Reviewing state-owned entities' governance landscape in South Africa

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Abstract

The current state-owned entities' (SOEs) governance landscape ranges from fragmented accountability frameworks and human factors to a convoluted array of SOEs typologies, i.e. parent entities and subsidiaries. The article reviews the SOEs' governance landscape to unravel underlying inconsistencies and contradictions and provides a compelling argument for opting to create an overarching SOEs governance and seamless legislative framework. The study perused primary and secondary data employing qualitative methods. As the proposed governance and seamless legal framework as not an absolute resolve of all SOEs challenges, the study tests whether the option could assist in arriving at a liberating praxis that would straddle and fulfil the corporate and developmental aspirations of the state.

Introduction

South Africa, like other countries, has made efforts to reform the state-owned entities (SOEs) landscape. On 12 May 2010, the President of South Africa, Jacob Zuma, publicly announced the appointment of the Presidential State-owned Entities Review Committee to review the role of SOEs (Chabane, 2010: 1). Despite the entities being the principal drivers of the formal sector of the economy, providing the bulk of economic growth as the main entities that deliver many social goods and services to ensure the quality of life to all South Africans, the SOEs legislative and policy frameworks are fragmented. This constrains the entities in their efforts to respond as effectively as possible to the socio-economic development mandate of the state.

Rondinelli (2007: 21) argues that there is increasing evidence that most public entities either do not contribute strongly to development, or perform their public service functions ineffectively and inefficiently. The assessment of SOEs in South Africa, which dictates that they are vulnerable to debt burdens, underinvestment, depreciation of assets, corporate governance quagmires and corruption problems, to mention but a few, confirms Rondinelli's (2007: 21) argument. These setbacks undermine and frustrate the state's intentions to achieve growth and development objectives.

SOEs in South Africa operate within a framework of multiple pieces of legislation, which are at times in conflict with the broad strategic thrust of the state. As there are differing views and trends around principles and practices of the SOEs, this article provides a review of salient issues emerging from the legislative, governance and human factor perspectives of the SOEs. Therefore, the review provides a compelling case to draw conclusions and recommendations at the end of the ensuing discussion.

Conceptual and theoretical framework

Governance vs. government

Largely, governance is a structure and process in which institutions on every level take decisions, determine who to involve in the process of decision making and implementation of decisions, and determine the person or persons to be held accountable and responsible for the outcomes of the implementation of decisions affecting numerous different actors (Ristovska, 2013: 242). It should be borne in mind that delivery of goods and services by SOEs are considered to be provided satisfactorily if the governance system in place is responsive to the needs of individuals, communities and society in general (Kanyane, 2010: 81).

It should be pointed out that there is a difference between government and governance. The latter is found in the former and not vice versa. Without governance, government remains an empty shell. On one hand, governance means the constitutional, legal and administrative arrangements by which governments exercise their power as well as the related mechanisms for public accountability, rule of law, responsibility, effectiveness, transparency, ethics, integrity and citizen participation (Laking, 2002: 268; Kanyane, 2008: 97). The concept, governance, originates from the Greek verb "kubernao" meaning "to steer". The ancient Greek philosopher Plato, being the pioneer of the concept of governance, used it for the first time in a metaphorical sense before it was passed on to the Latin language and the rest of the languages (Wikipedia, n.d.).

Pretorius (2015: 240) argues that good governance is the steering of society through networks and partnerships between governments' corporations and civil society associations. According to Mubangizi and Ile (2015: 78–9), good governance extends beyond the capacity of the public sector to the rules that create a legitimate, effective and efficient framework for the conduct of public policy. It implies managing public affairs in a transparent, accountable, participatory and equitable manner. It entails effective participation in public policy making, the prevalence of the rule of law and an independent judiciary, institutional checks and balances through separation of powers and effective oversight agencies mirrored to that of France.

