explained by the rational choice economic theory, which suggests that people make decisions based on an evaluation of the benefit that will be derived from such a decision. Investors make investment decisions, depending on which investment will result in a maximisation of their investment, by weighing the costs and benefits. Therefore, if the costs of ESG are lower than the benefit or returns, then investors will be attracted to the investment as this would be aligned to their interest of increasing a return on their investment (Chininga *et al*., 2023). The stakeholder theorists on the other hand, indicate that stakeholders, including investors, make investment decision based on the value that the firm creates for all stakeholders, including shareholders, customers, suppliers, employees, communities, governments, and others (Wijnberg, 2000).

An example of the importance of ESG in evaluating firm performance is evidenced by Eskom. Eskom is the highest emitter of sulphur dioxide in the world, according to research conducted by the Centre for Research on Energy and Clean Air (CREA). Statistics issued by the South African government indicate that Eskom accounts for two fifths of the country's green-house emissions. Eskom has indicated that the pollution from its coal fired power stations contributes to the deaths of more than 330 people each year. This is in addition to the ailments that people have suffered ranging from respiratory diseases, lung cancer, heart attacks and strokes. Several independent reports suggest that the true figure of deaths is between 650 and 2000 people each year.

Environmentalists have been petitioning government to increase its pace of coal powered plant closures, to reduce the poisonous sulphur dioxide and nitrogen oxides. However, the government has indicated that this cannot be done, as it would result in increased power outages (Bloomberg, 2023). There is no doubt that this liability will have a negative effect on Eskom in the form of lawsuits and reputational damage, which will have a negative effect on the firm's performance and its relationship with key stakeholders.

CHAPTER III:

METHODOLOGY

3.1 Overview of the Research Problem

South Africa has been regarded as having a robust corporate governance framework which has been developed in line with global standards (Johnson *et al.,* 2019). Despite this, corporate failures continue to be experienced. Collusion, corrupt business practices, fraud, excessive executive management control, passive investors, company mismanagement, a lack of board independence and poor oversight by boards over executives, were found to have contributed to these scandals and governance failures (Hlobo *et al*., 2022).

There are certain factors which act as the incentives or pressures that drive misconduct within corporations. These might include poor or ineffective monitoring and control mechanisms, complex organisational structures, or an ability to deliberately circumvent the controls within a corporation. The consensus by most scholars is that corporate governance mechanisms are by their nature monitoring mechanisms. If these are effective, it is expected that they should limit the chances or incentives for opportunistic behaviour and misconduct through effective enforcement (Habib et al., 2021).

This study seeks to examine the effectiveness of the internal governance mechanisms of SOEs and listed corporations within the context of South Africa as a developing economy.

3.2 Operationalization of Theoretical Constructs

Historical and socio-economic factors influencing South Africa's approach to corporate governance.

Few studies have been undertaken on the social and historical factors that have influenced the development and evolution of corporate governance in South Africa. One of the underlying philosophies of King IV is the traditional and cultural South African concept of "Ubuntu". The governance codes advocate for the integration of the firm into society as a corporate citizen. Corporations are expected to operate in a manner that is responsive to the needs and expectations of their internal and external stakeholders. The firm is described as interconnected with society, with an interdependence between the society and the firm, enabling the firm's sustainable performance. Whilst the firm has commercial objectives and, through these provides employment, contributes to the development of the economy, contributes to human capital development, and contributes to the fiscus through the payment of taxes, it also relies on society. It requires a customer base, a conducive operating environment, and a skill base, to operate efficiently. This idea of interdependence and interconnectedness is at the heart of the traditional South African concept of Ubuntu. The concept can be broadly translated as, I am, because you are, and you are because we are. The concept implies that there should be a common purpose of service to humanity, within society, including corporations (IoDSA, 2016).

It is not surprising that the governance codes of South Africa have such a strong stakeholder and resource theory-based approach to corporate governance, through the express emphasis of Ubuntu. South Africa has a unique history, in which most of the population, who are described as being black, were prohibited from participating in the economy. This was based on the apartheid laws and regulations which prescribed racial segregation (Allessandri et al., 2011). This has influenced South Africa's approach to corporate governance.

When the African National Congress formed a majority government and came into power in 1994, the government put in place affirmative action measures aimed at accelerating the integration of the black majority into the economy and into corporations that were historically owned and managed by the white minority racial group. One of the mechanisms of obtaining this objective was the Broad Based Black Economic Empowerment Act 53 of 2003 (BBBEE Act). The Act provides for a scorecard, which indicates the extent to which a corporation has put in place measures to achieve the objectives of the Act. The score of the firm is considered when business contracts, licenses and concessions are granted to a corporation, thereby improving the corporation's corporate performance and status (Gyapong et al., (2016).

One of the key objectives of the BBBEE Act is to increase the black ownership and management within corporations as well as to encourage these corporations to conduct business with small and medium sized black owned companies. Firms are recognised for appointing black directors, through which they show their commitment to the objectives of the BBBEE Act (Peloza and Papania, 2008; Allesandri et al., 2011). The appointment of black directors facilitates the firm's economic dealings by linking the firm to a network of influential businesspeople, politicians, activists, and empowerment groups (Allesandri et al., 2011). Gyapong et al. (2016) describe these interventions as a catalyst of cohesion and a promotion of the principle of interconnectedness, which is at the heart of the concept of Ubuntu. Whilst apartheid sought to de-humanise and humiliate black people who were regarded as inferior and were excluded from participating in economic activity, Ubuntu seeks to promote a social construct of communal togetherness, collectivism, and reciprocity.

History of Corporate Governance in South Africa

South Africa's unique socio-political history has had an influence on the nature of the political and economic reforms that the country has been undergoing since 1994. These reforms have had an impact on the corporate governance regime in South Africa. The corporate governance system in the United Kingdom was developed in response to the corporate failures experienced at the time. In South Africa corporate governance was motivated by the need for the country to be re-integrated into the global economy after being excluded through the sanctions that had been imposed on the country. One of the differences between the United Kingdom and South Africa is that the United Kingdom has an economy of a developed world, whilst South Africa has an emerging market economy (Diamond and Price, 2012). Certain corporate governance characteristics are not suitable for replication. For example, Malin (2006, cited in Diamond and Price, 2012) indicates that the adoption of the unitary board structure, which is dominant in the Anglo-American model, may not be appropriate within the context of South Africa. This is due to the need to meet demanding stakeholder requirements, which could be better achieved through a dual board structure. The analogy is that executive or unitary board structures tend to be focused on operational and business matters, whilst the supervisory board, in a dual board structure, is concerned with macroeconomic and stakeholder matters.

The King committee on corporate governance, which was established in 1992, was established during the time that the negotiations for a democratic South Africa were underway, which was also a time of international reforms in corporate governance. This was after the African National Congress (ANC) and its allies had called off the armed struggle against apartheid. The ANC had historically embraced the economic policy of socialism and there was an expectation that, as an organisation that represented the majority population group, political power should be handed over to the ANC. In 1989, the President at the time, P.W. Botha, met with Nelson Mandela, the president of the ANC, whilst he was still in prison, to discuss a negotiated settlement for a new democratic South Africa. The ANC agreed to participate in negotiations for the transfer of power and in 1990, the ANC was unbanned, and Nelson Mandela was released from prison. Negotiations began in 1990 and went on until 1994. The ANC was required to grant an assurance that the private sector, which was in the hands of the white minority, had a key role to play within the mixed economy of South Africa. This was one of the most important conditions that the previous government sought to ensure would be protected. This sparked fierce ideological debates between the ANC and its allies, including the Congress of South African Unions (COSATU) (Diamond and Price, 2012).

When the governance codes were first developed, they advanced many of the principles found in the Commonwealth countries and included an emphasis on the requirement for good corporate governance to serve the financial, social, and ethical interests of a wide range of stakeholders. In August 2000, the IoDSA called for a review of the first King report, considering international developments, without losing sight of the importance of embracing the interests of stakeholders. The second King report was published in 2002. This revised code sought to extend societal responsibilities to corporations. At the same time certain governance principles were advocated. The importance of ethics and integrity was emphasised as well as good accounting practices and the role of the audit committee received focus. This created the need for South African regulators to align the South African Generally Accepted Accounting Practices (GAAP) with the International Accounting Standards (IFRS) (Diamond and Price, 2012).

Incorporating corporate governance into the laws of South Africa was mainly conducted through the Companies Act. In 2004 there was a drive to enact a new Company Law, which would include governance matters and would be embraced by the business community of South Africa, in line with the government's new idea of stakeholder capitalism. The Companies Act was developed with the participation of advisors from other developed countries, particularly the United States, which began to introduce new concepts and ideas that were foreign to South Africa's historical company law tradition (Luiz, 2007).

These enhancements in corporate governance were closely aligned with the UK's developments, including the Combined Code, the Turnbull Guidance, the Smith Guidance and the Higgs report. The notable distinction was that King II emphasised stakeholder inclusivity, creating a modified or blended Anglo-American corporate governance model. The influence of the Anglo-American corporate governance model can be seen in the subsequent King reports, which further aligned the South African governance codes with international standards. This alignment extended to other related standards such as the International Financial Reporting Standards and the Auditing Professions Act of 2005 which aimed to align the accounting and auditing functions with those of the other Anglo-American countries. Consequently, many large South African companies expanded globally, with some moving their primary listings to the UK or USA (West, 2009).

The role of the Zondo Commission in corporate governance in South Africa

The report of the Public Protector resulted in the establishment of a judicial commission of enquiry headed by the Deputy Chief Justice at the time, Raymond Zondo. The Zondo Commission of enquiry focused its investigation on irregular appointments of public officials, improper conduct of executives within government and SOEs, and the irregular and fraudulent activities involving the Gupta enterprise. The Gupta enterprise is comprised of a family with wide ranging business interests, which succeeded in gaining control of several SOEs through improper relationships that had been developed with executives and board members of SOEs, as well as politicians and other public officials, referred to as state capture. During the investigation of the Zondo Commission, it transpired that several SOEs had been involved in improper relationships and business dealings with various corporations and personalities. These SOEs included not only Eskom (the country’s power supplier), but also Transnet (the country’s supplier of railway services), SAA (the country’s airline), Denel (the country’s arms manufacturer), SABC (the country’s broadcasting corporation), and PRASA (the country’s rail agency), amongst others. The Zondo Commission also investigated private companies that had financial dealings with the state. In addition, the investigation included improper conduct affecting various government institutions including the State Treasury, the Department of Public Enterprises, the Government Communication Information System (GCIS), the South African Revenue Services (SARS), the State Security Agency (SSA) and the South African Police Service (SAPS) Crime Intelligence. The investigation also focused on the oversight role of Parliament and the role of the ruling party, the African National Congress (ANC) and its influence on governance matters. The Zondo Commission ran from January 2018 to June 2022. The commission found that a group of individuals representing private business both nationally and internationally, had, in collaboration with various senior officials of SOEs and government departments, engaged in corrupt practices. These activities weakened the government, including the law enforcement and intelligence agencies., and had resulted in the illegally syphoned substantial amounts of money for their own benefit. This included irregular appointments and dismissals of government officials and representatives of SOEs. As a result, the oversight and corporate governance institutions were crippled and rendered ineffective, with procurement processes being compromised. Those implicated included the former President Jacob Zuma, several cabinet ministers, former heads of SOEs and other private businesspeople of influence. It was further recommended that the SOEs and the government forfeiture unit should take steps to recover the fraudulently obtained financial gains from the implicated individuals and corporations (Pillay, 2022).

Corporate Governance within State Owned Corporations (SOEs)

An SOE can be defined as an organisation in which the government has significant or full ownership, enabling it to be in significant control. SOEs play a key role in terms economic development, provision of social services and employment, and participating in strategic sectors of the economy (Gnan *et al*., 2010).

SOEs in South Africa are not listed on the Stock Exchange. They are also regulated and subject to the Companies Act and Codes of Good practice, just as private or publicly listed corporations are. In addition, SOEs are also required to further comply with the Public Finance Management Act 1 of 1999 (PFMA) (RSA, 1999) and the Protocol on Corporate Governance in the Public Sector. The Protocol on Corporate Governance in the Public Sector is a protocol that amplifies the King Code and sets out the governance structures as well as the risk management and reporting systems that are to be followed by SOEs (Department of Public Enterprises, 2002). The PFMA requires the directors of the SOE, including the supervisory board, to act with integrity and exercise a duty of care in ensuring good governance and the financial integrity of the SOE. This piece of legislation makes the directors accountable for ensuring that proper internal control, risk management and governance mechanisms are in place. The Protocol on Corporate Governance requires that the SOE appoints a board comprising members who have the capability and integrity of ensuring that the SOE operates optimally and carries out its mandate efficiently in the interest of the shareholder (Thabane and Snyman van Deventer, 2018).

Section 66(1)(2) of the Companies Act stipulates that SOEs must be governed by a board of directors to monitor and control the activities of the SOE. The Act further requires board members to act in the best interest of the enterprise, to act rationally and to exercise a reasonable degree of care, skill, and diligence. The Public Finance Management Act also requires the board to act with honesty and integrity. The board must be accountable to the political head, or government Minister under which portfolio the SOE operates. The board is also accountable to the legislature, regarding the governance and performance of the SOE, including the financial and risk management of the SOE.

The numerous corporate governance deviations by the political heads, boards, and executives of SOEs, suggest either a lack of appreciation for or a disregard of the importance of abiding by the governance rules and principles of ethics and integrity, in the interest of the SOEs overall success. Board members have been found to possess false qualifications, while others have been declared delinquent directors due to their unethical conduct. Additionally, some members have been found to have conflicts of interest and have been involved in the embezzlement of funds from the SOEs (Thabane and van Deventer, 2018).

Many of the corporate governance challenges of SOEs in South Africa can be attributed to political interference by the political head representing government as shareholder. This interference has included usurping and undermining the power of the board, involvement in the appointment, disciplining and dismissal of executives and managers of SOEs. The poor state of SOEs was acknowledged by the former President, Jacob Zuma in 2016, during his State of the Nation Address in Parliament. This acknowledgement confirmed the concerns that had been raised by civil society, the business sector, and professional bodies within the country (Thabane and van Deventer, 2018).

SOEs appear to suffer from an agency problem which arises due to the concentration of ownership in the government as its exclusive shareholder. The shareholder representative, who is a political head, has no ownership in the SOE but simply oversees the activities of the SOE. This responsibility of representing the government shareholder is only by virtue of their political appointment at a point in time. The citizenry, who are the true shareholders through government, are not able to hold the SOE board accountable, as they may not have the platform, knowledge, or capacity to do so. As a result, the political shareholder representative, the board of directors and the executives and management of SOEs, can potentially act in their own interest. This could conflict with the interests of the government and the citizenry. The poor governance of SOEs has resulted in substantial amounts of the fiscus being spent each year to bail out and subsidise under-preforming SOEs; several investigations have led to the removal of certain board members and executives from office (Thabane and van Deventer, 2018).

