

An Analysis of the Performance of State-Owned Enterprises in Namibia: Case Studies in the Transport Sector

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STATEMENT/DECLARATION

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ABSTRACT

The classical view of state-owned enterprises (SOEs) has typically been framed around dimensions of efficiency, productivity and administrative bureaucracy (Cuervo-Cazurra, Inkpen & Musacchio, 2014). A number of theoretical perspectives, namely the property rights school, the public choice tradition, the neoclassical approach, the behavioural approach and the budget-maximising approach, have been used to model SOEs (Lawson, 1994). Despite a long theoretical interest in modelling SOEs, and their large impact on the global economy, challenges still exist to develop a comprehensive theory of SOEs (Peng, Bruton, Stan & Huang, 2016). It is generally argued that SOEs have the potential for good governance, efficiency and better service delivery through enhanced performance. However, most SOEs do not reach these ideals. This situation justifies the need to study and carefully appraise options for injecting higher performance into SOEs if they are to play a meaningful role in achieving Vision 2030 – the vision of Namibia to become an industrialised country by 2030.

The primary objective of this dissertation was to analyse the performance of SOEs in the transport sector and to identify factors that have contributed to the high or low performance of these SOEs. Several arguments have been made about the inefficiency and poor service delivery of SOEs. According to Steytler (2009:19), “[t]he poor financial performance of state owned enterprises have [sic] often been attributed to weak management practices of the CEOs of these institutions”. The ‘bureaucrats in business’ thesis by the World Bank (1995) advances a contrary view, i.e. that bureaucrats who run state-owned enterprises should not be blamed for all the ills of these companies since they are not necessarily incompetent but rather have to deal with contradictory goals and perverse incentives.

Although the study confirmed most of the foregoing arguments, further analysis of the performance of SOEs in Namibia revealed that SOEs do not necessarily underperform simply because they are state-owned but because of the way that they are managed. With this revelation in mind, the study developed a model that could be helpful to address this situation, namely the performance of SOEs. Without going into the merits and demerits of the different methodologies, this study opted to use a mixed methods (pragmatic) approach. This allowed the researcher to adopt the best-suited approach to the research problem without getting caught up in the philosophical debates about which one is the best approach.

OPSOMMING

Die klassieke siening van ondernemings in staatsbesit (SOE's) het tipies is opgestel om dimensies van doeltreffendheid, produktiwiteit en administratiewe burokrasie (Cuervo-Cazurra, Inkpen & Musacchio, 2014). 'n Aantal teoretiese perspektiewe, naamlik die eiendomsreg skool, die openbare keuse tradisie, die neo-klassieke benadering, die gedragsbenadering en die begroting maksimalisering benadering, is gebruik om ondernemings in staatsbesit (Lawson, 1994) se model. Ten spyte van 'n lang teoretiese belangstelling in modellering SOE's, en hul groot impak op die globale ekonomie, uitdagings bestaan steeds 'n omvattende teorie van SOE's (Peng, Bruton, Stan & Huang, 2016) ontwikkel. Dit is oor die algemeen aangevoer dat SOE's het die potensiaal vir goeie bestuur, doeltreffendheid en beter dienslewering deur verbeterde prestasie. Maar die meeste ondernemings in staatsbesit nie hierdie ideale te bereik. Hierdie situasie regverdig die behoefte om te studeer en versigtig beoordeel opsies vir die spuit van hoër prestasie in SOE's as hulle na 'n betekenisvolle rol in die bereiking van Visie 2030 te speel - die visie van Namibië na 'n geïndustrialiseerde land geword in 2030.

Die primêre doel van hierdie verhandeling was om analiseer die prestasie van ondernemings in staatsbesit in die vervoersektor en om faktore wat bygedra het tot die hoë of lae prestasie van hierdie SOE's te identifiseer. Verskeie argumente gemaak oor die ondoeltreffendheid en swak dienslewering van SOE's. Volgens Steytler (2009: 19), "[t] hy swak finansiële prestasie van ondernemings in staatsbesit het [sic] dikwels toegeskryf aan swak bestuurspraktyke van die uitvoerende hoofde van hierdie instellings". Die "burokrate in besigheid 'n tesis deur die Wêreldbank (1995) bevorder 'n teenoorgestelde mening, naamlik dat burokrate wat ondernemings in staatsbesit loop nie moet die skuld vir al die euwels van hierdie maatskappye omdat hulle nie noodwendig onbevoeg maar eerder te doen het met teenstrydige doelwitte en verdraaide aansporings.