The French Government Shareholding Agency (Agence des Participations de l'Etat, APE) is a national organisation within the Ministry of Economy decreed in 2004. Its mission is to act as a shareholder for the French government in order to develop its assets and maximise the value of its stakes. As a monitoring tool, APE works with the competent departments involved in drawing up the contracts which bind these companies and organisations to the government. APE continually monitors the quality of governance in the entities in its portfolio and has effectively contributed in raising the standards of those entities (APE Report, 2011: 8, 13).

Government on the other hand is the state administrative machinery utilising governance to ensure effective service delivery. Concurring with this view, Verdeyen and Van Buggenhout (2003: 48) see corporate governance as a model of rules governing mechanisms of the decision-making process and the mechanisms of control and liability of the state entities or private companies. The rules relate to principles such as disclosure, openness and information, transparency, legitimisation, participation and checks and balances.

It is for this reason that the quality outcomes of the SOEs have to be achieved if corporate governance issues such as accountability, administrative capacity and internal operations are well structured. It is therefore important to underscore that good corporate governance demands shareholders, boards, executives and employees of SOEs to display honesty, transparency, ethics and integrity in the conduct of their corporate affairs.

SOEs need to adopt new reforms to be optimally viable. According to Hilb (2004: 76, 98) companies are to be strategically directed, managed and coherently controlled in an entrepreneurial and ethical way in a particular context. This approach attempts to cover the value orientation from both the shareholder and stakeholder perspectives. A holistic framework is imperative for the direction and control of entities that seek to integrate elements of accountability, remuneration and reporting to ensure vibrant functioning of the board in theory and practice (Hilb, 2004: 76, 98).

Corporate governance indices

Companies use internal controls to reduce agency cost problems. Internal controls include managerial participation in ownership, rewards for management, and the use of the board of directors for oversight. These internal controls affect firm performance and the outcome is consequential. A number of studies attempt to construct indices of the quality of corporate governance, such as the:

a) World Governance Indicators (WGI)
b) Ibrahim Index of African Governance (IIAG)
c) African Integrity Indicators (Global Integrity)

Each of these indices associate good corporate governance with good corporate performance. However, studies that link good corporate governance to strong performance, for the most part, come up short (Stout, 2007:800). In terms of the causality of good governance and corporate performance, perhaps none of the indices are satisfactory. In an important work that reviews the strengths and weaknesses of the corporate governance indices, Bhagat *et al.* (2008:1808) arrive at the conclusion that there is no one "best" measure of corporate governance – the most effective governance institution appears to depend on context, and on private corporations' specific circumstance.

Corporate Governance Protocols and Legal Issues

The Constitution

The Constitution of the Republic of South Africa (1996) enshrines the rights of all South Africans to equality and provides for specific measures taken to redress historical imbalances. The acts of law and prescribed policies address this constitutional imperative (Bronstein & Olivier, 2011: 196). The Constitution aims to dismantle the machinery of apartheid and transform society in all areas from education to the arts, from health care to the justice system. Key values and principles found in the Constitution have given rise to policies of affirmative action, black economic empowerment, gender equity and environmental policy. These principles and values have an inherent influence on legislation and policies that impact on SOEs.

The King Reports of Corporate Governance

The first protocol on corporate governance referred to as King I was published in 1997. The second King Report followed it in 2002 on Corporate Governance (King II) and in 2009, the third King Report (King III) was published. King IV is due for publication in 2017. The reports established recommended standards of conduct for boards and directors of listed companies, banks, certain state-owned entities and other public, private and non-profit entities. It included not only financial and regulatory aspects, but also advocated an integrated approach that involved all stakeholders including SOEs. The intention was to provide guidelines on the implementation of corporate governance, suggesting by implication, a consistent standard to which SOEs can adhere. Although King Reports do not carry legal weight, nevertheless, they are applicable protocol to improve governance in corporate and public organisations.