SOEs do not face the same pressures that are faced by corporations that have publicly held shares or private ownership. As a result, they are shielded from capital market pressures and other external governance mechanisms. This makes the effectiveness of the internal mechanisms important. Directors of SOEs usually have little influence regarding the goals and objectives of the board. Unlike the private sector, where executives set out the long-term strategic goals aimed at maximising the long-term value of the organisation, in the case of SOEs they tend to be influenced by political priorities and demands. This is no wonder as the principal shareholder of an SOE is the state, upon whom the SOE is dependent for resources and, to whom the board is answerable and by whom it is appointed. Where these appointed board members have a political affiliation to the state, this impedes the board's independence and judgement and could create a perception of the SOE lacking the authority to carry out its mandate. The board is often not entrusted with the full board responsibilities to carry out its mandate and their decisions are sometimes overruled by the shareholder representative (Gnan et al., 2010).

Countries such as China and New Zealand, have witnessed the privatisation or partial privatisation of SOEs. In the case of China, many of these SOEs have been listed on the Shenzhen and Shanghai stock exchanges. In the case of New Zealand, the privatisation has included energy generating corporations, with the government owning 51% of the shares. In the case of the national airline, Air New Zealand, the government has retained 53% of the shares in the corporation. With the economic liberalisation of the economy in India, post 1991, sectors that were exclusively within the purview of SOEs have been opened to the private sector. Since then, India has embarked on a programme of the partial sale of SOEs, aimed at making them more attractive to private investors. Privatised and semi-privatised SOEs have been shown to have a comparative advantage in terms of strategic importance. They have been able to increase turnover and profitability and have a higher level of autonomy and financial powers. The corporate governance guidelines applicable to these corporations are aimed at professionalising the board and improving compliance awareness, reporting and other corporate governance practices and standards. These SOEs have been given increased decision-making powers regarding investments, joint ventures, and mergers (Locke and Duppati, 2014).

3.2.1 Culture and Ethics in Corporate Governance

The role of ethics in corporate governance was investigated by Rena and Sibanyoni (2020) who conducted a qualitative study on South African firms. They sought to determine the relationship between non-compliance with corporate governance principles and material losses suffered by corporations and their stakeholders. They found that those responsible for the oversight of corporations do not always put in place mechanisms to ensure that compliance with ethical standards is embedded within the culture of the organisation. For example, most corporations do not have adequate policies and procedures on ethical standards and, as a result, the executives within the firms overlook important ethical considerations. Very few corporations have an appointed skilled and knowledgeable official responsible for the monitoring and promotion of compliance with corporate governance standards and requirements. In addition, directors do not get training on the requirements of the relevant corporate governance standards and on what their oversight role is expected to be within the organisation. In certain instances, the non-executive directors assume the functions of the executive directors and management by getting involved in the operational matters of the corporation.

The concept of developing a culture of compliance with corporate governance standards within organisations has been discussed by several scholars who have started moving away from the traditional agency perspective of corporate governance and are adopting a more socialised view. This includes analysing the behaviour of certain players within the organisation. This could either be in the boardroom where leaders interact with each other, or, when they interact with other constituents within the organisation. Some scholars have found that these interactions are influenced by the social context of the organisation, such as the values and beliefs that form part of the organisational culture. Organisations that have ethical values and norms as part of their culture tend to take ethical matters seriously; discussions on ethical matters are held openly, consideration is given to the effect that decisions will have on all stakeholders, and reward systems support ethical behaviour. Some scholars argue that leaders who operate within an organisation that has high moral standards and a culture of compliance with ethical values, tend to behave in line with this context. When faced with difficult decisions for which there is no clear solution, they tend to seek guidance from the organisation's value system and make decisions based on the effect these will have on the organisation, as well as the extent to which these decisions deviate from the moral norms, values and ethical culture of the organisation. Organisations with high levels of ethics usually also have a pro-social and cohesive organisational environment that has a high level of trust. To reinforce this value system, there is usually an informal or formal method of accountability and rewarding of behaviours aligned to the moral and ethical values of the organisation (Fotaki *et al.,* 2020; Hussain and Siddiqui, 2021).

Within the context of New Zealand, the influence of directors on corporate culture has been well documented. Grant and McGhee (2017) conducted a qualitative study involving thirty-three directors of corporations in New Zealand. The study found that the personal moral values of directors significantly influence their moral and ethical decision making. The effectiveness of codes of ethics and governance standards was found to be dependent on the moral values and ethical behaviours exhibited by the directors. The study recommends that when appointing directors, their integrity and ethical experience needs to be investigated.

Although there is limited research on the personal traits and values of board members, with ethics and integrity being more extensively studied, several studies have found that other factors, such as trustworthiness, exceptional communication, self-confidence, commitment, analytical abilities, and interpersonal skills are also important (Hlobo *et al*., 2022). Studies have also been conducted to investigate the extent to which the personal traits of CEOs also contribute to poor firm performance. An empirical study conducted by MacManus (2018) on U.S. corporations found that factors such as narcissism and self-importance have been found to be linked to misconduct. The study found a positive correlation between CEO hubris and earnings manipulation, due to flawed and amoral decision-making processes.

3.3 Research Purpose and Questions

This study seeks to examine the effectiveness of the internal governance mechanisms of SOEs and listed corporations within the context of South Africa as a developing economy. Based on the research findings, recommendations will also be made on how the effectiveness of internal corporate governance mechanisms can be improved upon.

The following research questions will be addressed:

5. What is the state of development of internal corporate governance mechanisms within South African publicly listed corporations and SOEs?

6. How effective are internal corporate governance mechanisms within South African listed corporations and SOEs?
7. What is the relationship between internal corporate governance mechanisms and corporate failures within the context of South Africa?
8. What influence does the country's socio-political history, national and organisational values and societal culture have on corporate governance within South African publicly listed corporations and SOEs?

The study will focus on a selection of large publicly listed corporations that have prominently experienced corporate failures in South Africa, between the years 2010 and 2019. In addition, the study will incorporate selected SOEs that have experienced governance failures over the same period.

3.4 Research Design

This qualitative study was conducted through conventional content analysis of secondary data. Secondary data analysis is a powerful and credible method for qualitative studies (Cheong *et al.,* 2023). The data was obtained from websites of the sampled entities and aggregated from various sources such as existing research that is publicly available. This approach alleviates the constraints posed by limited budget, resources and time required for primary data collection, such as obtaining first-hand information and perspectives through interviews and surveys.

Hsieh and Shannon (2005) discuss the different approaches used in conducting research through content analysis. The authors indicate that content analysis is a flexible research method often used for analysing text data in qualitative research. The approach focuses on the analysis of text data obtained from various sources such as surveys, interviews, focus groups, narrative responses, and printed media such as articles, books, reports, and other relevant publications.

Studies on corporate governance mechanisms have mostly been conducted quantitatively, rather than qualitatively or using mixed methods, limiting our understanding of corporate governance mechanisms (de Villiers and Dimes, 2021).

McNulty et al. (2013) conducted a study to establish the extent and development of qualitative research within the field of corporate governance, reviewing research published in journals between 1986 and 2011. The review indicated that, whilst qualitative research on corporate governance has grown over time, it remains a small fraction—less than 1% of the body of research. The research is mainly developed in Europe and predominantly examines board characteristics and dynamics, with a limited exploration of other governance mechanisms. Qualitative research is almost non-existent in emerging markets. In terms of methodology, most of the research has relied on interviews. The study concluded that there is much scope for qualitative research which could assist policy makers better understand how governance players and institutions function, offering different interpretations to corporate governance matters. Whilst interviews have been traditionally used for qualitative research, other methods such as observation, as well as narrative and textual analysis have also been utilised.

3.5 Population and Sample

For the purposes of this study, the population group included firms which had either encountered a firm failure or distress, due to a governance failure or, a firm that had experienced a corporate governance scandal.

A firm is considered as having experienced a financial failure or distress, when it is no longer able to meet its financial obligations and is obligated to undertake drastic actions in order to ensure that it continues to exist, such as being placed under business rescue, debt restructuring, selling off assets at a discount or being acquired and incorporated into a larger, stronger corporation. Alternatively, the firm may have been liquidated because of bankruptcy (Emuron and Yixiang, 2020).

A firm is regarded as having had a scandal in instances where managers or directors within a firm engage in unethical or illegal practices which results in the reputational damage of the firm. This may include accounting and financial irregularities, engaging in illegal business activities, failure to comply with requirements set by regulatory agencies, fraudulent activities and irregular reporting and disclosure (Watts et al., 2018).

In qualitative research, there is no ideal sample size. The quality of the selected sample is more important, as it determines the richness and relevance of the data required to achieve the research objectives (O'Reilly and Parker, 2013).

The sample size in this research includes four SOEs and four listed companies.

3.6 Participant Selection

The participants of this study include firms which experienced governance failures between the period of 2010 and 2019.

Macro socio-economic shocks, or "black swan" events, such as the coronavirus (COVID-19) epidemic, amongst other global crises, can precipitate business failures. The last epidemic of comparable magnitude was the Spanish Flu, over a century ago. The

COVID-19 epidemic has resulted in close to one million deaths globally and caused significant economic disruption, resulting in many business failures and fore-closures across several sectors including airlines, tourism, recreation / health, and fitness, as well as the related and support industries and service providers (Amankwah-Amoah *et al*., 2021). South Africa has particularly vulnerable to the COVID-19 epidemic, due to the already weakened and fragile economy (Anakpo and Mishsi, 2021).

For this study, the selected period of 2010 to 2019 is prior to the pandemic's onset. This period was chosen to exclude the possible impact or effect of COVID-19 on business failures, ensuring that the pandemic does not influence the research findings.

The starting point of the year 2010, aligns with introduction of the King III code for corporate governance during the year of 2009. The evolution of the corporate governance codes, from King II to King III, was influenced by the changes in international governance codes and the introduction of the Companies Act of South Africa 71 of 2008 (The Companies Act). One significant area of evolution of the codes was the requirement for integrated reporting by all companies. The King report emphasises that integrated reporting increases the trust and confidence among stakeholders, improves risk management, increases legitimacy of business operations, and allows for an evaluation of corporate ethics, values, and governance practices. The integrated report is intended to provide a holistic representation of the company's performance, with the emphasis on substance over form, rather than just producing physical documents. There is a requirement for controls to be in place to safeguard the integrity of the integrated reporting system and to ensure that there is no misrepresentation of the affairs of the company. The audit committee plays an important role in the integrated reporting process, as it is required to evaluate whether there have been any factors that may have led to management to present an incomplete or misleading view of the company, through its disclosure of the performance and business affairs of the company (IoDSA, 2009).

3.7 Instrumentation

This qualitative study was conducted through conventional content analysis of secondary data. The most important secondary source of information used in this study was the Integrated Annual Reports of the sampled publicly listed corporations and SOEs.

Content analysis has been used to analyse business and financial disclosures made by companies in their business reports, such as integrated reports. This allows the researcher to identify trends and disclosure practices, such as the consistency and quality of disclosures amongst different companies. In addition, regulatory compliance, and the level of accountability to stakeholders can be evaluated through these reports (Ettredge *et al*., 2010). For this research, several publicly available data sources were used, in addition to the integrated reports, including investigations and reports conducted by external bodies such as Parliament, the Zondo Commission of Inquiry and the Public Protector.

In content research, the analysis requires examining the language and context in which words are used in order to derive meaning, understanding and knowledge of the subject being studied (Wamboldt, D. 1992, p. 314, in Hsieh and Shannon, 2005).

The content analysis approaches that can be used depend on the nature of the problem being studied and the researcher's theoretical interests. These approaches are categorised as conventional, directed, and summative (Hsieh and Shannon, 2005).

Conventional approach - When there is limited research on the phenomenon being studied, or, the research would benefit from further description, qualitative researchers could choose to use the conventional qualitative research approach. In this approach the researcher does not have any preconceived ideas regarding the outcome of the research and allows the data to emerge or develop as it is analysed. The data is categorised or coded based on the key concepts and insights which emerge and, the link or relationship between these categorisations is explained and discussed in the research. The findings are then compared with other research and theoretical perspectives that might exist, the researcher discusses how the research adds to the body of knowledge on the subject and may recommend areas for further research (Morse and Field, 1995, in Hsieh and Shannon, 2005).

Directed approach - The directed qualitative research approach is more structured, and it is not as reflective as the conventional approach. This approach seeks to validate or build on an existing theoretical framework or conceptual approach. It may provide predictions on what can be expected from the variables being studied, as well as the expected relationship between such variables. Where interviews or questions form part of the research, these are usually targeted and are directed by the theory or concept being validated (Hsieh and Shannon, 2005).

Summative approach – The summative approach applies where the researcher seeks to simply interpret data as it is presented or manifested, as opposed to evaluating it within the context in which it is used or presented. This approach describes how words are used and may explain the context, without inferring deeper meaning. While the summative approach can provide some descriptive insights, its findings may be limited the lack of consideration for the broader implications of the data. The summative approach derives its credibility from demonstrating the consistency between the data being evaluated and the effective interpretation of such data (Hsieh and Shannon, 2005).

The use of content analysis to investigate the effectiveness of the board as an internal governance mechanism within the context of South Africa is not new. Ahmed (2023) conducted content analysis research examining how the composition of the board, as an internal governance mechanism, impacts the level and quality of disclosure in the integrated reports of JSE listed firms. The research was conducted on integrated reporting practices between 2019 and 2021, using an international integrated reporting framework and a database of 33 articles published between 2013 and 20121, in the Meditari Accountancy Research Journal. The study found that certain aspects of board composition, such as board size and the independence of the risk committees, positively affect integrated reporting. Conversely, other aspects, including board expertise, board activity, the independence of the audit committee, risk management expertise, committee size and meetings and auditor size, had a negative correlation with integrated reporting practices.

Primary vs Secondary Data analysis and research

Primary data analysis refers to the examination of data obtained first hand, during research. Secondary data analysis involves analysing data that was originally collected for a different purpose to answer the research being undertaken. Such analysis is usually undertaken by a researcher different from the one who conducted collected or collated the original data. Secondary data may consist of raw, unprocessed data or compiled data that has been processed, or partly summarised. Compiled data may include information from an organisation's database, newspaper articles, websites, statistical reports and journals, amongst other sources. Secondary data may also include data collected through surveys, such as census data, and data on social and economic behaviour (Perez-Sindin, 2017). For the purposes of this research, both primary and secondary sources of data were utilised

3.8 Data Collection Procedures

For the purposes of this study, the sample size includes publicly listed corporations and SOEs which have experienced corporate failures. The companies were identified through a Google search of the phrases "corporate governance failures South Africa", "corporate scandals South Africa" and "corporate governance investigations South Africa". The list of journal articles, reports and newspaper articles was reviewed and, the sampled listed companies and SOEs were selected based on whether the reported or studied governance failures occurred between 2010 and 2019. Due to the scope of this study, only companies that experienced governance failures, as opposed to other causes of firm failure, were sampled. These companies include four SOEs and four publicly listed corporations. The SOEs include ESKOM, Transnet, Denel and the SABC. The publicly listed companies include Steinhoff, EOH, Tongaat Hulett and Basil Read.

