

King IV State-Owned Enterprise Supplement: The Impact on the SOE's Approach to Governance in South Africa

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Abstract: The State-Owned Enterprise (SOE), to be trusted and accountable to the public, they need to implement effective governance processes that are beneficial to the stakeholders, particularly the government, which is a major shareholder. The advent of King IV SOE's supplement gave impetus to the implementation of the governance framework and effective control processes that empower the governing bodies to carry out their fiduciary duties effectively as it is expected and to provide strategic direction, policy approval, oversight and accountability. The SOE's supplement serves as a guide to proper governance in the SOE. The implementation of the King IV SOE's supplement enables the SOEs to fulfil their constitutional mandate and be profitable and realise the outcome of ethical culture, good performance, effective control and legitimacy. This paper is conceptual and made a critical analysis of the requirements of the King IV SOE sector supplement practices, and was compared and contrasted with the SOEs practices, duties and responsibilities using a literature review. The paper used SOEs (SOE's) in South Africa as units of analysis to interrogate the role that the sector supplement ought to play. The paper confirmed the extent to which the sector supplement satisfies corporate governance rules and practices. It also pointed out the recent failures in corporate governance in SOEs in South Africa, and the extent to which they left suspicion on the practices of the governing bodies and their adherence to acceptable governance practices, which have an impact on the organisational financial performance.

Keywords: Good Corporate Governance, King IV code; King IV State-Owned Enterprise's supplements, Stakeholders, SOE

1. Introduction

The Institute of Directors of Southern Africa (IoDSA) issued King IV Code on Corporate Governance for South Africa on the 1st November 2016 (IODSA, 2016). Different from its predecessor's King Codes, it introduced the sector supplements, which should however not be read in isolation but with King IV code (IODSA, 2016). The sector supplement is still considered new but will be one of the most useful and necessary documents in SOEs (IODSA, 2016). A plethora of literature suggests that there are little differences, between King IV and King III codes on corporate governance; however, the introduction of sector supplement set King IV code apart from all its predecessors as the entities will not continue to function as they were functioning under King III code (Chauke & Sebola, 2018).

The role of sector supplement on the SOEs are new even though they have structures aimed at dealing with corporate governance matters (IODSA, 2016). The recent failures in corporate governance in SOEs

in South Africa will be interrogated, compared and contrasted with the recommendation as contained in the SOE sector supplement. It is acknowledged that one of the hallmarks that characterise South African young democracy is the contribution to the discourse on corporate governance as contained the King code. It was in July of 1993 that the Institute of Directors in South Africa asked the then retired judge Mervyn King to chair a committee that was to deal with corporate governance, which culminated in the King I code which was the first corporate governance code for South Africa. From 1993, three more codes were published in 2002, 2009 and 2016 being King II, King III and King IV, respectively (Chauke & Sebola, 2018). The first three King codes generally applied to the listed entities, and King IV has however succeeded in extending the reach of good corporate practices and principles that are used to benchmark corporate governance in South Africa into the public sector (Constantatos & Sanker, 2018).

The critical strengths embedded in the King IV code in contrast to the earlier editions is the introduction

and the inclusion of sector supplements that were never there in the earlier codes, and it provides much clearer guidelines to public sector entities on how to apply good governance guidelines to their particular circumstances. It is, however, acknowledged that the objectives and mandate of SOEs differ from private sector entities (Constantatos & Sanker, 2018). The SOEs have no profit motive and in many of their business activities and have to abide by the developmental mandate that is given to them by the South African government as their shareholder.

The paper aims to interrogate the impact that the sector supplement of SOEs will have on the governing of these entities. For the longest of times, these adopted the governance structure without necessarily having any document that was specific to their sector. The introduction of sector supplement by the King IV codes has created a benchmark against which the performance and adherence to governance rules by the SOEs will be measured against. The sector supplement is published at a time when there are failures in corporate governance in SOEs in South Africa, and these have left the suspicion that the practices of the governing body and their adherence to good governance practices, with the ultimate impact the organisational financial performance aspects.

2. Legislative Framework

As a public sector company, the activities are defined by various individual pieces of legislation and the Public Finance Management Act. Within this framework, SOEs have, however, in the past observed most of the principles of governance contained in the King codes and did not have to do so in terms of the King IV code and its supplement (Constantatos & Sanker, 2018). The SOEs are statutory bodies that are defined in both the Public Finance Management Act (Act 1 of 1999) which is aimed at regulating the financial management of amongst others public entities and the Companies Act, (Act 71 of 2008) which is aimed at providing for the management of companies which include the SOEs.