Alhoewel die studie bevestig die meeste van die voorafgaande argumente, verdere ontleding van die prestasie van ondernemings in staatsbesit in Namibië aan die lig gebring dat SOE's nie noodwendig net onderpresteer omdat hulle in staatsbesit, maar as gevolg van die manier waarop hulle bestuur word. Met hierdie openbaring in gedagte, die studie ontwikkel 'n model wat nuttig om hierdie situasie, naamlik die prestasie van ondernemings in staatsbesit aan te spreek kan wees. Sonder om in die meriete en nadele van die verskillende metodes, hierdie studie gekies om 'n gemengde metodes (pragmatiese) benadering gebruik. Dit het die navorser tot die beste geskik benadering tot die navorsingsprobleem aan te neem sonder om gevang in die filosofiese debatte oor watter een is die beste benadering.

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CHAPTER ONE: ORIENTATION AND OVERVIEW

1.1 Introduction

The goal of this study was to contribute to a better understanding of the performance of State-owned Enterprises (SOEs)¹. According to the literature, there is broad interest internationally in better performance measurement and management in the public sector that is linked to questions around corporate governance of SOEs and the continuing search for appropriate ways to effectively and efficiently deliver public services (Grossi, Papenfuss & Tremblay, 2015).

To attain the goal of the study, the research was conducted on the performance of SOEs in Namibia, in terms of their governance, efficiency and productivity. This area was selected given the widespread concern about the subject of SOEs as reported in both public documents and the media. For example, on 10 July 2014, *The Namibian* newspaper reported that, “SOEs have been exposed to huge debts; poor leadership at both board and management levels; and that remuneration for executives was not linked to productivity and the ability to carry the expenditure burden” (2014:1). Such reports are not isolated, hence the need to conduct this study.

The research was conducted through a systematic examination and assessment of key performance indicators attributable to service delivery by the transport sector SOEs in Namibia. Furthermore, as part of the qualitative section, expert interviews were undertaken with political heads and senior officials from both the government and the SOEs (see Annexure 1). Through this research, the study makes a significant contribution not only to improving the quality of services provided by SOEs in Namibia, but also to a clearer understanding of the factors that explain the level of performance in public sector organisations in Namibia.

¹ The SOEs are known under other terms such as state-owned company, state-owned entity, state enterprises, publicly owned corporation, commercial government agency etc. In Namibia, however, they are usually referred to as State Owned Enterprises to denote their majority ownership structures and government deliberate attempts to venture into private (commercial) space. The term of course is still used even after the Public Enterprises Act, 2006 (Act No 2 of 2006) which was amended in 2016 to make provision, for among others, the efficient governance of SOEs in the country.

Based on the analysis and findings reported in this study, an attempt is made to define, design and recommend models (see the discussions under 6.3), mechanisms, instruments and processes to improve public sector performance and management. The study appreciates the challenges of selecting performance indicators and looks at the mandate that these SOEs were created for and how well they are governed in order to fully appreciate their level of performance.

With the above in mind, this introduction chapter begins by giving a general overview of the study, i.e. the background of the study, and goes on to present the research questions which provide the thrust of this study. The chapter further provides a brief legal framework, research problems and research objectives. It outlines the purpose and scope of the study and gives an overview of the chapters.

1.2 Study Background

Although Namibia's economy has largely succeeded in generating positive economic growth since independence some more than 27 years ago, this growth has fallen far short of what is required to attain Vision 2030 (Sherbourne, 2017). Notable shortfalls include unemployment, long delays in the delivery of government services, lack of or limited critical skills and poor service delivery.

Vision 2030 is a Namibian policy *framework* for long-term national development. In the foreword to Vision 2030, the founding father and President of the Republic of Namibia, Dr Sam Nujoma, had this to say about the document: “[...] it is a vision that will take Namibia from the present into the future; a vision that will guide us to make deliberate efforts to improve the quality of life of our people. It is designed as a broad, unifying vision which will serve to guide the country's five-year development plans ... and at the same time provide direction to government ministries, the private sector, NGOs, civil society, regional and local government authorities”. Therefore, Vision 2030 provides all government entities, including SOEs, the policy aims and objectives that they should effectively work towards.