The internal governance variables that were assessed included the functioning and composition of the board, risk management systems and processes and internal control and governance compliance systems and processes.

3.9 Data Analysis

Corporate Governance - Eskom

The governance and financial failures at Eskom resulted in the organization failing to generate power. In an appeal court judgement issued in December 2022, the constitutional court of South Africa held that government had violated the fundamental constitutional rights of citizens by failing to supply electricity to the country (Eskom Holdings SOC Limited v. Vaal River Development (Pty) Ltd and others, 23 December 2022).

Board and governance failures at ESKOM

In 2017 a sub-committee of Parliament investigated corporate and financial failures at Eskom and issued a report describing how billions of rands had been syphoned out of Eskom since 2010, with the amount increasing further from 2014. The report detailed how board members and other executives were appointed based on their political connectedness and their involvement in irregular procurement dealings and financial transactions. Questionable contracts were entered into, that were unfavourable to Eskom. One such deal involved the son of then President, Jacob Zuma, who, in partnership with the Gupta family, had been irregularly granted significant contracts with Eskom (Pillay and Prins, 2018).

During Jacob Zuma's presidency, between 2016 and 2018, Eskom experienced a high level of executive turnover. The organisation went through four board chairpersons, six CEOs, five CFOs, excluding acting or interim CEOs. Four ministers were appointed as the government's representative shareholder at Eskom. In 2016 the country's Public Protector released the State of Capture report, which led to an investigation into the affairs at Eskom and the improper and unethical conduct of Jacob Zuma (Kessides, 2020).

Eskom's governance reports

The Chairman's remarks in the integrated annual report of Eskom for the year ended March 2019, indicated that the board's focus was to stabilise the corporation and rebuild confidence by improving governance, ethics and addressing the irregularities uncovered through investigations. The board was also tasked with restoring leadership stability, following the high turnover amongst senior managers and executives. Additionally, the board faced the challenge of turning Eskom around to ensure its financial viability. Over the year, Eskom faced industrial action, a deterioration in power generation plants and financial challenges, which shifted the focus from governance to improving operational and financial sustainability (Eskom, 2019).

Ethics and Governance report – In June 2017, Parliament directed Eskom to investigate the allegations of state capture that were being uncovered by the Zondo Commission of Inquiry. In response, the new board appointed in January 2018, worked to bring financial, leadership and governance stability to the corporation. The board has acted on the allegations of corruption and fraud. Considering the irregularities that were uncovered, the Parliamentary sub-committee on Public Enterprises recommended that the government review the legislation and regulations governing SOEs to improve the governance and oversight. Eskom reported that its governance processes needed improvement, including the integrity of reporting and disclosure, governance structures and ethics (Eskom, 2019).

Report on the application of King Report – Eskom's reported that the board has been successful in its oversight, monitoring and control role over the organisation. It has acted ethically and with integrity in discharging its duties and providing strategic direction to the organisation. However, whilst the board monitors risks within the organisation, it has acknowledged that internal control mechanisms are not yet adequate to prevent collusion and fraudulent behaviour between employees and suppliers (Eskom, 2019).

In the integrated report for the year ended March 2020, the Chairman's remarks indicated that, during the year of 2019, Eskom experienced leadership instability, which included the resignation of the CEO and the appointment of an interim CEO. In January 2020, a new permanent CEO was appointed. The board indicated that it had implemented several measures to ensure that its governance practices are aligned with the King IV governance codes and that investigations into corruption continue to be undertaken (Eskom, 2020).

Board composition – In terms of Eskom's Memorandum of Incorporation (MOI), the board consists of a maximum of 15 directors, with a least two executive directors, and the majority being non-executive directors appointed by the shareholder for a term of three years. Non-executive directors cannot serve for more than three successive terms and appointments by the shareholder are made taking into consideration targets for race, gender, age and disability. Succession planning is also managed by the shareholder (Eskom, 2020).

It was reported that the board was composed of a diverse group with a broad set of skills, including academics, engineers, scientists, lawyers, a medical doctor, accountants and business professionals (Eskom, 2020).

The Zondo Commission report on Eskom

Part IV of the Zondo Commission's State Capture Report focuses exclusively on Eskom. The commission found that the board of Eskom had been irregularly appointed, based on their close association with the Gupta family and the son of then President Jacob Zuma, Duduzane Zuma. Evidence presented to the commission showed that the CEO and several board members were influenced by the Guptas to make decisions that served their interests. In return, board members and executives received benefits in the form of cash and paid holiday trips. The political head and shareholder representative at the time, Mrs. Lynn Brown, was found to have furthered the corrupt activities at Eskom, by appointing board members who would advance the interests of the Guptas and removing those who did not co-operate. In this context, the Eskom board granted the CEO unfettered responsibility for negotiating and granting major supply contracts to the Guptas and other connected corporations. The board failed to exercise any oversight over the irregular and fraudulent transactions that subsequently ensued, even after they were publicly reported. The commission recommended that the implicated executives and board members should face prosecution for their role in the irregular and fraudulent activities at Eskom, which resulted in the misappropriation of a significant amount of money and failures in the proper disclosure of the activities and financial affairs of the corporation (Zondo, 2022).

On the 7th of March 2023, President Cyril Ramaphosa created a new government ministry, appointing Mr. Kgosientsho Ramokgopa as the first Minister of Electricity. The function of the Minister is to oversee and co-ordinate the implementation of the country's

12-month energy action plan. The Minister, in his capacity as the political appointee, is required to work closely with the board and management of Eskom on a full-time basis to address the country's ongoing energy crisis. The Minister, in terms of Section 34(2) of the Electricity Regulation Act, will also assume responsibility for the procurement processes of new electricity generation capacity and expansion of the country's power supply. However, the functions relating to long term energy planning and energy regulation will continue to be the responsibility of the Minister of Mineral Resources and Energy, while the Minister of Public Enterprises remains the shareholder representative with the responsibility of appointing the Eskom board and overseeing the business activities of the company (The Presidency, 2023).

Corporate Governance – South African Broadcast Corporation (SABC)

History of the SABC

The SABC was established as the country's official public broadcaster in 1936. After South Africa transition to a democratic government in 1994, the activities of the corporation were governed by the Broadcasting Act No. 4 of 1999. Section 6 of the Act outlines the charter of the SABC. This charter sets out the framework under which the SABC is required to operate. It mandates SABC to contribute to the development of society by upholding principles of ethics and transparency as it provides the public with access to reliable information and offering entertainment through a wide range of programmes in the different official languages of the country and in line with the diverse values, attitudes and perspectives shared by the people of South Africa (Mpherwane *et al*., 2019).

During its early years post-1994, the SABC enjoyed a period of success and prided itself as an effective broadcasting corporation as it carried out its mandate to inform, educate and entertaining the broad spectrum of the South African population through radio and television, in line with its charter (Mpherwane *et al*., 2019).

However, after 2009, the SABC began to experience serious threats to its institutional independence and autonomy, coupled with corporate governance failures and management challenges (Bronstein and Katzew, 2018).

Governance at the SABC and the Public Protector's Report

An investigation into the governance of the SABC was carried out by the Public Protector after allegations of corporate governance failure, due to the board and executives bypassing governance requirements either in the interest of expediency, or, due to the manipulation and opportunistic interests of the Chief Operating Officer (COO) as the head of the Executive. This resulted in a failure of management systems and a dysfunctional and ineffective board. The findings by the Public Protector revealed that in the first instance, the COO's appointment was irregular as the individual did not possess the required qualifications for the role. In addition, the remuneration of the CEO was deemed irregularly and unjustifiably excessive, exceeding the levels provided for by the policies of the SABC. The Chairperson of the Board was found to have abused his power and authority by altering the academic qualification and experience requirements for the role of COO's role to accommodate the candidate that was appointed. Further, the appointments and compensation increase of several executive members, including the CFO and the Head of Compliance and Risk, were found to be irregular, due to breaches of the SABC's appointment and remuneration regulations, and in part, due to interference from the Board by government officials (Public Protector, 2014).

The deviation from corporate governance principles at the SABC was further highlighted by the Supreme Court of Appeal of South Africa. The court confirmed in its judgement, that not only was the COO's appointment irregular, but the interference by government, as the shareholder, in appointing the COO to a different position as Head of Corporate Affairs, was a circumvention and disregard for the rule of law (Matsiliza, 2017).

The public protector also found that the Board had failed in its duty to provide strategic oversight over the Executives, which resulted in corporate governance failures due to the irregular, irrational and unlawful decisions made by the Board and Executives. As a result of this oversight failure, the Executives acted opportunistically through maladministration and failed to disclose crucial information and provide the support required by the board to discharge its fiduciary duties. The Board therefore became dysfunctional as it failed to comply with the corporate governance principles and uphold the standards required by the SABC Board Charter and the King III corporate governance code (Public Protector, 2014).

The SABC's annual reports indicate that its corporate governance framework should be based on the pillars of governance as outlined in the Companies Act and the PFMA (SABC Annual Report, 2018; 2019). The PFMA specifically requires the Board to act with fidelity, exercising the duty of utmost care and integrity, to act in the best interest of the organisation, and to disclose to the state and legislature any relevant facts or any risks that might exist within the organisation. The Board and Executives of the SABC conceded that there had been corporate governance failures at the SABC, and the relevant comprehensive corporate governance regulations and principles were breached in favour of expediency, to achieve short term operational objectives (Public Protector, 2014).

Following the findings of the Public Protector and an internal enquiry into the corporate governance failures at the SABC, the board was subsequently terminated, and an interim board was appointed for a period of six months. Thereafter, a permanent board was appointed in October 2017, after the intervention of the legislature through an inquiry into SABC's affairs. The new Chairperson of the Board, in the 2017/2018 integrated report of the SABC, confirmed that the organisation had experienced governance failures and that measures were being taken to improve the corporate governance and eliminate the deep-rooted corruption, mal-administration and unethical practices that had become endemic within the organisation (SABC, 2018).

The new SABC Board appointed a new group of executives, including a new CEO, COO and CFO in 2018. Despite these efforts, he SABC continued to experience poor financial performance and the lingering effects of poor and unethical leaderships and a collapse of corporate governance. The SABC reported a decline in financial losses, improving from a ZAR1.1 billion deficit the previous year, to a loss of ZAR 622 million (SABC, 2018).

The Composition of the SABC board

The composition of the board is regulated by legislation. Part 5 of the Broadcasting Act No.4 of 1999 deals with the corporate governance of the SABC, including the composition of the board. It indicates that the board should be a unitary board comprising of 12 non-executive directors, appointed by the President on advice from the legislature and, three executive directors appointed by the board. The Act does not provide for any involvement of the Minister of Communications as the government representative, in the appointment of any of the board members or executives. The chairperson and deputy chairperson must be non-executive directors, and the board should be representative of the broad population groups of the country, in line with BBBEE regulations, and should comprise members with diverse qualifications and experience (Broadcasting Act, 1999).

Between 2017 and 2018, the diverse board of the SABC comprised members with a wide range of knowledge and experience across both the government and various private business sectors. The qualifications and experience of the board members ranged from journalism, accounting, public policy, business and economics, education, and human resources. The non-executive directors included three females and nine males. However, the board experienced a turnover of members during the year. Two board members resigned, including the female deputy chairperson, who served the board for only five months, and another female board member who served the board for just one month. The executive experienced several changes during the 2017/2018 year. There was an interim CEO from May 2017 to July 2017, followed by another from July 2017 to June 2018. There was an interim CFO from June 2016 to June 2017, followed by another from July 2017 to June 2018. There was an acting COO from September 2016 to January 2018 (SABC, 2018).

According to the SABC's annual report for the 2018/2019 financial year, the non-executive board members included five females and eight males with a similar profile of qualifications and experience as the 20/17/2018 board, with the addition of a board member with a PhD degree in the 2018/2019 board. Four of the board members resigned during the year, after serving the board for just about one year. Amongst the executives, resignations included two interim COOs, the interim CEO, and the interim CFO. There was an appointment of a Chief Audit Executive, two Group Executives, the Human Resources Executive, Group Chief Executive Officer, and a Chief Financial Officer. Additional positions were identified to be filled, which included two additional executive roles: one for Media Technology and Infrastructure, and another for Corporate Affairs and Legal. The SABC indicated that these appointments would go a long way in turning around the organisation's affairs, as it had continued to experience management failures which resulted in the inability to achieve key strategic initiatives, causing the organisation to continue to suffer from reputational and credibility problems (SABC, 2018).

Governance practices and outcomes at the SABC

In the 2019 annual report, the SABC once again lamented governance failures, unethical leadership, corruption, mal-administration, and its continuing financial difficulties. It reported a loss of ZAR 482 million. The board also highlighted the challenges in implementing the organisation's turnaround strategy, citing instability within the corporation, due to four of the recently appointed board members and executives opting to leave the organisation soon after being appointed. This resulted in the board failing to constitute a quorum and, as a result, failing to convene board meetings for most of the year (SABC, 2019).

In the 2019 and 2020 annual reports, the SABC describes its commitment to upholding the principles of corporate governance and meeting the highest standards of compliance. The commitment of the SABC is explained as going beyond mere compliance or a tick box approach. It involves implementing robust governance and risk management processes and adopting practices that ensure the corporation complies with both the letter and spirit of the corporate governance codes, governance regulations as well as other governance standards. The SABC indicates that there has been significant progress made in achieving these objectives. It further indicates that, through its board sub-committees, it has implemented controls throughout the corporation and has placed a focus on identifying and managing critical risks, in collaboration with the executives as well as internal and external auditors (SABC, 2019,2020). However, the governance outcomes do not suggest that these mechanisms and controls have been effective in ensuring that the SABC lives up to its stated corporate governance objectives.

The record of attendance of board members as reported in the 2018, 2019 and 2020 annual report, indicates that there has been regular attendance of board meetings and board sub-committee meetings, by board members, during the period of their appointment. However, the high turnover amongst board members and the fact that at certain times the board was unable to meet due to its failure to from a quorum, must have affected the quality and effectiveness of such meetings (SABC, 2018,2019,2020).