The contribution of King IV code lies in the manner in which it has distilled the previous 75 principles that were contained in King III code for good corporate governance into 17 principles that are contained in King IV, with each linked to distinguishable outcome. The sector supplements are aimed at making the

code more accessible in contrast to the 2009 version and enable the SOEs to measure their performance against broader standards (Constantatos & Sanker, 2018). King IV code acknowledges and recognises the need for SOEs to address the severe challenges that South Africa is facing concerning service delivery as well as the provision of strategic national infrastructure. The study of King IV sector supplement reveals that SOEs should be viable, efficient and competitive to ensure that the country's citizens receive value for money as they are funded from the fiscus. SOEs are state companies operating in the public arena, which are expected to be transparent and accountable (Constantatos & Sanker, 2018).

The Public Finance Management Act (PFMA), (Act 1 of 1999) was promulgated, and the act became effective on the 1st of April 2000. The promulgation and the use of PFMA have given effect to the Constitutional provisions as contained in the South African Constitution (1996), and it relates to national, provincial spheres of government inclusive of public entities.

According to the Companies Act, 2008, a state-owned enterprise is defined in section 1 as:

"An enterprise that is registered in terms of this Act as a company, and either is listed as a public entity in Schedule 2 or 3 of the Public Finance Management Act (Act No. 1 of 1999)".

The state-owned companies fall within the sphere of the PFMA which have more in-depth provisions in contrary to those in the Companies Act, which means that SOEs need to conform to additional to those in the Companies Act. King codes IV of good practice introduced supplements to the codes that directly deals with particular entities (King IV, 2016). The supplements are not necessarily independent of the King IV codes of good practice; they should be read together with them (King IV, 2016:111). The decision to have Presidential committee that was to deal with the review of SOEs have created a foundation that is expected to underpin economic growth and transformation as South Africa is regarded as a developmental state (King IV, 2016:111). The King IV supplement applies to all public entities that are listed in the Public Finance Management Act Schedules 2 and 3 of the Public Finance Management Act (PFMA). Governance outcomes and principles underpin King IV, and they apply to State-Owned Entities (King IV, 2016:111).

3. SOEs in Context

In the South African setting, the Department of Public Enterprises is the main shareholder representative of the government with oversight responsibility for SOEs (Constantatos & Sanker, 2018). Some of these companies are not directly controlled by the Department of SOEs, but by various other departments. SOEs play a crucial role in the South African economy. In key the sectors, that include electricity, transport (air, rail, freight and pipelines), and telecommunications, and the SOEs play a leading role, often defined by law; however, limited competition is allowed in some sectors, like telecommunications and air (Constantatos & Sanker, 2018).

The governing body of directors in SOEs have a role to play and their central function is the governance of SOEs (Constantatos & Sanker, 2018). The governing body carries the responsibility; it has a fiduciary duty, for the SOE performance. In this capacity, it acts primarily as an intermediary between the state as a shareholder and the company and its executive management. Many governments have implemented these three layers' approach, which is consistent with general company laws of most countries to good effect. SOE governing body shifted from their historical role of oversight bodies, entrusted with ensuring compliance toward driving performance to set strategies and cooperating with management toward their implementation (Constantatos & Sanker, 2018). In the minority of countries, SOE governing bodies are not adequately empowered by their government to assume such a strategic role, as they are circumvented for instance by the direct ministerial appointment of corporate executive management and or informal channels of communication and instructions, this may detract from the value-adding of the governing body (Constantatos & Sanker, 2018).

Corporate governance is, therefore, an essential part of SOEs, and it has become critical in past decades in both South Africa and internationally (ACCG, 2016:70-79; Malherbe & Segal, 2001:7). Governance in any organisation is crucial for the success of any organisation concerning the implementation of its strategic framework and control systems (ACCG, 2016:70-79). All organisations would like to run successfully and, to do so, they need a corporate governance framework to be in place to allow for a thriving competitive environment (Dibra, 2016:284). With the use of corporate