Legislative framework (Public Finance Management Act and Companies Act)

The Public Finance Management Act (PFMA) intends to secure accountability and sound management of the revenue, expenditure, assets and liabilities of public sector institutions. It applies to government departments, public entities (including SOEs) listed in schedules 1, 2 and 3, constitutional institutions, parliament and the provincial legislatures. The PFMA specifies the fiduciary duties and general responsibilities of governing bodies, heads of departments, accounting officers, managers and employees of boards or the accounting authorities, and therefore provides for personal liability in instances where there is potential breach of legislative duties.

The aim of the PFMA is to regulate financial management in the national government and provincial governments; ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; provide for the responsibilities of persons entrusted with financial management in those governments; and provide for matters connected therewith (PFMA, 1999:1). The object of the Act is to secure transparency, accountability and sound management of the revenue, expenditure, assets and liabilities of the institutions to which the Act applies.

Although the PFMA in its entirety covers all areas of public finance, sections 46 through 86 are of particular importance for financial governance issues. Every public entity governed by the PFMA must have an accounting authority, which must be accountable for the purposes of the PFMA. This is usually the board. However, if there is no board, the statutory governing body serves as an "authority". In special circumstances, the relevant treasury may approve or instruct that another body serve as the accounting authority for that public entity. Accounting authorities must ensure that accurate books and records as well as financial statements and other statutory reports are prepared and presented.

SOEs, especially schedules 1, 2, 3a-c, operate under PFMA legislation, for example Eskom, Telkom, Transnet, the South African Broadcasting Corporation (SABC), Denel, National Home Builders Registration Council (NHBRC), South African Bureau of Standards (SABS) and South African Airways (SAA). This also applies to provincial SOEs, *inter alia* Gauteng Tourism Authority (GTA), Phakisa Major Sport Events and Development Corporation, Richards Bay Industrial Development Zone (RBIDZ) and Mpumalanga Economic Growth Agency (MEGA).

The Companies Act of 2003 and the PFMA of 1999 as amended among others, regulate these entities in conjunction with other regulations that have specific sector or individual legislative needs, but also from different, sometimes paradoxical, perspectives. Having said that, the South African legislative and policy framework under which SOEs operate is fragmented and often contradictory and therefore does not facilitate the execution of fiduciary duties satisfactorily. Arguably, the current legislative and policy framework constrains the SOEs from performing their developmental, strategic and socio-economic functions.

SOEs (Schedule 1, 2, 3a-c) are also subject to a plethora of legislative frameworks stemming from Treasury Regulation 16, which makes provisions for national and provincial government institutions to enter into public-private partnership agreements. Studies carried out by the Department of Public Enterprises (DPE) point out incongruences between the PFMA and the Companies Act. It is also important to mention that the Companies Act and PFMA did not originally mean to grapple with the specific issues confronting public entities on a day-to-day basis as they serve as stopgap measures (SOEs Policy Dialogue Report, 2012: 10).

There is therefore a strong view that there is a need for singular overarching SOEs legislation based not only on legislative reform, but also on the practical application of having to deal with the dynamics on the ground. For example, the Companies Act stipulates clearly that shareholders appoint the board and the board subsequently appoints the CEO, but this is a problem for SOEs because cabinet approves the CEO's appointment, thus rendering the decision of the board powerless.

The Companies Act, praised for its contexts in governing from the smallest to the largest companies is welcome, but unfortunately, the playing fields are still unlevelled as all entities operate under different acts exposed to different treatments. However, one cautions that uniformity is not necessarily the answer to resolve the confusion. While it is critical to review the legislation, it is not a panacea to cure all the ills suffered by the SOEs.