In its annual reports between 2017 and 2020, the SABC reported on the activities of several board sub-committees and how they had assisted the board in overseeing the governance of the organisation. Members of the sub-committees include non-executive members, and the committees are all chaired by a non-executive director. These include the audit and risk committee. The role of this committee is to identify and manage all business, financial and governance risks within the SABC and, to ensure the accuracy and credibility of the accounting practices, financial statements and reporting of these by the organisation. There was a digital technology committee tasked with assisting the board in managing matters relating to the digital technological requirements of the SABC. There was a finance investment and procurement committee responsible for the short- and long-term funding and financial viability of the corporation. There was the governance and nominations committee, responsible for reviewing the size, structure, composition and effectiveness of the board. There was the human resources, governance and nominations committee, responsible for reviewing the size, structure, composition and effectiveness of the management of the corporation and ensuring that proper succession planning for executives. There was the public broadcasting services committee, responsible for overseeing the public broadcasting duties of the SABC, and the public commercial services committee, which also handled the public broadcasting responsibilities of the SABC. There was the news and editorial committee, responsible for assisting the board in putting in place editorial policies and ensuring the editorial integrity of the corporation. The social and ethics committee was responsible for ensuring that the SABC achieved its social and economic development goals in line with the United Nations Global Compact principles. It was also responsible for human resources matters and worked with the audit and risk committee to ensure that ethical standards and governance principles were upheld (SABC, 2018,2019,2020)

The SABC also reported that the corporation had put in place effective risk management systems in line with best practice and the highest global standards. The corporation further indicated that it complies with the PFMA and that the responsibilities of the Group CEO and CFO have been responsible for maintaining effective risk management systems and sound corporate governance in line with the King IV codes of corporate governance (SABC, 2020).

Despite the SABC emphasising the board and executive management's commitment to good corporate governance and highlighting the substantial focus and effort put into implementing the turnaround strategy since 2017 to stabilise the organisation by addressing maladministration and corporate governance failures, there was little improvement realised in the governance outcomes by the end of 2019. In the 2020 integrated report, the SABC highlighted that board meetings could not be held in 2019, due to the board's inability to form a quorum. This had been due to unfilled vacancies and four resignations of board members during the year under review. There were unsuccessful attempts made to deal with the corporate governance issues that had been highlighted by the Public Protector, Parliament, an internal investigation, reports of government through the Auditor General and investigations by the Government's Special Investigation Unit. These reports highlighted poor governance, sexual harassment, and political interference from government officials in the affairs of the SABC (SABC, 2020).

In the 2020 integrated report, the SABC continued to report financial losses amounting to ZAR511 million. The continued losses resulted in the SABC requesting a financial injection of ZAR3.2 billion from the Government, to continue operations (SABC, 2020).

In a presentation to Parliament on the issues arising from its 2020 integrated annual report, the SABC reported that it had plans to retrench 600 employees and would be putting in place measures to improve corporate governance, including the appointment of a new head of procurement to curb the granting of irregular contracts and irregular expenditure. Representatives of Parliament indicated that the SABC needed to investigate the underlying causes of the corporate governance failures and weak internal controls, as opposed to simply replacing people without addressing the systemic causes of governance failures (Parliamentary Monitoring Group, 2021).

What stands out as a feature of the SABC board and management, is the unstable and dysfunctional nature of the board and executive team. This can be attributed to a high turnover amongst board members and key executives and the interference by government officials in the governing of the organisation and operations of the board. This is confirmed by the SABC in its various integrated annual reports from 2017 to 2020 (SABC, 2017;2018;2020). There also seems to have been a lack of commitment to the attainment of good corporate governance outcomes, and a culture of good corporate governance seems to have been lacking. Whilst the corporation expressed its commitment to the highest standards of corporate governance, the actual practices and governance outcomes suggest otherwise.

Corporate Governance - Transnet

The governance failures of Transnet were investigated extensively by the Zondo commission, through the review of documentation and the hearing of oral evidence of several witnesses, which included previous board members and executives, who had been with the organisation between 2010 and 2018. During this period Transnet was engaged in a ZAR300 million expansionary programme aimed at increasing its fleet of locomotives and expanding rail and port infrastructure and network services. Several board members and executives were found to have engaged in corrupt practices and racketeering, in collaboration with the Gupta family. The expansionary programme was led by the Group CEO and Group CFO of the organisation at the time. Through corrupt practices, the processes of staff appointments, procurement systems, and internal control mechanisms were compromised and manipulated. This led to inflated costs being paid to corrupt suppliers without proper approval, facilitated by the collusion between strategically positioned individuals both within and outside the organisation. A group of executives and board members was strategically appointed to collude in the awarding of contracts while disempowering and marginalising key operational staff members who were responsible for ensuring adherence to proper procurement processes and controls. An amount of approximately ZAR41 billion was found to have been irregularly paid to companies that were controlled by the Gupta family and associates (Zondo, 2022).

The main facilitators of the corruption at Transnet included the Group CEO, Group CFO and the CEO of one of the freight subsidiaries. The latter was dismissed for malpractices in 2010 but was re-instated a few months later, through the direct intervention of the shareholder government representative, the Minister of Public Enterprises, at the time. This resulted in a significant outflow of cash from Transnet to selected beneficiaries through corrupt means. One of the ways in which procurement processes were manipulated was through the establishment of the Board Acquisitions and Disposal Committee (BADC) in 2011. This was a sub-committee of the board which assumed the responsibility of negotiating and approving contracts more than ZAR500 million. The compliance officer raised a concern regarding the involvement of the board in operational matters, which required knowledge of the business operations, including the financial, legal and operational risks of the business. This was ignored and resulted in a change in the governance culture, with the control of procurement processes and systems being vested in a select group of executives and uninformed board members. Procurement decisions were centralised within the BDC, without the involvement of a broader group of professionals who were responsible for scrutinising and evaluating the viability and appropriateness of the projects and for overseeing the procurement processes within the organisation. This led to restricted access to information and weakened internal controls. The flow of information to the broader board members and audit committee was restricted and filtered with selected information being disclosed to the broader board and audit committee. The chairperson of the board, who testified during the Zondo commission, indicated that governance failures were exacerbated by the irregular appointment of executives and board members through political influence. Some of the unqualified candidates were justified under the guise of BBBEE regulations, including the appointment of the CEO of Transnet (Zondo, 2022).

There have been several remedial actions that have been taken at Transnet to correct some of the governance failures, since 2018 when a new board was appointed. This has included a forensic investigation and criminal investigations into allegations of corruption and maladministration. The internal audit function was outsourced to external audit firms; however, this arrangement was not totally successful as some of these audit firms were found to have been implicated in certain acts of corruption within Transnet (Zondo, 2022).

The Zondo commission highlighted the importance of the role of the Parliamentary Portfolio Committee on Public Enterprises, urging it to increase its oversight responsibilities and demand increased accountability from the Department of Public Enterprises, headed by the minister of that department. The minister possesses the power to appoint non-executive and executive directors as well as the Group CEO and the Group CFO. This practice could be improved by allowing the board to appoint the executives without political interference. It could be further improved by ensuring that the appointment of board members is undertaken through an objective and transparent process, through which board members are evaluated and assessed by a competent committee. This would prevent situations where the Minister exercises his political influence to appoint board members who are allies willing to breach governance rules and practices, as opposed to making appointments based on the skills, knowledge, experience and competence of the board members (Zondo, 2022).

Corporate Governance Reports - Transnet

As a state-owned company, Transnet has a mandate to contribute to the socio-economic development of the country. The company must provide efficient and effective rail transportation, port services and pipeline infrastructure to the public, to facilitate the economic growth of the South African economy. This objective is in line with the government's economic growth objectives and strategic initiatives of the Minister of Public Enterprises. The organisation aims to further contribute towards the country's economic transformation through its broad-based black economic empowerment (BBBEE), skills development and Competitive Supplier Development Programme (CSDP) (Transnet, 2011).

In the 2011 integrated annual report, Transnet emphasised the board's strong commitment to upholding good corporate governance standards and principles. The company reported that it goes beyond just complying with the provisions of governance codes, such as the King code and other regulatory requirements, but also adheres to the spirit of good governance, which is demonstrated by the good governance outcomes that can be seen throughout the organisation (Transnet, 2012).

The company's report on corporate governance stated that the company had conducted an internal corporate governance audit and, had concluded that the company exhibited advanced levels of corporate governance compliance, including compliance with the PFMA. The company was found to have a high level of governance maturity with governance standards and principles being understood and consistently complied by management and employees, across the organisation. The audit identified the following areas for further improvement; filling of three board vacancies, the establishment of a social and ethics committee, increasing focus on compliance and refining the process used by the board in establishing a governance framework (Transnet, 2012).

The company reported that it effectively promotes a culture of ethics within the organisation and ethical values are entrenched throughout its operations. The ethical standards have been published in an ethical code, which guides employees and all other internal and external stakeholders who deal with the company. Transnet also prided itself in being a leader in establishing a formal compliance function and framework. The compliance function was established to identify, assess, monitor critical controls and mitigate risks of non-compliance to regulations, legislative requirements, standards and codes of conduct. The risks were reported to be identified and managed through a fraud and risk management plan (Transnet, 2012).

In terms of the board composition, the company reported that it has put in place a board consisting of mostly independent non-executive directors and, there were several sub-committees which supported the board in carrying out its mandate. The sub-committees included the corporate governance and nominations committee, audit committee, remuneration committee, the risk committee and the acquisitions and disposal committee. The role of the acquisitions and disposal committee is to develop and monitor the company's procurement management system and processes, to ensure that procurement is conducted in a fair, ethical, transparent and cost-effective manner and to ensure that tenders and contracts are properly awarded (Transnet, 2012).

The board has subsequently put in place a social and ethics committee, which has the role of guiding the board regarding its responsibility as a corporate citizen and its engagement with all stakeholders. The committee also advises the board on the company's legal, social, moral and economic obligations (Transnet, 2012).

The social and ethics committee guides the board in areas of responsible corporate citizenship and the company's ethical relationship with society. The committee manages the company's legal and moral obligations within its economic, social and natural environment, and guides the objectives and standards of the company's conduct and activities (Transnet, 2012).

The board consisted of a total of 16 directors. This included two executive directors, who were the CEO and CFO. The other 14 directors were independent non-executive directors, including the chairman. The non-executive directors are appointed by the shareholder representative, generally on a three-year term cycle. The company's articles of association indicate that there should be no less than 10 directors and no more than 18 directors, of which there should not be more than two executive directors (Transnet, 2012).

The directors of Transnet were reported to have a wide range of skills and experience. The areas of experience include, applied and behavioural sciences, engineering, business strategy, corporate governance, leadership, accounting and finance, economics, logistics and supply chain, law, marketing, investment banking, international trade, and business consulting. Most of the board members were seasoned board members and leaders, having had the experience of serving on multiple boards within the private and public sectors. The board was reported to have demonstrated a high level of independence, acumen and sound judgement. It had unrestricted access to information on the business, including the records of the company. The board also had unrestricted access to the internal and external auditors, professional advisors and the company secretary. The board conducts site visits and meets with executives as needed (Transnet, 2012).

In addition to the board sub-committees, the board is assisted by the company secretary, who is responsible for developing systems and processes to enable the board to effectively perform its duties. This includes advising the board on all corporate governance matters and regulatory requirements (Transnet, 2012).

In the 2012 integrated annual report, Transnet continued to report on how the board had been effective in the monitoring and control of the company's activities, and how it had demonstrated its commitment to high levels of corporate governance standards and principles. To ensure that the company adhered to high standards of reporting and disclosure, the company had adopted the international standards of integrated reporting and sustainability reporting, in line with the Global Reporting Initiative. The board was satisfied that the company complied with these reporting standards and all other governance codes and regulations (Transnet, 2013).

The report then indicated that in 2010, a complaint was received from the office of the Public Protector, regarding allegations of corporate governance breaches and irregular contracts involving the company. These included the alleged irregular appointment of consultants and irregular human resources practices. An investigation was commissioned by the company into these allegations. The investigation was conducted by two audit firms and the allegations were confirmed. The company reviewed the findings and concluded that the concerns that had been raised by the public protector, had been adequately addressed by management (Transnet, 2013).

In the report of the following year, 2013, it was announced that a new CFO had been appointed. Seven non-executive independent directors left the board, and one new non-executive independent director was appointed. The company continued to emphasise its commitment to adhering to the highest levels of corporate governance, demonstrating that it had gone beyond just applying the letter of the law. It highlighted that the board acts with fidelity, honesty and integrity in the best interest of the company. A single incident of non-compliance with procurement procedures was reported, involving container handling equipment (Transnet, 2014).

Over the following years, the company continued to report on the effectiveness of the governance frameworks and mechanisms operating within it. It continued to highlight its commitment to complying with the highest ethical standards and reported positively on the management and governance activities within the company. The first signs of governance risk were noted in the 2016 integrated annual report, where Transnet acknowledged that governance extends beyond simply complying with the provisions of the governance codes. The company realised that the effective implementation of corporate governance frameworks and risk management and control, requires consideration of the values and culture that drive human behaviour. The company committed to reviewing its governance frameworks to monitor governance outcomes. No reason was provided for this acknowledgement. This view was expressed after Transnet had consistently indicated in previous years that it was satisfied with its compliance with the highest governance standards and that governance values and practices had been instilled throughout the organisation (Transnet, 2017).

The company announced changes to the board during 2015, which included four directors who resigned from the board during the year. These included the CEO and CFO, both of whom were subsequently appointed by the shareholder representative, to hold the same positions at ESKOM, which had experienced governance failures. The CEO and CFO were replaced during the year under review. During the year, the board had three vacancies for non-executive independent directors. (Transnet, 2017).

In the 2019 integrated report, for the first time Transnet revealed that it had experienced governance failures. The governance section of the report began by emphasising that it was Transnet's priority to comply with the highest governance standards to attain financial stability. The report then detailed how there had been a web of fraud and corruption that had been uncovered through the state capture commission of inquiry, which required Transnet to radically change it governance structures, processes and frameworks. Subsequently, in May 2018, the board dissolved the acquisitions and disposal sub-committee, comprised of non-executive directors. In addition, disciplinary action was instituted against several senior members of the management team, resulting in their removal from the organisation. This included the dismissal of the CEO. Subsequently the entire executive team was dissolved, and the company's governance structures were re-evaluated. A new board was appointed in May 2018 and all sub-committees were consequently disbanded. Transnet indicates that this was the company's first step to restore good corporate governance within the organisation. In addition, a new sub-committee was added onto the board structure, which was the Finance and Investment sub-committee. The new board included seasoned board members with extensive board experience. The board members had a wide variety of skills and experience in the areas of leadership, finance and accounting, strategic management, law, business management, engineering, project management, construction, applied science, corporate governance and economics (Transnet, 2020).

The Chairman of Transnet reported that the web of fraud and corruption at Transnet resulted in the company being manipulated to benefit a group of individuals within and outside the company. There were significant irregular procurement transactions for goods and services involving executives who appointed external consulting firms within Transnet, to identify commercial opportunities through Transnet's supplier development programme, for their personal benefit. In certain instances, service providers were paid without rendering any services, goods were paid for, without being delivered. An investigation was undertaken to uncover the root cause of the governance failures. The findings of the investigation indicated that there was a widespread breach of procurement procedures and financial controls. There were lapses in the monitoring and control functions, as well as the company's risk management and assurance functions (Transnet, 2020).