governance, the organisation could be steered in the right direction as the term governance means to steer (Dibra, 2016:283). The expectation of the citizens has however been scuppered by the failures of corporate governance that have been experienced in various spheres of government and the private sector, particularly the failure of governance in SOEs as is striking visible (Santiso, 2001:5-6). Recently, there have been failures of corporate governance that have been experienced in both the public sector and private sector (Mahajani, 2016:29). According to KPMG (2011:31), the concept of corporate governance is dependent and relies on the governing body of directors and should include implementation process and control of the system. The lack of good corporate governance has resulted in poor company performance in the private sector and poor service delivery in the public sector (Santiso, 2001:13). Cooperate governance, however, covers an eclectic assortment of concepts and issues and can mean various things to various people (Mahajani, 2016:29; McGregor, 2008:2). Naidoo (2002:1) defines corporate governance as follows:

"Corporate governance is the practice by which the companies are managed and controlled".

Emanating from this definition, it can, therefore, be inferred that the practice that is used by companies in managing and controlling them constitute what corporate governance is.

4. King IV Code Recommendations

It was on the 1st of November 2016 that the South African King IV code on corporate governance was published by the Institute of Directors in Southern Africa (IODSA). Based on the way how that the code is structured, it can be realised that it provides a solid base of principles on which the SOEs can be based to navigate through the ever-changing governance environment. Analysing the sector supplement reveals that the SOE has been improved enormously to uphold the principles of good governance in the sector (IODSA, 2016). Further analysis of the sector supplement revealed that the code promotes transparency, which means that the organisation is expected to be transparent in their application of corporate governance practices.

Mosegare (2016) indicated that the promotion of corporate governance is integral to running an

organisation and delivering governance outcomes of ethical value, good performance, effective control and legitimacy. It can, therefore, be inferred that the reinforcement of corporate governance as a holistic and an interrelated set of arrangements need to be understood and implemented in an integrated manner. Corporate governance should not be only concerned with structure and processes but with ethical consciousness and conduct (Mosegare, 2016:33). Emanating from the analysis of King IV code, it can be summarised, and it is founded on transparency. From the study of the structure of King IV, it became evident that it rejects the tick box or compliance-based mindset (Mosegare, 2016:33; IODSA, 2016). It, however, required careful consideration of and application of practices as embedded in each principle (IODSA, 2016). These principles are fundamental to good corporate governance, and they may be applied universally across different types of organisations taking cognizance of the nature and size of the organisation (Constantatos & Sanker, 2018). The approach of inclusivity and flexibility is allowed in corporate governance in line with every type of organisation (Constantatos & Sanker, 2018).

Good corporate governance and their practices require an acknowledgement that an organisation does not operate in a vacuum, but it is an integral part of the society and therefore has accountability towards the current and the future stakeholders, and therefore corporate citizenship is critical (KPMG 2011). In analyzing King IV code, it became evident that it has adopted a new regime of apply and explain, and this will force organisations to be transparent in the application of corporate governance practices (Constantatos & Sanker, 2018). King IV focuses on outcomes, which means that the code's principles are linked to the desired outcomes, and therefore articulating of the benefits of good corporate governance. In the code, the principles and practices are differentiated wherein, principles are achieved by careful consideration and application of recommended practices, through the concept of apply and explain regime. The recent corporate scandals have rightly provoked renewed focus on the role of directors and the importance of corporate governance (Constantatos & Sanker, 2018). Even though King code is not law but voluntary code, adherence to it gives the stakeholders the expectation that things are run following expected principles. There is a vast difference between law and voluntary code, as there have been concerns

that despite the presence of King Code, organisations continue to fail in their governance compliance expectations as there are many corporate scandals. Some stakeholders expected the King code to prevent corporate scandals (Constantatos & Sanker, 2018). The difference between the voluntary code and law is that law provides the framework that people must not transgress and provides the sanctions they will face if they do, but by contrast, a voluntary code seeks to set out the principles and best practices that organisations with a sincere desire achieve good governance.

4.1 Governing Bodies

The King IV also focus on four governing body's governance roles and responsibilities which are aimed at steering and setting strategic target direction (strategy); approves policy and planning (Policy); Overseas and Monitors (Oversight) and ensures accountability (accountability). King IV code emphasises the role of the governing body in risk and opportunity oversight, and it is essential to note that SOEs have embraced the recommendation that combines the functions of audit and risk management as a single committee of the governing body which will be comprised of non-executive members. They have also accepted the emphasis that King IV code places concerning the protection and management of technology and information systems concerning the development of a cyber-security plan. The development of cyber security plans emanates from the recent events experienced in the global sphere, wherein there have been cyber hacking, and this phenomenon is a growing threat that needs to be attended to, and if not adequately addressed, companies may end forfeiting their long-standing reputations fast if they are not adequately protected against malware and industrial espionage are that are so prevalent. Thus, the SOE governing bodies and management have to elevate the importance of cyber-security (Constantatos & Sanker, 2018).

