

Corporate governance: Where are SOEs getting it wrong?

By [Romeo Tsusi](#)

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In South Africa, a state-owned company is defined as an enterprise that is registered in terms of the Companies Act, 2008 (the Act) read with Public Finance Management Act (PFMA), commonly known as State Owned Enterprises (SOEs or parastatals).



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The South African Government is a shareholder and exercises oversight responsibility.

SOEs play a pivotal role in the economic advancement, growth and development of our country. Thus, imperative that SOEs are well governed in order to perform efficiently. Ineffective governance may harm the economy and ultimately the public.

Challenges faced by SOE

SOEs have come under fire - amid allegations of state capture, corruption, financial crisis, maladministration and governance challenges.

This conundrum has seen appointments and resignation of Board members in thwarted attempts to restore good

governance and the legitimacy of the SOEs.

The question then becomes where are the SOEs getting it wrong? The answer lies with the exercise of good corporate governance by the Board, which is equally as important for any form of company.

The Board when exercising their duties must do so, inter alia, with requisite skill, care and diligence. This duty, in addition to the fiduciary duties of the Board, as a matter of law is owed to the entity itself (SOE) other than the Government i.e shareholder who appoints the Board.

It cannot be gainsaid that the challenges faced by the SOEs are directly linked to the interplay between politics and good corporate governance by the Board. For as long as Government interferes with the governance and independence of the Board, especially in commercial decision-making – it will result in a defunct Board that lacks autonomy, authority and accountability in the exercise of its functions.

Understanding good corporate governance

Corporate governance is defined as ethical and effective leadership by the Board towards achievement of ethical culture, good performance, effective control and legitimacy [King IV].

The Act provides that an SOE should comprise of at least three directors. The Act does not differentiate between executive director and a non-executive director.

King III defines executive directors as directors involved in the day-to-day running of the company and non-executive directors as directors not involved in the management of the company. The composition of executive and non-executive directors form the Board.

The Act provides that the business and affairs of a company must be managed by or under the direction of its board of directors, which has the authority to exercise all powers and perform any function of the company. This is a legal duty and responsibility assigned to the Board.

It is paramount to appoint highly qualified and competent directors of the Board, who are be able to exercise independent judgment with relevant industry skill and knowledge to determine the performance of the SOE.

King IV applies to SOE Boards and promotes the following governance principles:

- Ethical culture;
- Performance and value creation;
- Adequate and effective control; and
- Trust, good reputation and legitimacy.

Interaction between the Board and Government

Like any shareholder, the Government should be concerned with return on investment and financial viability along with the performance of the SOEs, which will in turn contribute to economic, social and service delivery.

The interaction of the Government with the Board should aim to maximize the SOEs economic advancement, growth and development. In doing so, ensure that the Board is clear and implements Government's strategic priorities as decided by the Cabinet in conjunction with the Minister and relevant department responsible for the SOE.

Therefore, the Board needs to balance in exercise of its fiduciary duties, the achievement of commercial viability for the SOE and delivering on the strategic priorities set by the Government, as the shareholder.

Similarly, the Government should not impose nor interfere and seek to assume the 'executive' position or authority in running of the SOE by the Board including through its appointment of the Board; it should appoint members who are capable to exercise their legal duty and responsibility toward the SOE rather than fulfil the mandate of a party by whom s/he was appointed.

Conclusion

The Government as a shareholder in its appointment of the Board should ensure that there is transparency along with suitably skilled, qualified and honest individuals that are appointed to the respective SOE Boards.

The Board should also exercise its powers and functions with independent judgment, authority and accountability in order to obtain the effective running of the SOE and maximize return on the investments and financial viability. When this is achieved it allows the Government to effectively contribute to the economic, social and service delivery advancement to the benefit of the public.

ABOUT THE AUTHOR

Romeo Tsusi is an associate in the Corporate and Commercial Department at Herold Gie Attorneys.

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