The company instituted an investigation led by external attorneys to address the fraud and corruption revealed through the state capture inquiry. The investigation resulted in criminal and civil action being taken against former employees and executives, as well as the suppliers who had been involved in irregular contracts and tenders. A forensic committee was established as part of the executive committee, to assist with ongoing investigations. In addition, the company's delegation of authority framework was re-evaluated to re-define the levels of approval for procurement and other business transactions (Transnet, 2020).

The governance section in the 2019 integrated annual report states that, despite the governance failures that the company had experienced, it had adopted and implemented and complied the King IV governance principles, together with all other governance regulations. These efforts aimed to achieve sound governance, instil an ethical culture, improve operational performance and secure social legitimacy. The company goes beyond complying with governance principles in form, but actively puts them into practice to ensure a positive impact on the company, its suppliers, customers, and other stakeholders such as local communities. The company assesses its compliance to the King IV principles and implements measures to manage governance risks. It has established a code of conduct to promote a culture of ethics, integrity and transparency within the company. In addition, the company has put in place a compliance function which has developed compliance policies, standards and a comprehensive compliance framework to identify regulatory risks (Transnet, 2020).

In the Transnet's 2020 integrated report, a very different picture was painted. The report indicates that the board was on a journey to restore good corporate governance and ethical leadership to restore the integrity of the company, caused by the effects of state capture over the previous nine years. This suggests that Transnet may have been experiencing fraud and corruption from 2013. The company continued to work with law enforcement agencies and has continued to institute disciplinary measures internally, to deal with those that were involved in defrauding the company. The company's financial position was negatively affected by the widespread governance failures which had continued over time. There had been insufficient investment in the company's infrastructure and safety systems. This resulted in the company failing to meet its business obligations and customer service requirements, leading to insufficient revenue generation (Transnet, 2021).

Corporate Governance - Denel

Denel, the country's arms manufacturer, showed profitable growth and improved efficiency, between 2011 and 2015, after implementing a strategic turnaround plan and appointing a new board. Denel successfully manufactured and exported missiles, artillery and military vehicles within Africa, the Middle East and South America, increasing its revenue from ZAR3.2 billion in 2011 to ZAR6billion in 2015. In 2015, the Group CEO was contacted by an associate of the Gupta's to meet the Gupta family, under the directive of senior government officials. The Group CEO reluctantly agreed to meet with the Gupta family at their family residence, where they were accompanied by the then Minister of Public Works and Enterprises. In a subsequent meeting, where the Group CEO was again summoned to the Gupta family residence, the son of the President at the time, was also present during the meeting. The meetings took place after the Gupta family had taken over one of the key strategic suppliers of Denel, which supplied complex engineering systems. After these meetings, the Minister of Public Works and Enterprises reconstituted the board of Denel, and the Group CEO was suspended. There was only one remaining board member, who was an associate of the Gupta family (Zondo, 2022).

The board that was removed included members with many years of experience, who possessed a wide range of knowledge and skills, including expertise in accounting, corporate governance and management, science, law, engineering, and included senior executives from the private sector. When the new board was appointed by the minister at the time, in 2015, the officials who were usually involved in the selection of board members, were excluded from the process. This was to allow the minister to appoint board members who would co-operate in ensuring that the Gupta family and the family of the President, benefitted from business dealings with Denel. The same Minister, on a separate occasion, had also summoned the Chairperson of the Eskom board to her residence where, in the company of the Gupta family, she instructed the Chairperson to appoint certain people into board committees. The person appointed as the Chairperson of the Denel board was discovered to have been an attorney that had been struck off the role due to unprofessional conduct, misappropriation of funds and dishonesty (Zondo, 2022).

The Chairperson also had ties with the Gupta family. Whilst the Minister had publicly lauded the 2011 board for their sterling performance and acknowledged their success in turning Denel around, she proceeded to appoint a new Audit and Risk sub-committee of the board, without the involvement of the board. The sub-committee was tasked with the responsibility of negotiating and evaluating high value contracts linked to the Gupta family. Two months after being appointed in 2015, the board suspended three executives of Denel who were later paid large sums of money to agree to leave the organisation. The removal of the executives at Denel coincided with the dismissal of executives at Eskom. In both cases, this included the Group CEO and the CFO, who were replaced with people that favoured the Gupta family. Based on these findings, the Zondo commission recommended that those involved in the manipulation of governance at Denel, should be prosecuted (Zondo, 2022).

Denel experienced near financial collapse after 2015, reporting a loss of ZAR2 billion in the 2017/2018 financial year. The organisation operated as a failed SOE, with solvency, liquidity and corporate governance failures ranked amongst the top ten risks to the business. Eight board members left the organisation, including the CEO, who was replaced by an interim Group CEO (Denel, 2017).

A new board was appointed in 2018 to lead Denel's turnaround strategy, after a forensic investigation, which highlighted the fraud, corruption and financial mismanagement that had become systemic within the organisation. The forensic investigation was triggered by the findings of the Zondo commission. The loss at Denel was reported to have been reduced from ZAR 1.96 billion the previous year, to ZAR1.46 billion. However, the auditor general was unable to determine the correctness of some of the financial transactions at Denel, due to the incorrect accounting methodology and misstatement of various financial activities (Denel, 2019).

The integrated reports of Denel do not provide a full disclosure of the governance failures that were being experienced within the organisation. The annual reports suggested that the corporation had put in place effective corporate governance frameworks and mechanisms. It was only after the Zondo commission findings, that the annual report referred to governance failures that had existed within the organisation.

Denel – Integrated Reporting

The corporate governance report of the 2015/16 financial year, emphasises Denel's commitment to the highest standards of corporate governance, risk management and internal control systems. The report states that, Denel's corporate governance framework is aligned to the King governance codes of conduct and the Companies Act. It states that the company has instilled a culture of good corporate governance and has put in place measures to ensure that the company complies with high levels of ethical standards, beyond simply complying with legislative and regulatory requirements (Denel, 2016).

In terms of Denel's board composition, the annual report states that Denel has a unitary board, which includes two executive directors, the CEO and CFO. There are nine independent non-executive directors who enhance the transparency and objectivity of the board. The board comprises a diverse group of board members, whose ages range from 39 to 62 years old. Forty percent of the board consists of females. The board comprises highly qualified and experienced members with skills including national security and defence, law, accounting, science, forensic investigation and intelligence, business management and politics (Denel, 2016).

The board has several sub-committees. These include the audit and risk committee, which is responsible for the monitoring and control of management processes as well as the internal and external audit processes. The social and ethics committee is responsible for monitoring the governance matters and stakeholder relationships. The personnel, remuneration and transformation committee are responsible for the remuneration, human resources and transformation policies and procedures. In addition to these sub-committees comprising non-executive directors, there is an internal audit function, which is an independent external audit body responsible for evaluating the effectiveness and adequacy of the company's internal control systems and processes. The annual report indicates that the company secretary's role as that of ensuring that the company has an effective governance framework that enables the board to effectively discharge its duties. However, it is also indicated that, during the 2015 year, the company secretary was investigated for governance irregularities and was placed on special leave (Denel, 2016).

The 2018 annual report, covering the activities of the 2017 financial year of Denel, was very similar to that of the 2015 financial year. The report confirmed that, as a state-owned entity, Denel's sole shareholder is the government, represented by the Minster of Public Enterprises, who appoints the board of directors that monitors the activities of the executive team (Denel, 2018).

The board composition in 2017 was much larger than that in 2015. It comprised 16 directors, including the CEO and CFO as the only executive directors, while the remaining directors were independent. The ages of directors ranged from 34 to 70 years. Five of the 16 directors were female (Denel, 2018).

The integrated report indicated that over the preceding three years, Denel had experienced several governance breaches, which had been highlighted by the Zondo commission's investigation into state capture. This was despite the company's previous reporting on its commitment and compliance with the highest standards of corporate governance. The report indicated that, from 2015, the company had experienced governance breaches which had negatively affected the financial performance of the company and its employees. The governance breaches and corrupt practices were stated to have tarnished the image of the company and negatively affected the company's credibility and relationship with its stakeholders. The tarnished relationships and credibility with financial institutions, suppliers, customers, and other stakeholders, resulted in Denel encountering difficulties in continuing with its business operations (Denel, 2018).

Denel stated that to correct the governance failures, the board had committed itself to enforce and instil corporate governance principles and standards, effectively manage the risks within the organisation, and ensure that the corporate governance regulations and standards were complied with. The governance framework aimed to balance the strategic interests of the company with those of its stakeholders. Surprisingly, the board reported, during the 2018 financial year, that it had been effective in fulfilling its mandate, and had ensured that ethical business practices were in place and that all governance standards and requirements were complied with. However, the audit committee report indicated that, after assessing the effectiveness of the internal controls within the organisation together with the external auditors, several governance lapses were uncovered during the 2018 financial year. This included weak and ineffective internal controls, irregular financial expenditure, non-compliance with the IFRIS reporting requirements and a breach of certain legislative requirements. There had been a breach of governance across the company. The governance report indicated that the governance failures were because of state capture that had been experienced by the company. The board emphasised that it was committed to rooting out the fraud and corruption within the organisation, which included the irregular awarding of contracts and breaches in legislation by some executives. As a result, the CEO and CFO left the organisation due to these irregular practices that were uncovered. Seven of the independent board members also left the organisation. Two were replaced by the shareholder. Fourteen new board members were appointed during the year (Denel, 2018).

In what may appear to be a justification for the governance failures, the annual report indicated that despite Denel's commitment to complying with the highest levels of governance standards, not all governance failures can be attributed to ineffective governance frameworks and mechanisms. The report stated that, these failures could also arise because of senior executives abusing their power and engaging in corrupt practices and fraudulent behaviour (Denel, 2018). It may be argued that if the governance framework and mechanisms are effective, they will protect the organization against abuse of power and corrupt practices.

Corporate Governance Failures – Steinhoff

The background and history of the Steinhoff failure

Whilst there have been several scandals and firm failures in South Africa, the case of Steinhoff ranks amongst the top, often cited as the biggest corporate fraud case in the history of South Africa (Naude *et al*., 2018). The case of Steinhoff can be likened to that of Enron in the USA. Enron was the darling of Wall Street. Enron's stock dropped from US$ 83 in 2000, to zero in 2001, witnessing a dramatic fall from being one of the most admired companies in America to a worthless institution in tatters, because of poor corporate governance (Healy and Palepu 2001).

The fraud case of Steinhoff International came to light in December 2017 when the CEO, Markus Jooste, suddenly resigned when the company's auditors were not able to sign off on the long-awaited financial statements of the organisation, amidst investigations of financial irregularity. Whilst there have been reports of other corporate scandals, none has disrupted the entire South African stock exchange to the extent that Steinhoff did. The scandal dominated financial and general news, resulting in the production of a true crime docu-series featuring live interviews titled "Steinheist". Steinheist is available for streaming on both the Showmax and Netflix platforms. It outlines the story of how the multinational corporation overstated its profits with disastrous consequences to its shareholders, going undetected, for close to a decade. Those interviewed include the founder of Steinhoff, board members, former executives, financial and business analysts, and institutional investors (Idea Candy, 2022).

The stock of Steinhoff on the Johannesburg Stock Exchange (JSE) plummeted by 90% within a week, sending shock waves across the country and internationally. Institutional investors and ordinary members of the public including pensioners, who had invested in Steinhoff, suddenly experienced a devastating collective loss of approximately Euro 10.7 billion (The Economist, 2017). What is most intriguing about the Steinhoff story is that, up to this point, it had appeared that all the dealings within Steinhoff were above board, and all the governance standards and requirements had been adhered to. The glowing reports and disclosures previously made, had boosted the confidence of investors (Naude *et al*., 2018).

The composition and functioning of the Steinhoff board.

It has been argued that what largely contributed to Steinhoff's downfall was the all- too powerful executive CEO, who was able to disguise and hide vital information from the board, making it difficult for the board to hold the executive team accountable (Idea Candy, 2022).

Steinhoff had a dual board structure. On face value, Steinhoff had a very impressive board. It had three directors with doctorates in accounting and one with a PhD in economics. One of the board members with a doctorate in accounting was a lecturer of ethics and was previously the head of the International Monetary Fund's audit committee. Many of the directors had personally invested substantial amounts in Steinhoff shares and, the board was criticised for lacking diversity and independence. The board members, all of whom were white males, had been on the board more than nine years and, it is believed by some that the board had developed a group culture and an attitude of accepting whatever the CEO presented. One of the board members, Dr Johan van Zyl indicates that the board was simply lied to by the CEO and that it was impossible for part-time board members to escape the deceit by someone who spent all their time devising ways to deceive and mislead the board, analysts, and auditors. Van Zyl admits that the board could have probed the executives a lot more on certain deals that were made. However, based on the plans presented by management and the company's demonstrated financial performance, the board believed that all was in order. Van Zyl indicated that there were too many people on the supervisory board that had long term entrenched relationships with the CEO and his management team. Questioning information presented to the board by the CEO could therefore have been interpreted as questioning the integrity of the CEO and his executive, which could strain long term personal relationships. For example, the relationship between Christo Wiese, the chairman of the board and Markus Jooste, the CEO of Steinhoff, is evidenced by the remark made by Wiese when he was asked whether he had trusted Jooste. He indicated that in 2014 they had made a ZAR62 billion deal on a handshake. The deal entailed Steinhoff purchasing Wiese's company, Pepkor (Rose, 2018).

The Steinhoff board was criticised for being homogenous, with almost all board members being accountants, which resulted in a single perspective. Even the head of investor relations was an accountant. Steinhoff was also criticised for having a dual board structure, where the supervisory board of independent directors was separated from the management board, with very little interaction between the two boards (Rose, 2018)

In 2016, which was the last period of reporting by Steinhoff before the scandal, the Steinhoff management board included the CEO, Markus Jooste, the CFO, Ben Le Grange and the COO, Danie van der Merwe. The supervisory board only included non-executive directors, who were not involved in the management of the business. The supervisory board had three sub-commitments, which included the audit and risk committee, human resources and remuneration committee and the nominations committee. However, only five of the eleven supervisory board members served in the board committees (Steinhoff Annual Report, 2016).

Corporate Governance – EOH Holdings

Governance failures at EOH

EOH Holdings limited is a global information and communication technology company whose listing on the Johannesburg stock exchange was censured by the JSE in 2020, due to its failure to comply with JSE's listing requirements, as provided in the Financial Markets Act, 19 of 2012. The corporation was found to have materially misstated its financial statements for the year ended 2019; and in its interim six months results published in January 2020, the corporation restated the financial results of the previous years, dating back to 2017. EOH was found to have experienced governance failures. The internal control mechanisms were ineffective and there was evidence of widespread fraudulent activities, which included irregular and fraudulent contracts with the government, as well as accounting and financial reporting irregularities. When these scandals were uncovered, EOH incurred a significant loss in its share price, and suffered reputational damage (JSE, 2020a).