However, and despite having established SOEs to provide services to citizens in conformity with Vision 2030 and various national development plans, many have failed to deliver on their mandate and they have instead become a liability to the government. For example, in the

2017/2018 Budget Speech, the Minister of Finance stated that SOEs are expected to cost the tax payers around N\$13,948,815,187 over the next three financial years. According to the Minister of Finance, SOEs will receive N\$4,602,576,290 in 2017/18, N\$4,615,054,579 in 2018/19 and N\$4,732,184,320 in 2019/20 (Republic of Namibia. *Estimates of Expenditure for the Financial Year and Medium Term Expenditure Framework 2017/18-2019/20*). Such subsidies show that the performance of some SOEs is contrary to the intention of their establishment.

According to the Organisation for Economic Cooperation and Development (OECD), the establishment of SOEs is often seen as the answer to the problem of slow and bureaucratic government processes and procedures. SOEs are viewed as having the potential to enhance better performance and good service delivery, thereby propelling rapid economic growth. It is believed that if SOEs adhere to sound business principles, the benefits will include, but not be limited to, good governance, efficiency, better service delivery and reduced administrative costs (OECD, 2005).

Indeed, there is broad consensus that SOEs are meant to play an important role in the developmental agenda of any country. Some scholars (Abubaka, 2011; Nwoye, 2011) have argued that the debate on SOEs is no longer whether they have a role to play in national development, but rather which role and how best they should play it, since SOEs must perform efficiently and effectively to excel.

1.3 Namibian SOEs

SOEs have been exposed to huge debts, poor leadership at both board and management levels and that remuneration for executives was not linked to productivity and the ability to carry the expenditure burden.²

(The Namibian, 10 July 2014:1)

² Sentiments of the Namibian Prime Minister contributing to the debate on the Annual Report of SOEs in the National Assembly.

In Namibia, SOEs fulfil important functions, such as providing vital services to citizens (e.g. electricity and water), regulating several sectors of the economy (e.g. employment) and raising revenue for the government (Weylandt, 2016). Despite their importance in the national economy, Namibian SOEs are perceived as controversial due to their inefficient or inept service delivery. According to Weylandt (2016:2), “even the SOEs that were supposed to be commercially sustainable have too often relied on repeated government transfers to keep themselves afloat, while a long line of corruption, scandals and tales of dysfunctional management have tarnished the reputation of the sector”. Ironically, SOEs are regulated by legislation, albeit fragmented, with one major act being the Public Enterprises Governance Act 2 of 2006 (as amended). This Act is considered in detail later in the chapter.

Several arguments have been advanced with regards to inefficient and poor service delivery. According to Steytler (2009:19), “[t]he poor financial performance of state owned enterprises have [sic] often been attributed to weak management practices of the CEOs of these institutions.” The ‘Bureaucrats in Business’ thesis by the World Bank (1995) advances a contrary view, i.e. that bureaucrats who run state-owned enterprises should not be blamed for all the ills of these companies since they are not necessarily incompetent but rather have to deal with contradictory goals and perverse incentives.

However, despite notable differences of opinion, it must be said that there is general agreement regarding the developmental agenda of SOEs, which goes well beyond the issues of rent extraction by policymakers, corruption or winning the vote of employees in some constituencies as in the public choice tradition (Florio & Fecher, 2011). One view is that SOEs are important policy instruments (Christiansen, 2011). States have used SOEs to foster research and innovation and for the implementation of industrial policy (Millward, 2011).

As the Guide to the Namibian Economy 2017 notes, since independence in 1990, the government has devoted considerable policy attention to SOEs (or parastatals as they were then called). This resulted in a dramatic increase of SOEs from 12 in 1990 to 45 in 2003. According to *The Namibian* newspaper (10 July 2014:2), a total of 72 SOEs have been established to date. In addition, these public enterprises have been used as an important training ground for new black Namibian professionals (Sherbourne, 2017:419).

At the same time, debate has been on-going on issues such as privatisation, commercialisation, and liberalisation and deregulation *vis-à-vis* continuing state ownership. This debate has partly

been a reflection of a broader discourse in mainstream neoclassical economics *vis-à-vis* new public management. Of course, neither of these approaches is comfortable with the idea that state-owned enterprises could perform well and thus prefer privatisation (Florio & Fecher, 2011). Critics of SOEs in Namibia take a similar position and have long argued for the privatisation of ailing enterprises to unburden the taxpayer and to force the entities to run profitably. Despite such calls for privatisation, the government seems to have taken a softer approach of ‘corporatisation without privatisation’ (Aivazian, Ge & Qiu, 2005).