When the issues of corporate governance were traditional, they were focused on listed entities. King IV code, however, take into account that corporations all exist in a bigger ecosystem. The ecosystem that is made up of the different relationships and interactions that need to be managed amongst companies, investors, SMEs within supply chains, civil society and state-owned entities, from where that majority of critical infrastructure, is provided.

King IV code inclusive approach breaks new ground for the King Codes, and in corporate governance space in general. The King IV SOE supplements are not standalone codes, as they must be read in the context and conjunction with the main King IV code. The sector supplement does not provide detailed guidance, but rather to provide each sector that is currently covered by the code with the examples of some of the corporate governance challenges, and also provide a way on how to deal and respond to them (Constantatos & Sanker, 2018). What may be included in the challenges may, amongst some of them include relevant legislation, ownership structures, governing body composition as there is extensive intervention by the government as the shareholder.

5. King IV SOE Supplement

King IV code, when compared with the King III code, is more succinct, and it contains sixteen principles applicable to all organisations and the seventeenth principle applicable to institutional investors. Against the sixteen principles, there are two hundred and eight recommended practices, and for the seventeenth principle that applies to institutional investors, there are an additional six recommended practices (Constantatos & Sanker, 2018). King IV also provides sector supplements to give the different types of organisations on how to apply the King code within their context. Five sector supplements are covering, municipalities, non-profit organisations, retirement funds, small and medium enterprises and the last one being State-owned Entities (Constantatos & Sanker, 2018). The sector supplements terminology is in the context of King IV that is how specific definitions and they are translated into a particular environment and guidance on the interpretation of specific principle considered most relevant and possibly challenging to the sector.

Sector supplement explains how specific organisations or sectors should apply King IV code. The quintessence of the King IV Code as constituted by its governance outcomes and principles that apply to SOEs, which encompasses the necessary adaptation in terminology. The recommended principles and practices in the King IV code are referenced in the SOE's supplement to illustrate how they could be accustomed to meet the demands, and the sector supplement provides adequate guidance and explanation of how recommended practices in the

code could be a customer to meet the situational specifics of the various sectors.

While the supplement may help contextualise the implications of the King IV principles for different types of organisations for code preparers, they are still left with adapting the more than 200 recommended practices in a scalable manner. It can be insinuated that a request for guidance could arise from the other sectors that are not covered as a result of the precedent that will be set by the supplement (Constantatos & Sanker, 2018). The analysis of the supplement revealed that the general approach to the application and interpretation of the code should enable users to formulate their sound solutions to corporate governance challenges (Constantatos & Sanker, 2018). The KING IV sector supplement connects and reconciles the King IV code and legislation applicable in the particular sectors (Constantatos & Sanker, 2018). The sector supplement concept is right in that it assists with the linking to the King code with specific sectors (Constantatos & Sanker, 2018).

The application of King IV code SOE's supplement to SOEs is necessary as it explains the terminology that is found in King IV code in the context of the SOEs. In the context of King code, what is referred to as an organisation, it will be SOE in the SOE environment; the governing body will be SOE boards, Management will be administered CEO, who is the SOE manager or accounting officer; External auditor is the Auditor-General or any other auditing firm that is contracted by Office of the Auditor-General; Shareholders (Mosegare, 2016:60).

5.1 Leadership, Ethics and Corporate Citizenship

These elements require that there should set the tone to lead ethically and effectively (Mosegare, 2016:33). It is the responsibility of the governing body to ensure that the SOE's ethics are managed effectively and the same context the SOE should ensure that as an SOE it is a responsible corporate citizen (IODSA, 2016). The governing body should, on its own set the tone for a culture that fosters and nurtures accountability for the proper execution of the objectives of the SOEs (IODSA, 2016). It can, therefore, be argued that the values of accountability, responsibility, fairness and transparency exemplify ethical leadership. They are the cornerstone upon which any enterprise is conducted

regardless of the size and nature of operations (Mosegare, 2016:33). Thus, the sound governance and leadership start with a focus by the members of the governing body on their own, individual and collective character and behavior, additionally, setting an example through its character and behaviour. Corporate citizenship represents an alternative expression of the core purpose of the SOE as set out in section 151(2) of the Constitution.