EOH is a successful global company which grew rapidly in South Africa. The annual reports of EOH describe EOH as a global company with a presence in Africa, Australia, the Middle East and the USA. In 2015 the company reported that it increased its revenue by 35% and profits grew by 45%. EOH was consistently ranked as one of the best performing companies on the JSE and had received several awards for excellence, recognising its accomplishments and success. One of the awards was the Forensic Corporate Member of the Year award, presented to EOH at the International Association of Certified Fraud Examiners conference. In the same annual report, EOH emphasised the importance of corporate governance and the commitment by the board of directors to entrenching the highest governance standards and principles throughout the organisation. This included ensuring the existence of effective policies, systems and compliance mechanisms that would advance good corporate governance, fostering a culture of integrity and ethical values upheld by the leaders of the organisation (EOH, 2015).

In a study of the corruption which occurred at EOH, led by the global affairs think tank ODI, it was found that EOH suffered from several institutional failures. The company did not have an internal audit function, the company’s subsidiaries did not produce proper accounting statements, the board did not meet regularly, and it did not have a proper oversight over the corporation. There were questionable board appointments, including the appointment of an executive director who served within the company between 1998 to 2007, and was then appointed as a lead independent director up until 2019. After the governance failures were uncovered at EOH, a new board of directors and new external auditors were appointed to restore governance and rebuild confidence among shareholders, and implement the necessary financial accounting and reporting changes within the organisation. The new management at EOH subsequently co-operated with the Zondo commission, the South African Revenue Services, the financial regulatory agencies, and government investigation units, in uncovering the corruption and fraud that had occurred within the organisation. It is surprising that the governance failures at EOH continued for such an extended period without any investigation by the regulators and other public investigation and law enforcement authorities despite public reports alleging corruption. This raises questions about the effectiveness of the oversight role played by not only the internal, but also external governance compliance mechanisms (Gelb, 2023).

The details and extent of the governance failures at EOH were exposed during the Zondo commission. The evidence brought before the commission indicated that poor oversight of the executives led to business decisions being made without proper board approval. Furthermore, the new management of EOH provided evidence showing how executives within the company colluded with government officials regarding Microsoft and SAP licensing deals, as well as I.T. network services within national and provincial government departments. The collusion involved by-passing procurement processes, irregularly granting tenders, inflating prices, and paying bribes and irregular fees through politically connected intermediaries. EOH also made irregular donations to the ANC governing party and other influential and politically connected individuals, amounting to tens of millions of rands. One example of the irregularities at EOH included an unsolicited tender submitted by the company to the Johannesburg City's network and security infrastructure department (Zondo, 2020).

EOH Board

EOH had an experienced and highly qualified board with diverse skills ranging from business professionals, engineers, scientists, chartered accountants, academics and IT professionals. The single tier board included five executive directors, four independent non-executive directors and three non-executive directors. There was also a representation of racial and gender diversity amongst board members. In 2015 the board had six sub-committees which were chaired by non-executive directors. The sub-committees included the audit committee, risk committee, IT Governance Committee, Remuneration committee, nominations committee and the social and Ethics Committee. The annual report indicated that the board was satisfied that all committees were effective in discharging their duties, which included ensuring that all the necessary risk identification and management systems were in place. There were no areas of non-compliance with regulations and legislation, and the codes of good governance had all been adhered to within the organisation (EOH, 2015).

The 2016 annual report of EOH was very similar to that of 2015. Once again EOH expressed its commitment to ethical leadership, and explained how it had ensured that a culture of ethics had been cultivated within the organisation and the highest standards of corporate governance had been complied with. The risk management report outlined how effective risk management policies, structures and processes were implemented to ensure that business risks were identified and mitigated ((EOH, 2015).

EOH's 2018 annual report indicated that the board was committed to ensuring that high levels of corporate governance existed within the organisation and explained how the company had focused on strengthening the company's governance framework.

An external service provider was engaged to review the company's governance structures and processes. This was specifically reported as including a review of bids and tenders by EOH on government contracts. The external risk monitoring service provider did not discover any governance risks but still made some recommendations to further strengthen the governance at EOH. It was reported by EOH that the board was also reconfigured and strengthened, and the new board was described as possessing the necessary independence, skills and capabilities of performing their oversight function over the organisation, in line with the highest governance standards (EOH, 2015).

Governance failures at EOH

In 2019, the EOH annual report indicated that the Companies Act, JSE listing requirements, the KING IV codes of governance, international financial reporting standards (IFRS), international integrated reporting council framework (IIRC), were all used as a basis for determining the company's compliance with governance and financial reporting standards. Consequently, the company commissioned a forensic analysis of the fraudulent and corrupt activities that had been uncovered within the organisation in previous years. The results of the forensic analysis uncovered critical weaknesses in corporate governance and risk management structures and processes. Internal control systems including internal audit, legal compliance, supply chain, procurement, and management of human resources, were found to have been inadequate. The business processes were found to be weak, as well as the monitoring and control over the organisation. The financial and business reporting was poor, resulting in poor decision making within the organisation. The corporation was found to have lacked the necessary skills to manage its operations. Sixteen employees of EOH were implicated in the corruption scandals at the company. Eleven of these employees left the organisation and eight were reported to the Financial Intelligence Centre. There were 78 organisations that irregularly benefited from the corporation’s BBBEE enterprise development programme, several loans were written off without explanation and several payments were made based on non-existent or ghost contracts (EOH, 2019).

Following these findings, the board approved a new best practice corporate governance framework, with updated governance structures and codes of conduct. A programme was put in place to develop a culture of ethics and compliance within the organisation and among its suppliers. A chief risk officer with extensive experience in corporate governance was appointed to lead the co-ordination of the governance and risk management programmes within the organisation, focusing on embedding a culture of ethics, courageous leadership, and good governance (EOH, 2019).

EOH attributed the governance failures uncovered in 2019 to rapid expansion, which left governance structures under resourced. Further, the oversight and monitoring functions were inadequate to meet the needs of the organisation, lacking the necessary professional skills and capabilities required to ensure proper information flow and analysis EOH’s operations. The report indicated that in retrospect, the 2018 annual report, which had suggested that good corporate governance was in place within EOH, was based on poor reporting and a lack of proper information being provided to the board regarding the organisation’s activities. A new board was appointed by EOH, which the company indicated had extensive knowledge on governance matters, was diverse in professional skills, race and gender and possessed the independence to operate effectively. The roles between the board and the executive were formally defined. The function of the company secretary was described as that of supporting the board and directors of the company, with direct access to the chairman. The company secretary had access to external independent professional advice (EOH, 2019).

The EOH annual report of 2020 indicates that the company had put in place a new best practice governance framework which includes mechanisms to uphold and enforce ethics and good governance within the corporation. This is aimed at ensuring that there is ethical and effective leadership being exercised in directing and managing governance matters and in the compliance to standards of accountability and transparency within the organisation. The seven pillars underpinning the governance framework were described by EOH as being ethical leadership and culture, transparency and disclosure, risk and compliance framework, corporate citizenship framework, sustainability and resilience, governance structures and accountability and strategy management. Under the risk management report of EOH, the company reported on several risks that had been identified within the organisation. These included a lack of professional skills, retention and motivation of staff, an ineffective performance management system, the possibility of irregular tenders, bids and fraudulent contracts being replicated and inadequate governance practices. Despite explaining the risks associated with the irregular and fraudulent activities that had occurred within the organisation, including litigation matters, EOH indicated in the notes on the financial statements that none of these were considered material enough to collectively have a significant effect on the financial position of the company (EOH, 2020).

The inconsistency between the statements and reports made by EOH over the years, asserting that it had adequate governance frameworks and mechanisms in place to ensure compliance with the highest governance standards, and then retracting these statements in 2019 while further qualifying them in 2020, suggests that EOH may have simply been engaging in a mere tick box exercise in reporting on its compliance with governance standards. By its own admission, the company failed to put in place effective governance systems and processes, but still went ahead and reported on how effective these were, based on the requirements of the governance regulations, codes and legislation. The appearance of exceptional financial performance by EOH may have blinded the board, allowing executives to continue with business operations without being properly monitored, much like what seems to have occurred at Steinhoff.

Corporate Governance - Tongaat Hullet

Background of Tongaat Hullet

Tongaat Hullett is an agricultural company with a long successful history. The company was established in the 1800s. It had its first listing on the JSE in 1952 and a secondary listing on the London Stock exchange in 1939. After several mergers, the company engaged in a wide range of business activities which included aluminium, consumer foods, cotton, edible oils, catering, agriculture, textiles, and transport, amongst others. In the 1990s, the company re-focused its business on agro-processing and agricultural land development. The company grow successfully, employing over 22 000 people. It established a footprint of agricultural and agro-processing facilities in South Africa, Botswana, Mozambique, and Zimbabwe (Tongaat Hullet, 2018).

In July 2020, the JSE imposed a censure on Tongaat Hullett, as well as a penalty of ZAR7.5 million, due to accounting irregularities uncovered, that had occurred between 2011 and 2018. The accounts of the corporation were found to be non-compliant with IFRS. These irregularities were found to be material and resulted in the publication of false and misleading financial statements to the JSE and shareholders, in breach of JSE and accounting regulations. The JSE found that the CFO of Tongaat Hullett had failed in his duties to ensure that the company published financial information accurately reflecting its financial and business performance, and that it complied with the listing requirements of the JSE. As a result, the CFO was disqualified from holding the position of a director of a listed company, for a period of 10 years (JSE, 2020).

Reports on Governance systems and practices at Tongaat Hullet

In the 2017 annual report, Tongaat Hullett's chairman emphasised the company's commitment to upholding the highest levels of corporate governance standards. The report stated that the board had provided strong and ethical leadership that enabled the company to achieve its corporate governance objectives and strategic business objectives, including compliance to the King code, Companie's Act and the JSE listing requirements. The annual report indicates that the board was committed to ensuring that compliance to corporate governance went beyond a simple compliance exercise or tick box type of compliance with governance codes, principles, and regulations, but best practice governance principles were embedded in the daily activities and business practices of the organisation and were part of the culture of the organisation (Tongaat Hullet, 2018).

The report further indicated that the board had been effective in its duties, expressing satisfaction with its composition, in terms of race and gender diversity, the skills and experience of the directors, and the fresh perspectives that they brought. It also highlighted the quality of board meetings and the effective oversight that the board had exercised over the company. The executive was commended for its role in contributing to the sterling performance of the company (Tongaat Hullet, 2018).

The Annual report of 2018 indicates that there were no changes made to the board and it was stated once again that the board and its committees continued to provide effective oversight of the company and provided ethical leadership, to which the success of the company was attributed. The company indicated that financial accounting standards had been adhered to and that the financial statements were a true reflection of the financial affairs of the company, adding that the future financial performance of the company was positive (Tongaat Hullet, 2019).

Governance failures at Tongaat Hullet

In the annual report of 2019, Tongaat Hulett reported that the company had encountered a misfortune due to governance failures, which had affected employees, shareholders, raw material suppliers and community members. The company indicated that it was committed to re-establishing proper corporate governance standards and strengthening the leadership and oversight of the organisation. A new CEO and a new CFO were appointed as executive directors, and as leaders of the executive team. In addition to this, a conscious decision was made to replace some of the long serving non-executive members on the board. These included the chairman of the board and four other non-executive directors, three of whom were independent non-executive directors. The non-executive chairman was replaced with an independent non-executive chairman. The new board included members with a wide range of skills, knowledge, experience, and business acumen. It was diverse in terms of race and gender. The annual report indicated that the changes to the board would ensure that there was a balance in the concentration of power, increased independence, and an improved skills diversity (Tongaat, 2020).

The new chairperson, who assumed duties in February 2019, reported that a forensic investigation had uncovered that there had been a misstatement of the financial performance of the company during the year of 2018 and the IFRS accounting standards had not been complied with. Due to the materiality and extent of the accounting irregularities, the company decided to request that the shares on the JSE and London Stock exchange, be suspended. The chairman stated that the board was committed to leading the corporation ethically and transparently with integrity and accountability. He indicated that the board was committed to adhering to the highest standards and principles of corporate governance, which were included in the company’s corporate governance manual and charter and codes of ethics. The company also established an ethics management programme which included whistleblowing, ethics reporting, auditing, and risk analysis. The audit committee and social and ethics committee were tasked with managing this ethics programme, to ensure that a culture of ethics and integrity existed within the company. The board committees of the company included the risk capital investment committee, strategy transformation and operations committee, nominations and director affairs committee, legal and regulatory committee, remuneration and human resources committee, social and ethics committee and the audit and compliance committee. The board removed the decision-making authority of the committees, vesting all decision-making authority in the board itself. The company reported that it would re-evaluate this decision in due course, once it was satisfied that the compliance culture within the company was satisfactory and that all the necessary governance policies, frameworks and structures were in place and operating effectively (Tongaat Hullet, 2020). Tongaat Hulett failed to recover from the damage that had been caused by the irregular accounting practices and eventually entered voluntary business rescue on the 27th of October 2022. The company was subsequently sold off due to its business failure, an outcome that the board attempted, but ultimately failed to challenge (Child, 2024).

Governance Failures – Construction Industry

Collusion and bid rigging within the construction sector has existed for many years. In South Africa, the first cartel was exposed in 2007, when the Competition Tribunal uncovered a cartel involved in bid rigging in the supply of concrete pipes. This led to one of the largest construction companies, Murray and Roberts, submitting a leniency application to the Competition Commission regarding their involvement in bid rigging, price inflation and market share allocation, which had occurred from 1973 to 2007. Following the uncovering of the cartel related to the supply of concrete pipes, the

Competition Commission launched a wider investigation into the possible collusion within the construction sector in 2009. In 2010, the Competition Commission invited companies that may have participated in collusive behaviour to voluntarily come forward to settle their contraventions and qualify for leniency. Twenty-one construction companies applied for leniency relating to 300 separate contraventions. (Parliamentary Monitoring Group, 2013).

During the investigation of the construction sector, the Competition Commission uncovered collusive behaviour that had occurred between 2000 and 2009. The administrative penalties that were issued based on the settlements with the various companies, amounted to ZAR1.46 billion. The collusion and bid rigging were found to have involved large public sector projects with the government as well as SOEs such as Eskom and the South African National Road Agency. Much of the corrupt activities related to the construction of stadiums for the 2010 FIFA world cup tournament held in South Africa, and the construction of roads. These large powerful construction companies also agreed on the profit margins to be attained from the construction projects and succeeded in excluding smaller firms from competing against the cartel (Khumalo *et al.*, 2010).

Bid rigging was also found to have existed in industrial projects such as mining operations, paper and milling initiatives, the construction of university residences as well as private residential developments (Ratshisusu, 2014).