Concern for escalating fiscal burdens and several prominent cases of mismanagement and poor performance resulted in the Cabinet commissioning Deloitte and Touche to compile a report on the governance of SOEs in 2000 (Sherbourne, 2017; Weylandt, 2016). The Report on a Governance Policy Framework for State-Owned Enterprises in Namibia (Deloitte & Touche, 2001) raised serious concerns on the performance of SOEs in Namibia, citing a litany of issues. These issues include rapidly increasing public spending and lending to the sector; excessive financial returns due to monopoly pricing; increased capital intensity but decreasing productivity of capital; high levels of debt; low tax payments; inconsistencies in governance practices; undue political interference; uncertainty about SOEs’ development role; and unsatisfactory performance of board members (Sherbourne, 2017:420).

The report recommended a new classification of SOEs and proposed a new governance structure, whereby a central governance agency in the Ministry of Finance would assume the *pari passu* fiscal responsibility to monitor SOEs’ performance while being overseen operationally by a State-Owned Enterprise Governance Council (SOEGC) at Cabinet level. This central governance agency existed under the Office of the Prime Minister between 2003 and 2006, but was not supported by any enabling legislation and it was therefore rendered impotent (Weylandt, 2016:6).

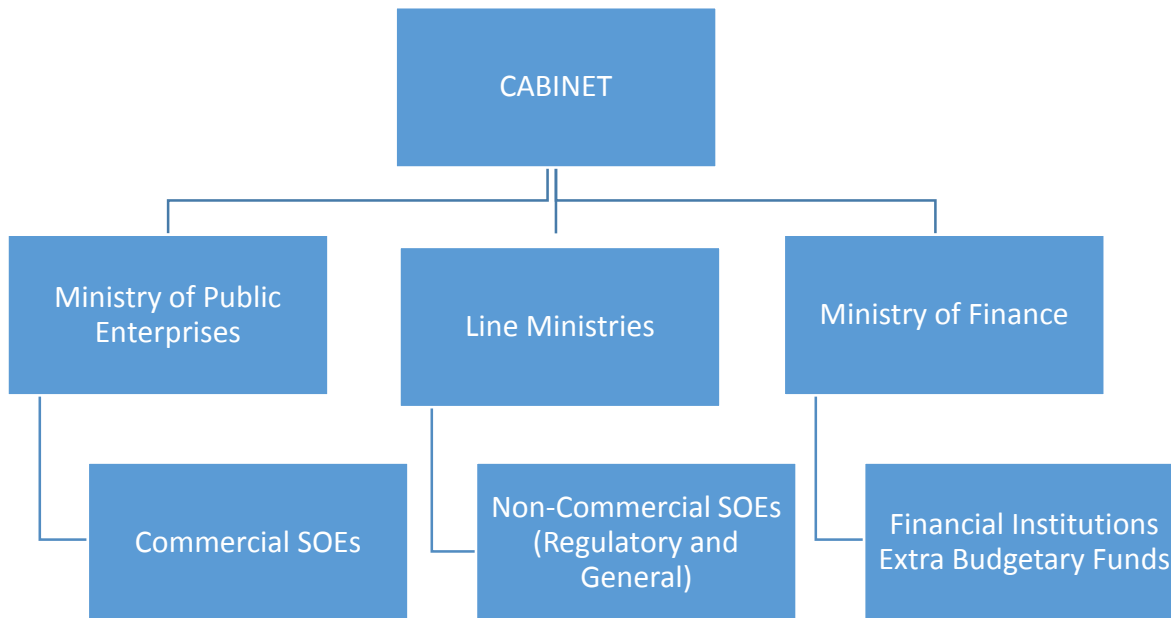
The SOEGC, which was in essence a cabinet committee that was chaired by the Prime Minister, was supposed to develop a framework for governance and determine how performance would be measured. It was envisaged that this council would, among other things, enter into governance agreements with SOE boards and determine the composition, number, eligibility and terms of office of board members, with the power residing with portfolio ministers to appoint and set the remuneration for board members. After a 2008 amendment to the SOEG Act, the

power of portfolio ministers to appoint SOE boards was withdrawn and assigned to the power to appoint board members back from the Council (Weylandt, 2016:6).

Ambiguity in the above governance arrangements is confusing. Dual reporting, multi-ministerial supervision and co-shared responsibility thus remain a standing critique. In his contribution to the debate on the Annual Report of SOEs in the National Assembly, the Prime Minister argued that “the current dual governance model of SOEs has multiple layers of authority and communication which makes it difficult for the council to efficiently and effectively perform oversight functions stipulated in the Act” (*The Namibian*, 10 July 2014). This situation could therefore hamper the performance of these entities.