5.2 Performance and Reporting

The governing body or the boards should lead the value creation process by appreciating that the strategy, risk and opportunity, performance, and sustainable development are inseparable elements. The governing body or the boards should ensure that the codes and the other disclosures enable the stakeholders to make an informed assessment of the performance of SOEs and its ability to create value sustainably (IODSA, 2016). The element of performance and value creation should be interpreted following the Constitution that proves for the objectives of the SOEs (IODSA, 2016). These constitutional objectives explain the meaning of the value creation in the SOE context. Meaningful disclosure is the mechanism by which a governing body is held accountable by community members and other stakeholders (IODSA, 2016). SOEs should consider the practices concerning disclosure and codes as a means for meaningful communication and demonstrate accountability.

5.3 Governing Structures and Delegation

The governing body or the board should serve as the focal point and custodian of corporate governance in the SOE. It can, however, be argued that what is currently happening in the South African SOE is contrary to this principle. It should ensure that its composition comprises of the balance of skills, experience, diversity, independence and the knowledge needed to discharge its role and responsibilities (IODSA, 2016). The governing body should consider creating the additional governing structures that will assist with balancing of power as well as the effective discharge of responsibilities, but without surrendering accountability. The governing body or the board should ensure that the appointment of and the delegation to, competent executive management contributes to a practical arrangement by which authority and responsibilities are exercised (IODSA, 2016). The governing body or

the board has the responsibility to ensure that the performance evaluation of the governing body, its structures, ties members, the executive mayor and the SOE manager and the SOE secretary or corporate governance professionals result in continued improved performance and effectiveness.

The governing body or the board should serve as the focal point of the corporate governance ascribing fiduciary duties to the SOE manager as accounting officer, governing body shares in these fiduciary duties under its constitutional role (IODSA, 2016). The legislated responsibilities are consistent with the role of the governing body following King IV code, which provides as follows: providing direction and strategy; giving effect to strategy by approving the policy, including plans, frameworks, structures and procedures; providing oversight of implementation and demonstrating accountability and transparency through disclosure (IODSA, 2016). In the SOE context providing direction and strategy, it should be understood as to the adoption of a single, inclusive and strategic plan that is critical for the development of the SOE (IODSA, 2016). Oversight of implementation can be achieved through the performance management systems, and the account could be realised and demonstrated through the annual code. As part of the overarching role, the specific responsibilities of the governing body's responsibility of serving a focal point and as a custodian of corporate governance in the SOE, the governing body will have to affect its legislated responsibilities (IODSA, 2016). The process of appointment procedures of and composition of the governing body should be done in line with the requirement or bearing in mind the fact that SOEs main shareholder is the government which is represented by the minister (IODSA, 2016). Because the composition of the should be pro-actively planned from the skill and experience required, there should be a strong emphasis on an in-depth induction for newly elected governing body members at the start of a new term.

As a matter of legal duty, governing bodies must act in substance with the independence of mind in the best interest of the SOE. The constitutional integrity as a collective body acting at all-time in the best interest of the SOE enjoys priority over the interest which individual governing body members may have (IODSA, 2016). There is no independent chair in the governing body as provided for in the code. The principle of delegation governing

structures and administration is consistent with developing a system of the delegation that maximises administrative and operational efficiency and provide adequate checks and balances (Mosegare, 2016:60).

5.4 Governance of Functional Areas

In terms the functional governance areas, the governing body should have adequate and effective control as such the governing body should govern risk and opportunity in a way that supports the SOE to set and achieve strategic objectives (Mosegare, 2016:60-70). The governing body or the board should govern technology and information in a way that supports the SOE and to set and achieve strategic objectives (Mosegare, 2016:82). The governing body should govern compliance with the laws and ensure consideration of adherence to non-binding rules, codes and standards. The governing body has the responsibility to ensure that the SOE remunerates fairly, responsibly and transparently to promote the creation of value sustainably (IODSA, 2016). The governing body ensures that assurance results in an adequate and effective control environment and integrity of reporting for better decision making (IODSA, 2016). To implement these principles, in instances where there is a shortage of resources, the shared service model should be adopted.