Corporate Governance – Basil Read

One of the publicly listed companies that were involved in collusive behaviour is Basil Read. The global company operates in 22 countries which all have different legal, financial, governance and regulatory requirements to be complied with. The 2011 annual report of Basil Read indicates that the Competition Commission was investigating the company for collusion. The company reported that it had raised a provision for a possible penalty that may be imposed by the Competition Commission. Despite this, the annual report states how the company was committed to moving beyond a legal compliance approach towards corporate governance, but also embedding global governance standards within the organisation. The company provides as evidence the improved BBBEE score and its governance and risk management processes. The report indicated that programmes had been put in place to improve compliance with the King codes, the Companies Act and competition legislation. This included the training of directors and employees on governance requirements and their roles and responsibilities. The company was also in the process of developing an anti-corruption policy, based on the Anti Bribery Act of 2010, of the United Kingdom (Basil Read, 2010).

Basil Read, by their own admission, had adopted a compliance or tick box approach to governance, as opposed to an outcomes-based approach. It would also seem that ethical standards and governance principles were not embedded within the culture of the organisation.

3.9 Research Design Limitations

Whilst secondary data collection and content analysis are effective methods for conducting qualitative studies, there are certain limitations to this approach. These include concerns over data quality, limited clarity regarding the data sampling and collection processes of the primary data, and the suitability of the data for secondary use. There may also be limited clarity on the situational context and objectives of the primary research, and how this may have influenced the interpretation of the primary data. This limitation can be mitigated the secondary researcher acknowledging these limitations and ensuring that the primary research or primary data is relevant to the secondary research question. It is also useful to disclose the context and circumstances under which the primary research was conducted, and how it is linked to the secondary research (Chauvette *et al*., 2019).

Corporations are complex entities, and studies undertaken on corporate governance generally use large samples of data. Whilst this allows researchers to establish patterns and trends, it does not provide conclusive insights into how specific governance variables affect specific types of corporations (Larcker and Tayan, 2023). This is because corporate governance enforcement mechanisms are interlinked, which may explain the various and sometimes contradictory findings from different studies. Difficulties often arise in identifying and isolating variables, such as the specific and direct effects of leadership, ethics and culture on corporate governance from other internal and external governance mechanisms. A further difficulty may arise in distinguishing the causes and effects of internal mechanisms from those of external governance mechanisms. This limitation is reinforced by de Villiers and Dimes (2021) who indicate that there may be interlinks between the determinants, mechanisms, and consequences of corporate governance. Different corporate governance mechanisms may act as substitutes or could be complimentary to one another.

3.10 Conclusion

The research suggests that the corporate governance failures observed in the organisations studied, can be largely attributed to board failure and poor risk management.

Despite the vast amount of research that has been undertaken on corporate governance over the years, there remains limited insight into the specific board practices that make boards efficient, including aspects such as information flow, performance oversight and risk detection. Regulations and laws allow boards to rely on the information provided by the executive management, regarding the financial and operational affairs of the corporation. Unless there are red flags, the board is entitled to trust that the information provided by the executive is accurate. It is not common for boards to restructure or reconstruct the information provided by the executive, to investigate and verify the accuracy of the data being disclosed, particularly if reports from internal and external auditors confirm that the affairs of the corporation are in order. In many cases of corporate failures, the board only became aware of a lapse in risk controls, after the event. Examples from global companies which have experienced such instances includes, the board of Wells Fargo, which was not provided with accurate information regarding the extent of cross selling violations that existed. The board of Boeing was not aware of the design flaws in 737MAX aircraft and the failure by officials to engage transparently with federal regulators. It would be expected that with qualified and skilled board members, sophisticated communication systems, and world class governance regulations, breakdowns of this magnitude could have been prevented (Larcker and Tayan, 2023).

The high turnover of board members was also found to be a contributing factor which limited the board's effectiveness, particularly amongst SOEs. High turnover disrupts the board's functioning and affects its leadership effectiveness. Frequent changes mean that board members are not able to consistently meet with the same group, making it difficult to formulate strategic decisions and then proceed to oversee the execution of such decisions by management. Such disruptions often result in boards failing to effectively carry out their duties, as they must ensure that there is a re-alignment amongst board members on the strategic objectives and address the loss of institutional knowledge acquired by longstanding members. A study conducted by Vafeas (1999) investigated how firm performance is positively influenced by the ability of the board members to increase their knowledge and understanding of the business activities, which results in improved decision-making. This highlights the importance of board stability, as disruptions caused by high turnover could reduce the board's effectiveness in supervising the activities of the corporation.

CHAPTER IV:

RESULTS

4.1 Research Question One

What is the state of development of corporate governance mechanisms that exist within South African publicly listed corporations and SOEs?

This research question seeks to investigate the extent to which South Africa's governance frameowrk is aligned to global standrads and accepted governance principles.

4.2 Research Question Two

How effective are internal corporate governance mechanisms within South African listed corporations and SOEs?

This research question seeks to investigate whether the governance outcomes are reflective of the effectiveness of internal governance mechanisims.

4.3 Research Question Three

What is the relationship between the existence of internal corporate governance mechanisms and corporate failures within the context of South Africa?

This research question seeks to investigate the corelation between the existence of and, compliance to, internal corporate governance mechanisisms and corporate failures.

4.3 Research Question Four

What influence does the country's socio-political history, national and organisational values and societal culture have on corporate governance within South African publicly listed corporations and SOEs?

This research seeks to investigate whether the social, economic and polictical history of South Africa has had any influence in the development of the corporate governance principles and frameworks.

4.4 Summary of Findings

Research findings – SOEs

A culture of poor governance seems to be embedded in SOEs with the tone being set from the top, from the shareholder through to the board, and down to the executives and the senior staff of the organisation. In the case of SOEs, the research findings show that politicians representing government as the shareholder, have successfully manipulated governance processes by controlling the appointments of board members and senior executives, for political expediency and personal financial gain. This has resulted in a high turnover of board members who either leave because they wish to ensure that they retain their reputation of ethics and integrity, or, they may simply be pushed out for not being willing to co-operate with the corrupt intentions of the political representatives of the shareholders.

Research Findings – Publicly listed companies

In the case of private companies, the research findings highlight the risk associated with the board placing too much trust on the executive or CEO. The board may be blinded by the perceived financial and business success of the organisation. In the case of Steinhoff for example, the board mistakenly associated the perceived success of the organisation with the effective governance and leadership of the organisation. This blindness interferes with the level of independence that the board exercises, and important matters could then be overlooked based on the unwarranted trust.

4.5 Conclusion

South Africa has a very developed corporate governance framework. The governance codes and regulations have evolved over time in order to ensure that they are aligned to global tandards. The listing requirements, governance codes and charters require listed entities and SOEs to comply with the highest governancne standards. Listed corporations and SOEs have reported on their compliance to governance standards and principles and, have expressed their commitment to upholding these governance principles and standards.

However, the governance outcomes and corporate failures suggest that the level of compliance reported upon by the corporations is not always a true reflection of the actual compliance to governance standards and principles. There have been several instances where firms have produced glowing integrated reports. In these reports the firms demonstrate and explian how they comply with and, are committed to the highest governance standards and principles. When these same companies endure corporate scandals and governance failures, they register their disappointment and surprise that the governance risks were not detected and the governance failures could not be foreseen.

In reviewing the investigations and reports on most of these entities, it can be concluded that the effectiveness of internal governance mechanisms in curtailing governance failures is due to a lack of ethical leadership and the failure by the board to put in place mechanisims aimed at upholding and instilling governance values within the organization. There has also been a failure in puttinh in place effective risk management and compliance monitoring mechanisms.

CHAPTER V:

DISCUSSION

5.1 Discussion of Results

Discussion of results – SOEs

A culture of poor governance values and ethics seems to be embedded in SOEs with the tone being set from the top, from the shareholder through to the board, and down to the executives and the senior staff of the organisation. In the case of SOEs, the research findings show that politicians representing government as the shareholder, have successfully manipulated governance processes by controlling the appointments of board members and senior executives, for political expediency and personal financial gain. This has affected the board's competence in properly carrying out its duties.

Board competence has been identified by the research as playing an important role in the effectiveness of boards as an internal governance mechanism. The research findings suggest that, whilst qualifications, skills, experience, diversity, or independence of board members are important, these cannot be exclusively used as a measure of determining board competence and effectiveness. In instances where the board becomes disempowered and the scope of their responsibilities are subverted, or, when the executive gains an excessive level of influence and power over the board, this results in a diminished level of oversight from the board and, consequently, non-compliance with governance principles and regulations. This makes the board ineffective and incompetent, resulting in its failure as an internal governance mechanism.

A study on SOEs was conducted by Gnan *et al*. (2010) on the relationship between board independence and board competence, on the one hand, and ownership concentration and government ownership, on the other, as internal governance mechanisms. The authors, quoting Fama and Jensen (1983), indicate that whilst board independence and board competence are important board characteristics, within SOEs the context in which these characteristics exist is differentiated by the relationship between the board and the government as the owner or shareholder. This means that there are certain competencies which board members should possess to effectively deal with the political relationship between government and the corporation, while also compensating for the managerial gap, which has been found to be a common characteristic found in most SOEs. This then requires the board to have a higher level of business and management competence.

The need for boards to possess the necessary skills and capability is hampered where incompetent boards and executives are appointed by the shareholder of SOEs, either due to the shareholder's in-ability to identify and screen the people who have the necessary skills and experience, or, where it is politically expedient or furthers corrupt interests to do so. This weakens the board and enhances firm risk.

The evidence brought before the Zondo commission showed that in many instances, the Minister or shareholder representatives often manipulated the board selection processes and abused their power by appointing board members and in certain instances even executives, who were not qualified to fill the positions in which they were appointed. This can be seen in the cases of Denel, SAA, ESKOM and Transnet, amongst others. Although not an SOE, but the same culture and pattern of behaviour by government representatives, was seen with the appointment of the Commissioner of the South African Revenue Services (SARS), who allowed the organisation to be infiltrated by corrupt individuals, resulting in the maladministration of an organisation that had previously been heralded as ranking amongst the best tax and revenue collection services in the world. This suggests that the appointment of board members and senior executives such as CEOs and CFOs should not be left to politicians, but should be made by a body that has the capacity to appoint people with integrity, who are able to lead public institutions successfully (Zondo, 2020).

Certain European countries such as Hungary and the Czech Republic have been successful in running SOEs efficiently by appointing board members who have the relevant professional qualifications, competencies, and experience in running SOEs. South African SOEs could learn from these countries by ensuring that board members are properly screened so that only trained, knowledgeable, motivated, and competent board members are appointed (Matsiliza, 2017).

There has been an argument made that, the misalignment between the interests of the board and that of the shareholders of SOE's has an impact on the effectiveness of boards. In terms of the agency theory of Fama and Jensen (1983) and the property rights theory of Alchian (1977), the shareholder's incentive to play its oversight role of monitoring and controlling management, will be limited to instances where the benefit of such oversight exceeds the costs of oversight. In the case of privately owned corporations, these oversight costs, or agency costs, are borne by the shareholders of the organisation. However, where the corporation is government owned, the costs are borne by the stakeholders or public citizens as the ultimate owners of the SOE. This results in government performing its oversight role poorly. There is also a view that is put forward by the public choice theory, which suggests that politicians generally act in their own political interest as opposed to acting in the interest of the public. They have the expectation that boards of SOEs should advance those interests which will result in the attainment of the government's political agenda, such as increasing votes. As a result, the scope of the board's authority and responsibilities may be curtailed by the board being over-ruled or not supported by management and government, when trying to execute its roles and responsibilities (Gnan *et al.*, 2010). This suggests a need for an intervention, either through governance codes, charters or other governance regulatory instruments, which will allow SOE boards to operate independently of government and, their appointment and tenure should not be determined by politicians, but independent bodies which have the skills and competency of doing so.

Discussion of results – Publicly listed companies

Collusive behaviour, unethical accounting and business practices and improper relationships with government officials in order to enhace profitability, have been found to exist amongst publicly listed corporations. In many instances, these breaches of corporaate governance have gone unnoticed until it results in a corporate scandal or firm failure.

The research found that leaving a trusted executive to operate with a minimum level of oversight, creates the risk that the executive may not disclose all relevant information and may succeed in being deceptive to the board, the shareholders, and other stakeholders of the organisation. Several of the boards of corporations that have experienced governance failures, indicate that the irregularities which are uncovered were unexpected and have appeared like a "bolt out of the blue".

The monitoring and control of global complex organizations operating in several jurisdictions and industries, such as EOH, Steinhoff and Basil Read, results in increased business and corporate risks. This requires the board to exercise a higher level of scrutiny. For the board to execute this function effectively, it will require the assistance of sophisticated risk management systems and processes, such as AI.

The research findings also show that, over-reliance by the board on external investigators and compliance bodies, including auditors and regulators, to monitor governance compliance, could result in an abdication of the board's responsibility. This over reliance on external bodies affects the board's ability to ensure that effective internal governance systems and processes are in place to manage governance risks and to accurately report on these. External bodies may not necessarily be in a more advantageous position than the board to have a full appreciation of the risks that exists within a corporation, even after interrogating the information being disclosed to them. This has been evidenced by auditing bodies incorrectly signing off on the financial performance and integrated reports of listed organisations, which later turns out to be a misrepresentation of the performance of the company.

5.2 Discussion of Research Question One

South African corporations have internationally recognised governance systems and mechanisms. These include listing requirements, laws, regulations, regulatory bodies, shareholder and stakeholder activism and codes of governance. The codes, regulations and laws set out how internal governance mechanisms must be established and the role of such mechanisms, such as board composition and the roles of the board and its sub-committees. Despite this, corporations continue to experience governance failures, due to noncompliance to governance principles.

The governance principles have been codified in the King IV report, which sets out the requirements for effective governance and stipulates the mechanisms required to be put in place to achieve this objective. The King IV report is outcome based and is focused on encouraging the optimisation of good corporate governance through the mindful consideration and application of the principles of the guidelines, as opposed to mindlessly reporting on compliance with the guidelines as a tick box exercise (IoDSA, 2016).

5.3 Discussion of Research Question Two

The research findings show that the internal corporate governance mechanisms of South African companies may not always be effective, despite the high levels of compliance and commitment to corporate governance, which is elaborately disclosed by the companies in their integrated reports. A lack of ethical leadership, implementation of effective risk and monitoring processes and weak internal controls, result in the existing corporate governance mechanisms and frameworks being in-effective.

Within the context of SOEs, these companies experience a challenge in managing the agency-principal relationship. As agents of the government shareholder, the board and executive, operate within a mandate provided to them by the government as their appointee. They are accountable to government. This creates a risk of boards managing, controlling, and governing the corporation in protection of the political interest of the principal, as opposed to acting in the interest of the citizens, who are the beneficiaries of the services provided by SOEs. This research shows examples where political interests are protected even when the protection of these interests is against the principles of good corporate governance. In the instances where board members have chosen not to comply with the political mandate, they either leave the organisation voluntarily, or they are removed. This has resulted in unstable boards and ineffective executive teams, causing disruption and instability which renders the SOE's ineffective.