With these observations in mind, the former Prime Minister, now the President of Republic of Namibia, Dr Hage Geingob, created a new Ministry of Public Enterprises to try to resolve the dual and multilevel supervision of SOEs, with the aim to provide policy and pathways for commercial SOEs’ efficiency and self-sufficiency.

Figure 1.1 below (which will be discussed in detail later) stipulates the new framework. It suffices for now to indicate that, under the new system (Hybrid Governance Model), the Ministry of Public Enterprises would become the full shareholder of all commercial enterprises (having the potential to generate profit), and non-commercial ones (mostly dealing with regulatory aspects) would be under the respective line ministries while the financial enterprises would fall under the Ministry of Finance. It should be noted that, besides these categorisations, portfolio ministries still run the regulatory aspect of their respective sectors.

Figure 1.1: The Hybrid Governance Model

Source: Jooste (2016)

1.4 Research Problem

Over the past couple of years, the Namibian government introduced a number of measures to boost the performance of SOEs in the country through the provision of substantive financial resources, amendments and enactments of new laws. The economic impact of these entities on the country's economy has been a constant subject of public debate. With the poor performing SOEs, their continuing dependence and the debt level into which they have led the country into, the public has been questioning the SOEs' efficiency. The study intended to investigate the fundamental factors impacting the performance of these various institutions by analysing the performance of specifically selected SOEs in the transport sector.

Singling out only SOEs in the transport sector makes sense because of Namibia's vast land surface and small population. Transport is consequently paramount to connect this population that is spread across a wide land surface. It should be understood that Namibia spans an area of approximately 825,000 km² and it has a population of about 2,113,077 (Government of the Republic of Namibia, 2011:3). It is one of the world's lowest populated countries, with a population density of approximately 4,600 hectares per person, which is more than five times

the world average. Delivery of services is therefore an ever-present constraint in most parts of the country. Furthermore, Namibia harbours ambitions of becoming a logistical hub for the SADC region. Most of these services and ambitions require the transport platform to be realised, hence the importance of the sector as a basic enabler for any economy.

As a basic enabler for both domestic and international purposes, transportation is a very expensive commodity. Thus, the biggest challenge facing actors in Namibia's transport sector is how to provide such services to the larger and geographically dispersed public in an efficient and effective manner. The establishment of SOEs was thought to be the answer to this problem, since government departments are often viewed as slow and bureaucratic, with cumbersome processes and procedures.

It is generally believed that SOEs, if properly managed, have the potential to enhance performance and service delivery, thereby propelling rapid economic growth. However, the reality has been far from ideal in the case of Namibia if one considers the resource inputs to these institutions versus their performance and the general public outcry about their poor performance and limitations. In Namibia, SOEs are classified into three tiers based on their size and contribution to the economy.

The three key indicators that are used to classify SOEs in categories are: total revenue, total asset, and total primary employment (Namibia State-Owned Enterprises Directive, 2010). In addition to the three tiers, SOEs are also divided into three groupings of enterprises, namely economic and productive, regulatory, and service-rendering enterprises.

1.5 Research Aim

The overall aim of this research was to develop a conceptual and detailed understanding of factors that influence the performance of SOEs in the transport sector with a view to contribute to improving the performance of SOEs in Namibia.

1.6 Research Objectives

The primary objective of this research was to analyse the performance of SOEs in the transport sector in terms of governance, efficiency and productivity by identifying the critical factors that have contributed to the high or low performance of these SOEs. In order to better understand factors that affect the performance of Namibian SOEs, the study set the following specific objectives:

1. To assess and objectively determine the level of performance (in terms of governance, efficiency and productivity) of Namibian SOEs in the transport sector;
2. To examine the empirical evidence of factors responsible for the observed performance of SOEs in the transport sector;
3. To design interventions to improve the performance of SOEs; and
4. To recommend a set of measures to the government, along with their associated implementation mechanisms to rationalise or optimise SOE performance.

1.7 Research Questions

To address the outlined topic and meet the objectives, the study was guided by the following research questions:

1. How do Namibian SOEs in the transport sector perform?
2. What factors explain the level of performance of SOEs?
3. What are the right models, mechanisms, instruments and processes for enhancing performance of SOEs?

1.8 Research Design and Methodology

“The person who believes he/she knows everything reveals not only arrogance, but also a profound ignorance.”