Another hurdle faced by SOEs is that private companies enjoy operating in the competitive environment of the Companies Act. Yet SOEs find it tough to compete with these private companies, as they have to operate within the PFMA environments, which appear to be inflexible. The competitive advantage of the SOEs remains frustrated by the stringent standard operating protocols of the PFMA. For example, SAA finds it difficult to operate on an equal footing with private airlines. "When the entity sets its priorities, the political decision kicks in and stipulates that the state desires to increase its trade relations with one of the African countries on the continent" (SOEs Policy Dialogue Report, 2012: 10). The entity is then forced to ensure that there is a route, which flies to the specific destination irrespective of its profitability. Profit and socio-economic development are at odds here.

When the route is unsustainable due to profit losses, it prompts bailouts by the state, which burdens its already overstretched fiscus. If corporate and social motives are not properly balanced, there is the potential for capital loss due to political interests and social responsibilities at play superseding profit and corporate investment targets (SOEs Policy Dialogue Report, 2012: 10). The SAA, now transferred from the DPE to fall under the National Treasury, is a case in point. The three SOEs – SAA, the South Africa Post Office and power utility, Eskom, which are the main drivers of the economy in distress, troubled by governance complexities – are now overseen by the Deputy President, Cyril Ramaphosa (Statement on the Cabinet meeting, 2014: 3) due to their respective governance and resource capacity challenges.

Are SOEs supposed to straddle the divide between corporate and social environments? The issue of balance between corporate and social investment comes under the spotlight here. There are SOEs which must do both, but it is a different ball game altogether. If the SOE for example, is investing commercially, let it operate as a commercial enterprise. If there is an agency that depends on allocations from the fiscus, it must be established accordingly. Special funding dispensation for community obligations of a reasonable scale is undeniably desirable but this should be clear from the onset, to avoid establishing

SOEs on wrong motives of multiple conflicting mandates, which is a recipe to cause these public entities to fail in the end.

According to Balkaran (2008:4), the failure of SOEs is rooted in the multiple and conflicting objectives mandated to them. Nellis and Kikeris (1989:667) explain that governments often decree that their SOEs must operate in a commercial, efficient and profitable manner, but at the same time, they insist that SOEs must:

- provide goods and services at prices less than cost-covering,
- serve as creation centres of employment,
- receive their supplies from state-sanctioned suppliers, and
- choose plant locations on political rather than commercial grounds.

In addition, politicians and officials do not function as profit-motivated shareholders. Instead of pressuring the SOEs to increase sales and reduce costs, they pressure them to pursue non-commercial goals. The government faces a conflict of interest that undermines the quality of the policy. For example, in the absence of independent regulation, the government can get away with regulating the sector in an arbitrary manner. This renders the very nature of the sector particularly susceptible to political pressure, which amounts to loss of profits and exponential vulnerabilities. Consistency and uniformity is the key to promoting overarching single SOEs governance guidelines and legislation. Thus, there should be no harm in creating legislation specifically aimed at SOEs.

The 2007 report by Rondinelli titled *"Can Public Enterprises Contribute to Development? A Critical Assessment and Alternatives for Management Improvement"* also alludes to the fact that the continued public ownership of these entities in their current state of affairs puts South Africa at risk in the global economic space unless the development, transformation, legislative, regulatory, governance and ownership issues are resolved (Rondinelli, 2007: 13).

Underlying Inconsistencies and Contradictions

Shareholder ministries and jurisdictions

The Department of Public Enterprises (DPE) is the government shareholder representative, with oversight responsibility for some Schedule 2 SOEs, such as Transnet Limited, SAA, Eskom, Pebble Bed Modular Reactor, Denel, Alexkor Limited, South African Forestry Company Limited and Ariviakom (Pty) Ltd. Other SOEs fall under their lead ministries. For example, the Airports Company South Africa (ACSA) falls under the Ministry of Transport, the Central Energy Fund falls under the Department of Energy, and the Armaments Corporation of South Africa falls under the Ministry of Defence. These fragmented jurisdictions of the SOEs unnecessarily complicate sector policy development, co-ordinated implementation and the achievement of desired outputs as it encumbers sharing resources and developing synergies. In addition, there is currently no clear or apparent methodology as to how the SOEs are domiciled in their lead ministries or different shareholders. A case in point is ACSA falling under the Department of Transport, while SAA falls under the DPE.