Matsiliza (2024) reflects on this challenge and indicates that the agency- principal relationship tends to become one of patronage, where the agent acts in the interests of the principal out of loyalty. Whilst SOEs are created to advance public policy objectives and socio-economic development through the provision of essential goods and services, the opportunistic behaviour of the principal representative by interfering with the board, executive appointments as well as operational matters such as procurement and tender processes, results in governance failures and a failure of the SOE in meeting its socio-economic objectives.

5.4 Discussion of Research Question Three

The research findings show that there is no conclusive correlation between the existence of internal governance mechanisms and the occurrence of corporate failures. Some of the global companies that were examined have multiple listings and are required to comply with the highest global standards of corporate governance. Despite this, they have experienced governance failures and, in the case of Steinhoff and Tongaat Hulett specifically, the companies have eventually collapsed.

5.4 Discussion of Research Question Four

The research shows that the socio-political and economic history of South Africa has influenced the development and evolution of corporate governance. This can be seen in the construction of the King reports which have adopted a stakeholder approach to corporate governance. The codes specifically require corporations to consider the cultural values and social needs of the community.

One of the main features of King II in the evolution of corporate governance in South Africa, is that it introduced the requirements for governance practices to reflect the values and cultural philosophies of the broader South African society. These values include spiritual collectiveness over individualism, consensus building rather than dissension, humility and helpfulness over criticism and, the spirit of “ubuntu” (humanity, peaceful co-existence and brotherliness), amongst others. King II also seeks to ensure that the diversity of the South African society in terms of culture, religion and ethnicity is considered by corporations as they develop their ethos of trust, respect, fairness and inclusivity, over discrimination and prejudice. This ethos is expected to guide how boards and executives manage and conduct business (Ntim, 2009).

The King II report, therefore, focused on the qualitative aspects of good corporate governance as opposed to acting as a regulatory instrument. It sought to introduce an obligation for corporations to meet societal needs and contribute to the development of the wider society by incorporating these aspirations within their corporate governance frameworks (Van der Merwe *et al*, 2004). The cultural norms and values of South African society are further entrenched by the King IV report. King IV refers to an organisation as being an integral part of society and places emphasis on the interdependency between companies and society. This is captured in the codes through the African concept of *Ubuntu* or *Botho*. This concept is expressed in the phrase *uMuntu ngumuntu ngabantu* and *Motho ke motho ka batho*, which can be translated as *I am because you are, you are because we are*. This implies that there should be a common purpose between human and corporate endeavours. Corporations, as creators of wealth, should contribute to the development of the society which serves as the customer and skills base which the corporation relies on for its sustainable development (IoDSA, 2009).

It is within this context that the Anglo-Saxon corporate governance system, which has been adopted by South Africa, exists. The Anglo-Saxon governance model is designed for the protection of shareholder rights and wealth maximisation. It advocates for an effective board of directors which has the appropriate skills and qualifications to further this objective. South Africa has adopted these principles, with the aim that the application of these principles will result in the protection of shareholder interests and the long-term sustainability of the organization. This success will in-turn benefit society and other stakeholders.

The challenge of balancing these two broad governance objectives, is a philosophical or ideological challenge. It relates to the extent or degree to which an organization chooses to adopt the stakeholder principles in their governance practices, without compromising the maximisation of shareholder wealth. The governance framework and practices remain unchanged. The requirement for the board to operate independently, to exercise ethical leadership, to manage governance and business risks, to instil a culture of compliance to governance principles and ensure that proper monitoring control and assurance mechanisms are in place, is not influenced by "Ubuntu" or BBBEE or the historical implications of apartheid.

The corporate governance philosophy of South Africa may well have been influenced by the country's socio-political history, national and organisational values, and societal culture. However, the governance frameworks and mechanisms, including the internal governance mechanisms, are influenced by the Anglo-Saxon governance models of the developed countries. The governance practices and frameworks are the vehicle through which the ideological governance objectives are achieved. The political influence of SOEs, corruption, accounting irregularities, manipulation of board and executive appointments, bribery, collusion the misstatement of a company's affairs has very little to do with the country's socio-political history or values. Rather, it has to do with the effectiveness of governance mechanisms, which is influenced by whether good corporate governance principles and practices are adhered to by the board and the organization.

CHAPTER VI:

SUMMARY, IMPLICATIONS, AND RECOMMENDATIONS

6.1 Summary

Based on the research findings, it is clear that the current internal governance mechanisims have been found to be ineffective in curbing governance failures. The research findings show several factors that contribute to making internal governance mechanisms ineffective. One of the main reasons is the absence of a strong governance culture within organisations, which is guided by ethical values and integrity. This is due to the leadership failing to practice ethical and courageous leadership. This evidence can be seen in the governance failures of both publicly listed companies and SOEs. The lack of commitment by corporations to ensure positive governance outcomes ultimately weakens and compromises other governance mechanisms. Corporations often adopt a nominal or tick box approach to governance compliance, seeking to portray to stakeholders the adherence to corporate governance regulations and principles, even when actual governance outcomes suggest otherwise.

There is a governance model which is recommended for the effective functioning of internal corporate governance mechanisms. This model is predicated upon the proper composition and functioning of the board as the nexus or link between all other internal governance structures. The proposed model is that of the Chartered Institute of Public Finance and Accountancy (CIPFA) and the International Federation of Accountants (IFAC).

The CIPFA and IFAC jointly developed the corporate governance framework (the international framework) aimed at ensuring that public sector entities comply with the highest levels of good corporate governance. The aim was to instil values of ethics and integrity at all levels within the organization. Whilst the framework was developed for the public sector, the governance principles are applicable in organizations across different sectors. The board is responsible for ensuring that the governance principles are understood and practiced in all functions, processes, and operations of the business, including personal behaviour. The governance framework highlights the importance of sustainability and links the organization's success with positive societal and environmental outcomes (CIPFA and IFAC, 2014).

There are seven principles which underpin the governance framework. These include;

A. **Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law** - The board should promote a culture of ethics and integrity and, should take the lead in living up to these values. All decisions within the organization must be guided by values of ethics and honesty.
B. **Ensuring openness and comprehensive stakeholder engagement** – In order to maintain trust and confidence in the organization, the organization should be transparent and as open as possible when reporting to stakeholders about its decisions, actions, as well as the outcomes and, the impact and consequence of such decisions and outcomes to the organization, the environment and society.
C. **Defining outcomes in terms of sustainable economic, social, and environmental benefits** - Due to the long-term socio-economic and environmental impact of the organization, plans must be put in place to ensure that the organizational outcomes are positive and contribute to the sustainability of the organization and its ability to meet its long-term goals and objectives.
D. **Determining the interventions necessary to optimize the achievement of the intended outcomes** – It is important for the board to engage in scenario planning to evaluate how the interventions being made by the organization will contribute

to the attainment of the organization's objectives. This allows the organization to pro-actively put in place measures to mitigate any financial, operational, social, or environmental risks which may arise.

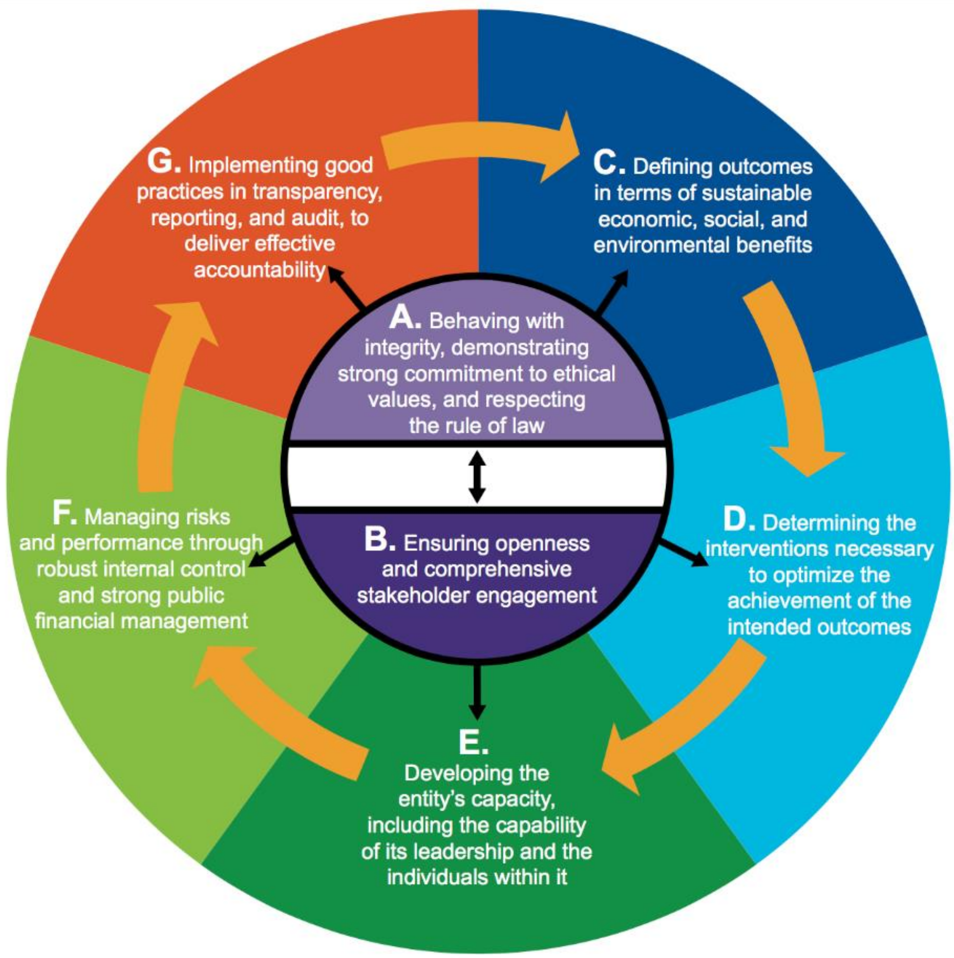
E. **Developing the entity's capacity, including the capability of its leadership and the individuals within it** – The board needs to ensure that the organization has the capability and capacity to carry out its mandate. The includes putting in place effective governance and staffing structures, so that the board, executives, and staff have the skills and capacity to respond to the challenges and risks that the organization might be faced with.

F. **Managing risks and performance through robust internal control and strong public financial management** – Boards need to ensure that there is an effective risk assessment process to identify potential systemic and non-systemic risks. This creates risk awareness and boards are then able to make decisions on the risks they may be prepared to take or avoid. This risk awareness, as opposed to being risk averse, allows boards to identify opportunities that could otherwise be missed by a risk averse board. The organization should have an effective internal control system to put in place the controls required to address the risks identified.

G. **Implementing good practices in transparency, reporting, and audit, to deliver effective accountability** – Reporting of the organization's activities should be carried out honestly and transparently, in a manner that is clear and understandable. Through integrated reporting the organization can engage with internal and external stakeholders in an integrated and coherent manner, with regards to the decisions, actions, plans, expected future performance and relevant social, financial, environmental and governance outcomes. Stakeholders must be able to hold the organization and the auditing function should provide assurance of the accuracy of the disclosure by conducting an analytical review of the company's performance (CIPFA and IFAC, 2014).

Figure 6.1 illustrates how the various principles for good governance relate to each other. Principles A and B permeate the implementation of principles C to G. Figure 6.1 also illustrates that good governance is dynamic, and that an entity should be committed to improving governance on a continuing basis through a process of evaluation and review.

Figure 6.1 The International Framework: Good Governance in the Public Sector



***Source: CIPFA and IFAC (2014)**

6.2 Implications

The King IV code of corporate governance provides a set of 17 principles or guidelines which organisations are encouraged to adopt. Whilst the previous code, King III, had 75 principles and guidelines which organisations were required to either apply, or explain why they chose not to apply the guidelines. King IV on the other hand, requires organisations to both “apply” and then go on to “explain” the details of how the guidelines have been applied. The rational for this shift is that it allows stakeholders to better assess whether the intended outcomes of good corporate governance have been achieved and, for those external to the organisation to have a basis upon which they can assess the extent to which the four corporate governance outcomes set out in the code, i.e., ethical culture, performance in a sustainable manner, effective controls and legitimacy, have been achieved (IoDSA, 2016).

The outcomes-based approach of King IV is in line with the views expressed in some studies which indicate that corporate governance needs to be embedded within the culture of the organisation, to be effective and to facilitate a mindful and deliberate application of good corporate governance in the interest of the organisation and stakeholders (Agyemang *et al*., 2019; Demidenko and McNutt, 2010). A deliberate and intentional application of the codes will result in effective governance mechanisims.

The King IV defines corporate governance as the exercise of ethical and effective leadership by the board of directors, aimed at the effective control and performance of the organisation, whilst also ensuring that there is an ethical culture and legitimacy through ethical and effective leadership of the organisation. The main area of focus of King IV was placed on the structuring and functioning of the board of directors as well as stakeholder inclusivity. The King IV report is outcome based and is focused on encouraging the optimisation of good corporate governance through the mindful consideration and application of the principles of the guidelines, as opposed to mindlessly reporting on compliance with the guidelines as a tick box exercise (IoDSA, 2016).

The research findings suggest that much of the governance failures that have been identified have been due to a non-compliance to the principles and guidelines of the codes. Most firms have adopted a tick box approach to corporate governance, resulting in the unsustainable achievement of governnce goals and objectives.

6.3 Recommendations for Future Research

There is an opportunity for further research to be conducted as a comparative analysis of a wider sample of companies. This would investigate whether those companies within South Africa which have complied with good corporate governanc principles and guidelines, have had effective internal governance mechanisims and, have experienced positive governance outcomes.

There is also an opportunity to conduct a study which would include the interviewing of people who may have been involved in the governance of corporations, as well as regulators and governance professionals, in order to supplement the research obtained through the content analysis of public documents. This would provide deeper insights towards the causes of the ineffectiveness of internal governance mechanisims.

6.4 Conclusion

The research findings shows that there are several factors that contribute to making internal governance mechanisms ineffective. Even though an organisation may claim to comply with the regulatory and legal governance requirements, the desired governance outcomes may not necessarily be realised. One of the main reasons seems to be board failure with the leadership failing to practice ethical and courageous leadership, leading to the absence of a strong culture of governance within the organisation. The lack of commitment by corporations in ensuring positive governance outcomes, ultimately weakens and compromises the governance frameworks and mechanisms in place. Corporations then resort to a nominal or tick box approach, seeking to portray compliance with corporate governance regulations and principles and misleading disclosures in integrated reports.

The misleading reporting and disclosure affects the judgement of external stakeholders. These stakeholders include shareholders, regulatory authorities and even auditors. As a result, opportunities for external governance mechanisms to strengthen internal governance mechanisms, may be missed. This creates an opportunity for those managing the corporation to engage in opportunistic behaviours, due to weakened governance structures.

There is therefore a need to ensure that corporations put in place effective governance risk monitoring mechanisms that go beyond merely reporting on governance compliance. These mechanisms should also measure a corporation's ability to identify and control potential governance risks, with the aim of managing governance outcomes.

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