(Goddard & Melville, 2001:1)

The above quotation amplifies the need to search, discover and create new knowledge, hence the importance of this research. There are many definitions of research available in the literature

but, according to Leedy (cited in Goddard & Melville, 2001), it is a systematic quest for discovering knowledge. The term “systematic” is very important as it distinguishes research from the mere collection or gathering of information or data.

1.8.1 Research design

This study opted for a descriptive research design, in particular the Case Study. It employed a case study approach by analysing the performance of five (5) SOEs from all four (4) transport modes. According to De Vausa (2001), a case study is an in-depth study of a particular research problem rather than a sweeping statistical survey. It is often used to narrow down a very broad field of research into one or a few easily researchable examples. In this case, the study narrows down the performance of SOEs in Namibia by considering specific SOEs in the transport sector.

Furthermore, the study also employed a mixed method (pragmatic) approach. According to the Alzheimer Europe site (2013), the pragmatic approach allows the researcher to adopt the best-suited approach to the research problem without getting caught up in philosophical debates about which is the single best approach. The pragmatic approach recognises that every method has its limitations and that the different approaches can be complementary. Furthermore, the choice of this research paradigm was informed by the assumption that using a mixed-method approach increases the likelihood that the sum of the data collected will be richer, more meaningful, and ultimately more useful in answering the research questions (Prestkill, 2009).

Another important question that this research needed to consider was whether to adopt a pure or applied research approach. Pure research is undertaken for a single goal of gaining knowledge, while applied research is undertaken to solve a specific practical problem. Considering the topic under investigation, the research opted for both because of the huge interest this topic (SOEs) has attracted over the years.

1.8.2 Population and sample

The population is simply all members of the group that the researcher is interested in. According to Burns and Grove (1993), the population refers to all elements consisting of individuals, objects and or events which meet the sample criteria to be included in a study. For this study,

the sample criteria were classification and sector. For example, only those SOEs classified as Tier 3 (larger SOEs) and those in the transport sector were considered.

A sample on the other hand is a set of the population that, according to Bynner and Stribley (1978), is usually chosen because to access all members of the population is prohibitive in time, money and other resources. Collins et al (2000:149) define the sample as a subset of measurements drawn from the population.

It is important to note that the sampling for the study was done using the purposeful and opportunity sampling approach. A key issue in choosing the sample relates to whether the members you have are representative of the population. For this study, the answer was yes, as the selected members had the relevant background of the subject matter and occupied positions where they could appreciate the discussion under investigation. These were;

- a) Political Heads (Ministers) who were targeted using unstructured interviews.
- b) Senior Government Officials (Line Directors in charge of the selected SOEs and those from the Public Enterprise responsible for governance issues) who were targeted using structured questionnaires.
- c) Senior officials in charge of SOEs (Board Members, Chief Executive Officers and their respective Management members).

1.8.3 Data and data collection

The study utilised both primary and secondary data. The primary data were collected and analysed from 16 key informants. The eligible sample criteria were mainly expert knowledge on the subject matter, position (mostly management – as they are able to appreciate the problems/challenges under discussion) and willingness to participate. The key informants included managers from line directorates responsible for the different transport modes (aviation, railway, road and maritime) from both the Works and Transport and Public Enterprise ministries, with specific and expert knowledge on the subject matter. Furthermore, political heads (ministers) of both ministries (Works and Transport and Public Enterprises) were also interviewed. The political aspect was very important so as to appreciate the intent and

expectations behind the creation of these entities (SOEs) and to assess if these were being met. Secondary data were collected and analysed by evaluating previous audits, researches and review reports.