Coupled with the views expressed on the importance of tabling overarching SOEs' legislation, there are some contesting arguments about the governance of the SOEs. The DPE has already made public pronouncements, especially when the former minister, Malusi Gigaba, talked at length about the super ministry for the SOEs. Conversely, there are obviously differing views about the sector-based arrangement of the SOEs. These contrasting views do not bring resolution to the issue under discussion, as they were not scientifically tested. One must make firm decisions and to test them to clear the SOEs from this confusion by ensuring that tried and tested balanced views prevail (SOEs Policy Dialogue Report, 2012: 10).

Political Interference and conflict of interest

In terms of the functioning of the SOEs boards, hard technical questions to be asked are: who hires and fires the group chief executive officer (GCEO)? Is it the board, the shareholder minister or the cabinet and what are the best practices globally? Which works better, hiring by the board, the shareholder minister or the cabinet? This issue of hiring and firing the GCEO is prevalent in schedule 2 SOEs, which are mostly characterised by purging and personality glitches among the management of the entity, members of the board and the shareholder minister. There is also an element of interference, which is always confused with intervention, interface and insulation (SOEs Policy Dialogue Report, 2012:11). It is a known fact that there are more often than not, sour and acrimonious relationships among the shareholders, the boards, GCEOs and these hitches are recently expounded in the respective SABC "when governance and Ethics fail" report and PRASA "derailed" report of the Public Protector.

At the SABC, the Public Protector investigated allegations of maladministration, systemic corporate governance deficiencies, abuse of power and the irregular appointment of Mr. Hlaudi Motsoeneng by the SABC. According to the Public Protector (2014: 10–11),

> *"The essence of the allegations investigated was that there was systemic corporate governance failure at the SABC at the core of which was expediency, acutely poor human resources management and a dysfunctional Board; all of which was said to be primarily due to manipulative scheming by the SABC's Acting COO, who allegedly lacked the requisite competencies for the post and manipulated, primarily new Boards and GCEOs to have his way and to purge colleagues that stood in his way".*

The Public Protector argues that the SABC findings are symptomatic of pathological corporate governance deficiencies at the SABC, including failure by the SABC Board to provide strategic oversight to the National Broadcaster as provided for in the SABC Board Charter and King III Report. The GCEO, chief operating officer (COO), and the chief financial officer (CFO) according to the Public Protector failed to provide the necessary guidance to help the Board effectively discharge its fiduciary responsibilities. The Board was dysfunctional and on its watch allowed a non-executive chairperson to assume the role of "executive chairperson" by authorising numerous salary increments for the COO (Public Protector, 2014: 22).

The Public Protector also found that the former shareholder minister of communications unduly interfered in the affairs of the SABC; and abused her powers by rejecting the recommendation made by the Board for the appointment of the CFO and the orchestrated inclusion of the curriculum vitae of the candidate she preferred who did not apply for the position. By doing so, she was in violation of the Executive Ethics Code, and the principles of Corporate Governance (Public Protector, 2014: 23–24).

At the Passenger Rail Agency of South Africa (PRASA), the Public Protector investigated allegations of maladministration relating to financial mismanagement, tender, irregularities and appointment irregularities against PRASA. According to the Public Protector (2015: 5);

> *"The essence of the complaints was that Mr. Montana, then GCEO of PRASA, improperly awarded tenders; appointed service providers without following proper tender processes and allowed maladministration, corruption, conflict of interest and financial mismanagement, in the procurement of goods and services and managed human resources irregularly, including nepotism and the improper handling of whistle-blowers".*

The Public Protector argues that there is a culture of systemic failure and hiding of information that could provide evidence of maladministration and other forms of improper conduct at PRASA. If the pattern is not arrested it has the potential to derail the effective and efficient procurement of goods and services to support PRASA operations to ensure effective service delivery (Public Protector, 2015: 382). One infers that the human factor at play in flouting supply chain policies is a rooted problem that eats away the fiscal fabric of the state, hence prevailing occurrences of avoidable expenditure and preventable disruption of services at PRASA.