5.5 Stakeholder Relationships

The shareholders in an SOE structure is the government; and the outcome expected is that of as part of decision making in the best interest of the SOE the governing body should ensure that stakeholders-inclusive approach is adopted, which takes into account and balances their legitimate and reasonable needs, interest and expectations (IODSA, 2016:7). The governing body or the board should ensure that the SOE responsibly exercises its right, obligations, legitimate and reasonable needs, interest and expectations as the holder of a beneficial interest in the securities of the company. In terms of legislation, an SOE's primary duty is to serve the community who have the right to contribute to decision-making processes (IODSA, 2016:7). The practice recommendation forming part of decision making in the best interest of the SOE, governing body to ensure stakeholder inclusivity approach is applicable to give effect to the duties of the governing body and also as far as other stakeholders, such as employees and regulators are concerned.

Governing bodies of SOE should be proactive in setting up reviews of SOE service delivery by the citizens as a performance monitoring and evaluation mechanism. They should also assume the responsibility for oversight of its SOE entities, where applicable and ensure that there is alignment and congruence between the business plan of the SOE entity is developed (IODSA, 2016:7).

6. State-Owned Enterprise in the Mirror of King IV SOE Supplement

In compliance with King IV, there is an expectation of four outcomes, which are ethical and effective leadership, performance and value creation which should be pursued sustainably, which are also replicated in the SOE supplement. Additionally, these outcomes should be premised on the adequacy and effective controls, trust, good reputation and legitimacy. These are the outcomes that are expected from the King IV code. The seventeen principles of King IV are addressed under each outcome and apply to institutional investors, while other organisations have to comply with the sixteen principles. Under the outcome of performance and value creation, the first principle that is discussed herein, which is principle 4, that deals with the governing body that appreciates that the organisation's core purpose, in terms of its risks and opportunities, strategy, business model, performance and sustainable development are inseparable elements of the value creation process. In this outcome, one of the areas that the issue of risk has been raised, however under the outcome of adequacy effective control, principle number 11 is outlined that deals with the governing body's role of in governing risk in a way that will support the organisation's setting and achievement the strategic objectives (Department of Environmental Affairs, 2013:7). When dealing with the risk, the areas that will need to be attended to include both positive and negative effect of the risk, the appetite for termination and mitigation of risk and monitor the effectiveness of the risk management (Department of Environmental Affairs, 2013:7). In the sector supplements for SOEs, similar principles are dealt with, which is principle 4 and 11 which deals with risk and how risk should be governed.

The compliance with risk management of any other business activity should take place within the context of leadership and rigorous governance principles. The governing body of an organisation has

the duty and responsibility to ensure that the organisation complies with all applicable laws and rules. Besides, the governing body also has a responsibility to consider adherence to codes and standard as none adherence could result in the regulatory risk (PWC, 2012:3; National Audit Office, 2010:6).

In terms of section 66(1) of the Company's Act 71 of 2008, SOE must have a governing body, and such governing body should have the authority to exercise all the powers and have to perform the functions that are conferred on the enterprise. The exercise of these powers as bestowed by section 66(1) must however be carried out in the context of limitation as contained in the section or such should be carried out in terms of Memorandum of Incorporation. The accountability that the governing body of SOEs has conferred the same powers in terms of section 49 of the PFMA (Act 1 of 1999) and is aligned to King IV (King IV, 2016:12); the principle that necessitates the governing body to act as the principal point and guardian of corporate governance (King IV, 2016:12). It can, therefore, be argued that the ultimate accountability of an SOE rests with the governing body.

In terms of section 66(1), the affairs and business of the SOE should be managed under the direction of the governing body because the governing body has the authority to perform and exercise all the functionality that is in a company. The Public Finance Management Act in section 51 stipulates that the governing body should maintain the effective, efficient and transparent systems of the financial and risk management and internal control and making use of combined assurance.

Despite the practical difference that exists between private organisations and SOEs, do exist concerning their risk exposure categories (Department of Environmental Affairs, 2013:7). The commonalities that exist between private and SOEs suggest that the process of managing risk at state-owned companies is no different from that which applies in the private sector. The management of risk as practised in the public sector is a general management function and which applies to all managers and it aims to support government imperatives (Naude & Chiweshe, 2017:3; OECD, 2004:53-57; Hood & Rothstein, 2000:1-3). Corporate governance standards about SOEs and legislative requirements regulate and control the use of public funds as such they place pressure on SOEs that have to develop

an effective, efficient and transparent system of risk management (OECD, 2004:53-57). The risk in SOEs environment is never static; as such, there should always be constant monitoring of risk. In the South African context, such should be applied with the inclusion of the practices of the South African Institute of Risk Management code of practice (Hardy, 2010:7-8).