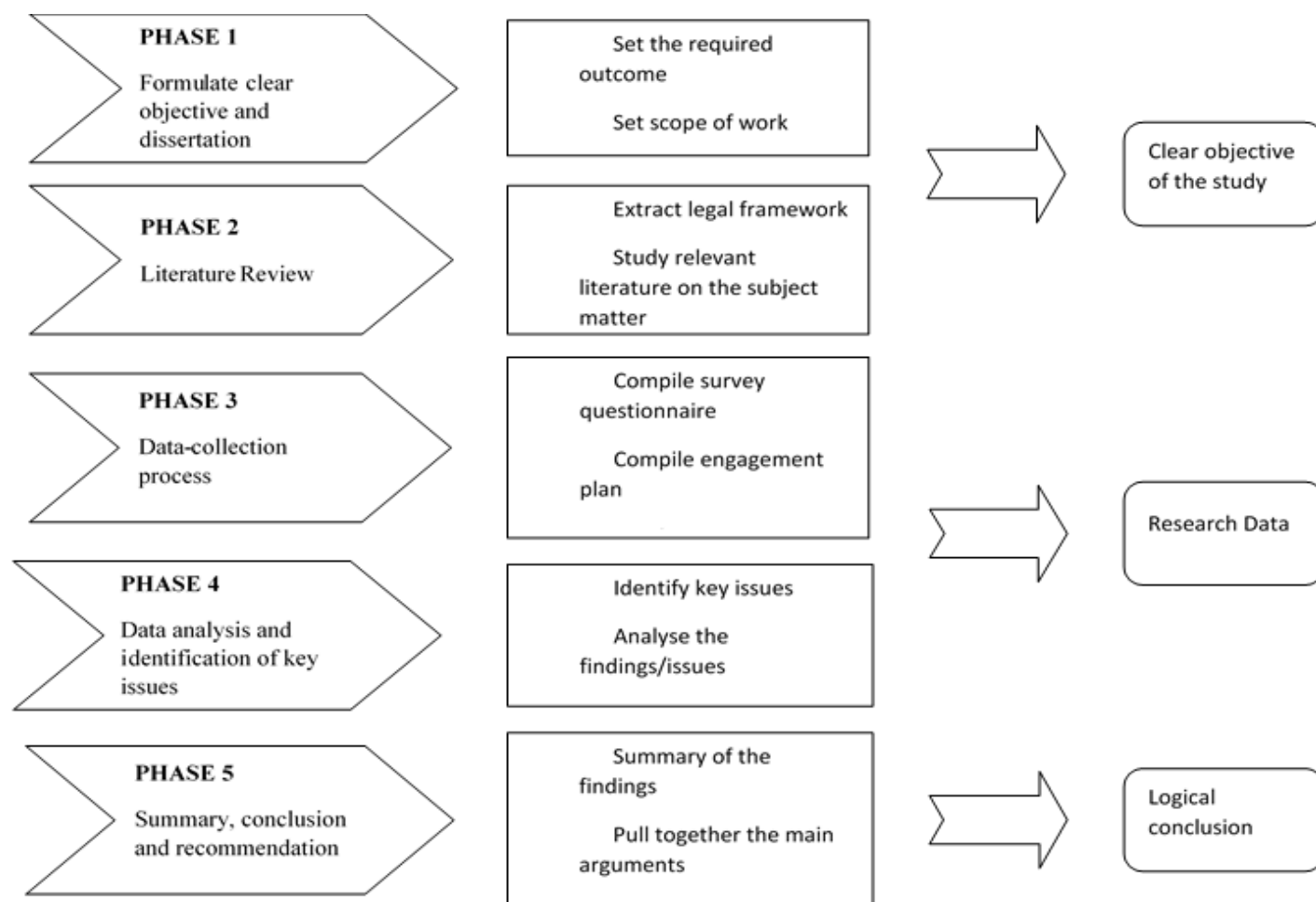
All in all, the information was collected in a controlled manner to eliminate alternative explanations in a systematic way (Welman, 2001:5). This process eliminates non-scientific ways of gathering data, such as inclusion of authority, biased opinions, preconceived notions and peer pressure (Welman et al., 2005). The study employed a triangular method to eliminate biased opinions. It looked at theories, interviews and checked them against audited reports.

1.8.4 Data analysis

Finally, the data collected were processed and analysed. The analysis of data is a process of inspecting, cleaning, transforming and modelling data with the goal of discovering useful information, suggesting conclusions and supporting decision-making. According to Bogdan and Biken (1982:145), this process involves working with data by organising and breaking it down, synthesising it, searching for patterns, discovering what is important in it and determining what can be learnt.

For this specific study, the researcher opted to use content analysis. Content analysis allows the researcher to create and arrange responses into themes based on research questions. Furthermore, SOEs were rated based on the outcomes of the different instruments and other secondary data, such as their audited financial reports, supported by the relevant theories introduced in the literature review. In cases of non-disclosure of certain information, the researcher improvised by making extrapolations from the available data, which could be a limitation of this study.

It should be further noted that the information was analysed qualitatively and as such it is diverse and somewhat broad, especially given the general comments given by some respondents. However, the analysis ultimately enabled the information to be sieved and relevant issues to be grouped together to produce a composite whole. Below is a closer and graphic look (Figure 1.2) on how the study of the analysis of the performance of SOEs in the transport sector in Namibia was conducted. It describes the road of the dissertation to the logical conclusion in Chapter Seven. The study followed a scientific approach to reach the conclusion.