It becomes clear that not only a reform of legislation is needed to address SOEs' problems and challenges, but also a human factor that requires maturity and emotional intelligence to run the affairs of the SOEs from a leadership and managerial point of view (SOEs Policy Dialogue Report, 2012: 11). Castro (2007: 272) stresses that political interference and conflict of interest result in excessive employment, poor choices of product and location, lack of investments and ill-defined incentives for managers.

Political interference and conflict of interest in the SOEs' sector is not unique to South Africa. In Italy the persistent political interference in state-owned companies – including railways, postal service and public transport, among others – has significantly hampered their productivity, efficiency and profitability. Similarly, the World Bank has concluded that, in emerging markets, a banking sector dominated by state-owned entities poses a threat to economic development and stability, as preferential lending and patronage create market distortions and chase away private competitors (Wong, 2009: 2). SOEs should resist the temptation of political interference and conflict of interest for them to thrive.

On that score, the Italian government and other countries where political interference is an issue, such as South Africa, can learn from *inter alia* Sweden and the United Kingdom where safeguards are in place to enhance their ability to oversee SOEs at arm's length (Wong, 2009: 2). Strict adherence to and enforcement of corporate governance principles is required. While one recognises that in a developing country there may be socio-economic initiatives that a government wants to undertake and implement through SOEs, the latter should have clear transparency, accountability and empowered decision-making functions on these issues. The ability of successful SOEs in countries such as China, India, Malaysia and Indonesia to balance effectively between government socio-economic directives and maintaining competitive and financially productive SOEs requires further scrutiny. In South Africa a lack of co-ordinated and integrated plans from the SOEs and an inability to balance its different roles as policy maker, regulatory entity and shareholder, is evident (Fikelepi, 2010: 115).

SOEs versus private corporations

The OECD Guidelines on Corporate Governance of SOEs (2005: 3,18) underscores ways of balancing the state's responsibility to implement its ownership functions (such as selection and nomination onto supervisory boards) actively, while at the same time resisting inappropriate political interference in the governance of SOEs. The guidelines explain that there are equal opportunities in markets where private corporations compete with state-owned companies, and that the method by which the states apply their legislative and supervisory powers should not distort the competition. Additionally, the guidelines suggest that the state should exercise its ownership function through a centralised ownership unit, which needs to operate independently and in compliance with its publicly disclosed ownership policy. An important element is a strict separation of ownership and legislative functions of the state. In this way, Klapper and Love (2002: 36) write that the ownership of the state, when exercised in a professional and responsible manner, attempts to improve corporate governance in all sectors of the economy.

As South Africa's economic strategy and policy development has changed since 1994, the framework within which SOEs operate needs revisiting. The DPE was established pre-1994 by the De Klerk government in preparation for the privatisation of state-owned assets before the advent of democracy. In some senses, the DPE is therefore, premised on an outdated privatisation model. The entire SOEs' landscape needs alignment in support of the National Development Plan (NDP), vision 2030.

SOEs are different from private corporations in that the choice of managers may be made on a political basis rather than merit. Perhaps this explains why in the SOEs' context, governance structures are convoluted with political cloud and unmerited compensations. This is not surprising as, theoretically, such compensation in SOEs are not competitive because by nature, they are less based on market outcomes than private corporations

(Geddes, 1997). Data from recently privatised private corporations show that managerial pay increases significantly post-privatisation, even when the managers remain the same. The explanation for these findings is that there is a high correlation between increase in salary and potential profits of the private corporations as opposed to the SOEs (Niskanen, 1971).