In the 2016/2017 consolidated report by the Office of the Auditor-General on the final audit outcome, it became evident that there were governance failures in many SOEs (AGSA, 2019:106). As a result of the governance failures, government resources and guarantees were used to sustain such SOEs (AGSA, 2019:106). As part of its audit, the Office of the Auditor-General considered the leadership, financial and performance management, including governance in the SOEs (AGSA, 2019). The audit was aimed at identifying the possible root causes of reduced audit outcomes, irregular expenditure and financial health concerns that were prevalent in the sector (AGSA, 2019). The instability at the board and executive levels played a significant role in the outcomes of SOEs. When auditing the Airports Company of South Africa, it was found that the board composition was not stably emanating from the significant resignations of board members towards at the end of the financial year (AGSA, 2019). The South African Broadcasting Corporation also had instability at board level since they had an interim board with a six-month term, and a new board was appointed in October 2017 (AGSA, 2019). According to Companies Act and the PFMA, it is required that the board members should declare any conflict of interest in case there is any in respect of a matter that is on the agenda; however, it was found that in some instances the board members did not submit a complete declaration of interests to ensure proactive management of such conflicts of interest (AGSA, 2019).

Stability in leadership positions plays a critical role in the state of affairs of the SOEs. It was found that instability at executive levels contributed to the negative audit outcomes at some of the SOEs legislation (Constantatos & Sanker, 2018). To ensure that the current state of affairs at SOEs improves, leadership and capacity challenges will have to be addressed legislation (Constantatos & Sanker, 2018). The focus should also be directed towards making sure that appointments at the board and executive levels include people with the appropriate

mix of skills and experience, including having an impeccable record of integrity and reputation. The process to stabilise the boards of SOEs, which is currently being undertaken by the Department of Public Enterprises, will have a positive impact on the governance of SOEs and is expected to also create more stability at management level. Our assessment of the internal controls of SOEs shown below indicates that although the majority of internal controls improved, financial and performance management controls remained weak (Constantatos & Sanker, 2018). The basic controls that need the most attention in this area are the processes to improve compliance with legislation (Constantatos & Sanker, 2018). This includes ensuring that SOEs are aware of all the legislation they need to comply with as well as implementing controls such as checklists to enable compliance and the monitoring of compliance. SOEs also have not institutionalised the use of audit action plans to address audit findings from external and internal audits. As a result, the root causes of audit findings are not addressed (Constantatos & Sanker, 2018). This slow response by the management and boards of SOEs, in turn, resulted in little progress being made to improve audit outcomes, with some SOEs even regressing.

7. Results and Discussion

The SOE supplement is based on four chapters, which are leadership, ethics and corporate citizenship; performance and reporting; governing structures and delegation; governance functional areas and stakeholder relationships. These chapters of the sector supplement will enhance the governance practices in the SOEs. It also became evident that the provision of ethical and effective leadership could not be provided in the SOE due to the instability in the governing body structures. However, the effort was noted wherein the Department of Public Enterprises has undertaken a process of appointing the governing bodies in the various SOEs. These appointments will however not be able to yield results in the short term as they will remain new incumbents in the organisation, wherein they will have first to establish an understanding of the environment before any substantial impact could be realised.

The principle of corporate citizenship is also dependent on the leadership, which means that the lack of leadership could not help the process and due to leadership lacklustre in SOEs, these areas have suffered and be strengthened by sector supplements.

The absence or ineffectiveness of leadership in the SOEs, has made it impossible for them to achieve any of the other outcomes of performance and value creation; adequate and effective control as well as trust, good reputation and legitimacy. The audit outcomes from the Office of the Auditor General (2019), confirms this state of affairs. The introduction of the SOE sector supplement can go a long way in addressing this shortcoming.