Subsidiarity issues

To this end, as a senior researcher, one observes that the inconsistencies in the legal and governance frameworks of the SOEs have also brought about many illicit practices, including abuses of the subsidiarity principle. In many instances, subsidiaries of SOEs are not transparent and their financial records not linked to that of their parent entities. This makes it difficult to audit and monitor the vast number of subsidiary companies. Some subsidiaries, including those listed in schedule 3 of the PFMA in respective provinces abuse the subsidiarity principle by creating a subsidiary of another subsidiary. These extensions are clearly an abuse of the subsidiarity principle, taking advantage of the fact that subsidiaries have less stringent reporting requirements. A further confusion arises because the parent entity is non-commercial and yet all subsidiaries are commercial outfits with fiduciary duties. In short, the current subsidiarity arrangement creates a haven for corruption to thrive in the regime of SOEs sector.

Recommendations

The debate about SOEs is never completely finished. It has been, and still is, one of the interesting and long-standing sticky issues in the public domain that is difficult to resolve. A regular review of the SOEs is necessary, as it is currently unfinished business to keep the SOEs in check. In the broader scheme of things, the pertinent question is to establish whether the legislative framework under which the SOEs function is adequate to enable effective contribution of SOEs to achieve the state's development objectives. In addition, there is a need either to enhance the current legislative framework or to opt for an alternative solution.

The review of the legislative and policy framework of SOEs in South Africa demonstrated that SOEs are under a multiplicity of policy and legislative mechanisms, which are not only inconsistent but also onerous. The current legislative framework is fraught with difficulties and challenges, which hinders the ability of SOEs to function optimally. There is a need for a complete overhaul of the SOEs sector. The streamlining and rationalisation of the legislative framework is therefore important. In this process, legislative and policy efficiency should guide the streamlining and rationalisation process. The focus should be to facilitate the ability of SOEs to fulfil the developmental agenda of the state as espoused in the NDP, vision 2030.

It is on this basis that corporate governance reform could be a viable option if SOEs are to be profitable and efficient or at least of the same standard as their private corporations' counterparts. Corporate governance reform must tackle the challenges of the SOEs straddling social and commercial environments, otherwise the results will be disappointing. When the costs of any non-commercial objectives are removed, SOEs should be able to recover their own cost of capital without asking for bailouts from the state. Otherwise, it would not be a viable option to improve them. It would be rather a better option to close them down or sell them off (Wong, 2004: 8).

To this end, we recommend four interconnected options:

a) There is a need to enact a single SOEs' act to resolve apparent contradictions, gaps and duplications. SOEs should immerse in a seamless environment, yet should also remain sector-based with clear subsidiarity restrictions. In such a single act, the board could have more powers in line with the OECD guidelines.

b) The state as an active shareholder should exercise its ownership rights in respect of SOEs by holding the board accountable for its obligation to provide strategic direction. The board could also have the required operational autonomy to achieve the defined objectives free from political interference by the shareholder.

c) The need to clarify the role of the executive authority, boards and the chief executive in the governance and operational management of SOEs is crucial (Kanyane, 2013: 91).

d) The establishment of an independent monitoring and compliance agency, similar to that of the French Government Shareholding Agency (APE) but adaptable to South African situation requires urgent consideration.

Overall, the need for SOEs to be streamlined and harmonised under an overarching and seamless act of parliament is not only clear, but is also urgent.

Conclusion

On one hand, the discussion reveals that it is not necessarily the legislative instrument that is problematic, but the human factor that tampers with the prevailing legislation, supply chain policies and governance practices. On the other hand, it becomes apparent that the issue of governance in the SOEs sector, especially SABC and PRASA among others, is muddled with antagonism, animosity and corruption, which besmirch the whole operation of the SOEs sector and therefore needs mature treatment. Lastly, a balancing act between corporate and economic development ambitions of the SOEs, received much attention in the corpus of the discussion, and therefore needs effective resolution.

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