8. Conclusion and Recommendations

It can, therefore, be concluded that the SOEs play an important role in South Africa and they, therefore, need to be supported by the state; however, they should be called upon to account. The introduction of the SOE sector supplement if adopted and applied, could reduce and eradicate many ills that are currently in existence in this sector. Accountability in government is essential in ensuring that public officials are accountable for the decisions and actions that are taken when they execute their roles and responsibilities. The Auditor General's office has also raised an issue that some of the matters that they previously raised were never attended to (AGSA, 2019:120). Appointments will have to be made at the board executive levels to ensure and safeguard stability in the control environment of SOEs. SOEs should strengthen their financial and performance management systems to account credibly on their finances and performance. The oversight by the departments, ministers and parliamentary committees responsible for SOEs should include robust in-year monitoring and ensuring that governance policies and practices are checked and ensure that they are in place. There should also be consequence management, wherein, the boards and chief executive officers are held accountable for the delivery and financial results of the SOEs, and there should be speedy and effective consequences for poor performance and transgressions whenever they manifest. With all those described above, the implementation of the King IV sector supplement on SOEs, have principles that when applied, can change the fortunes of SOEs.

References

- ACCG. 2016. State of Corporate Governance in Africa: An Overview of 13 Countries. African Corporate Governance Network.
- AGSA. 2019. Governance, Oversight and Financial Sustainability. Pretoria. South Africa.

- Chauke, K.R. & Sebola, M.P. 2018. Corporate Governance Failures: Is it the End of Governance as We Know it? The 3rd Annual International Conference on Public Administration and Development Alternatives. 4-6 July 2018. Stellenbosch, Saldanha. South Africa. 257-263.
- Chauke, K.R. & Sebola, M.P. 2018. Risk Management: Can it be a Panacea for SOEs Ills? The 3rd Annual International Conference on Public Administration and Development Alternatives. 4-6 July 2018. Stellenbosch, Saldanha. South Africa. 291-298.
- Constantatos, O. & Sanker, T. 2018. SOE Governance Unmasked. A Learning Journey. Cape Town: Future growth Asset Management. Rondebosch. South Africa.
- Dibra, R. 2016. Corporate Governance Failure: The Case of Enron and Parmalat. *European Scientific Journal*, 12(16):283-290.
- Institute of Directors in Southern Africa. 2005. King II Code on Corporate Governance. The Institute of Directors in Southern Africa: Johannesburg.
- Institute of Directors in Southern Africa. 2016. King IV code: Sector Supplement, Supplement for SOEs. The Institute of Directors: Johannesburg.
- Institute of Directors in Southern Africa. 2016. King IV Code on Corporate Governance for South Africa. SOE's supplement. The Institute of Directors in Southern Africa: Johannesburg.
- IODSA. 2016. King IV Report on Corporate Governance for South Africa 2016. Institute of Directors in Southern Africa. South Africa.
- IODSA. 2016. King IV Report on Corporate Governance for South Africa. Part 6: Sector Supplement. Institute of Directors Southern Africa: Johannesburg.
- IODSA. 2018. Governing Body Committees – King IV Practice Notes. Institute of Directors Southern Africa: Johannesburg.
- Mahajani, N. 2016. Strategies that led to Failure – Case Study of Corporate Governance. *Global Journal of Management and Business Research Interdisciplinary*, 16(1):28-34.
- Malherbe, M. & Segal, N. 2001. Corporate Governance in South Africa. 2001 Annual Forum at Misty Hills. Muldersdrift. South Africa. 10-12 September 2001.
- McGregor, L. 2008. Improving Corporate Governance in South Africa. Discussion paper submitted for the 1st USB Colloquium on Corporate Governance, 18 September 2008. University of Stellenbosch Business School, South Africa.
- Mosegare, P.M. 2016. Critical analysis of Corporate Governance Implementation and Control System within the SOE's sector in Gauteng Province in South Africa. University of KwaZulu-Natal: Natal.
- Naidoo, R. 2002. Corporate Governance: An Essential Guide for South African Companies. Double Storey Books: Juta Company, Mercury Crescent, Wetton, Cape Town, South Africa.
- Republic of South Africa. 1996. The Constitution of the Republic of South Africa. Pretoria: Government Printing.
- Republic of South Africa. 1998. Local Government: SOE Structures Act. Pretoria: Government Printing.
- Santiso, C. 2001. Good Governance and Aid Effectiveness: The World Bank and Conditionality. *The Georgetown Public Policy Review*, 7(1):1-23.
- Tricker, R. 1984. Corporate Governance: Principles, Policies and Practices. Oxford: Oxford University Press.