Figure 1.2: The Dissertation Process Flowchart of Study

Source: Author's construction

1.9 Significance of the Study

State-owned enterprises have the potential for good governance, efficiency and better service delivery through enhanced performance. However, most SOEs are exceptions to these ideals. This situation justifies the need to study and carefully appraise options for injecting higher performance into SOEs if they are to play a meaningful role in achieving Vision 2030. These are the critical policy questions that are addressed in this study. Chapter 7 contains the conclusions and recommendations that are, in turn, based on the research questions set above.

1.10 Scope of the Study

Currently, Namibia has eight SOEs in the transport sector. The study investigated five SOEs, namely Air Namibia, Namibia Airports Company, Namport, Roads Authority and TransNamib, covering each transport mode, namely air, sea, road and rail, respectively.

1.11 Outline of the Study

The following chapter outlines were utilised in this study:

Chapter 1: Orientation and Overview provides the general overview of the study. It shows the research problems, the research questions, the research aims and objectives. It goes on to show the significance of this study, thus showing its necessity, meaning and worth. This study was done within a determinable context and this chapter accordingly also shows its limitations and scope. All in all, this chapter introduces the dissertation to the reader.

Chapter 2: State-Owned Enterprises in Namibia: Context and Challenges provides some of the major and salient issues relating to SOEs in Namibia. It gives a descriptive overview of the context and challenges faced by SOEs in the country. The context aspect covers the history and rationale of establishing SOEs in the country while the challenges aspect covers the performance issues and difficulties with which SOEs are faced. The chapter consciously discusses the two aspects (context and challenges) to set the stage for the succeeding chapters. It set questions pertaining to the where (context) and why (challenges) aspects with which SOEs deal with year in and year out. This chapter sets the trajectory of the dissertation and guides its thinking in a systematic and coherent way – from the general to the particular.

Chapter 3: Literature Review provides a systematic identification, location and analysis of documents containing information related to the research problem. These documents include both primary and secondary data: legislation, policies, technical organisational documents, research or scholarly articles, abstracts, reviews, dissertations, books, other research reports and appropriate electronic media outputs.

This chapter ascertains what others have already done on what relates to this study and the topics it covers. This prevents unintentional duplication of other research, but it also provides an understanding and insight that is necessary to place a topic within a logical framework. Chapter 3 thus outlines the research strategies and specific data-collection approaches that have or have not been productive in investigations of SOEs and related topics.

Chapter 4: Transport-Orientated State-Owned Enterprises in Namibia: A Policy, Legislative and Institutional Reality Perspective deals with one of the primary objectives of this research, namely to analyse the performance of SOEs in the transport sector. The chapter breaks down the policy and legal framework and several theoretical and practical aspects relevant to the governing of these SOEs in the country. Furthermore, the chapter delves into the gaps of these legal instruments. It thereafter covers the environment of SOEs and models governing SOEs. This is done while contextualising this environment and these models by showing where they are reflected in Namibian legislation or executive discretionary formations.

Chapter 5: The Performance of State-Owned Enterprises in Namibia presents the analysis of findings of the performance of the transport sector SOEs in Namibia. The chapter gathers data from interviews and desk research and analyses it following the research design and methodologies set out in Chapter 3. There is a strong concentration of the data acquired from field research, specifically the questionnaires that were distributed to the respondents. This data is also analysed in terms of scholarly research and other data revealed in Chapter 2. Previous research is accordingly presented and contextualised. The result is that Chapter 5 reveals that the major causes of mal-performance of SOEs in Namibia have been financial management practices; a deficient management information system; absence of key performance indicators; incompetent management policies; and corruption. Corruption in particular is a common factor in all organisations with poor management, corporate governance ethics and, worse, poor salary structure and political interference.

Chapter 6: A New Approach to the Performance of State-Owned Enterprises in Namibia

reviews some of the innovations and strategies that attempt to enhance the general performance of SOEs in Namibia. This chapter provides an innovative model that can be used to enhance the performance of SOEs in Namibia's transport sector. It builds on the previous chapter by doing a gap analysis. The chapter concentrates mainly on the old framework and then moves to the new proposed one. The question that this chapter ends with is whether these approaches have helped improve the performance of SOEs in the country. By taking into account the gap between the desired ideal and the current reality, the author proposes a new model that can help to improve the performance of SOEs in the country. All in all, the chapter intended to compile a simple but useful innovative model to assist the performance of SOEs in the transport sector. The model contains sufficient details and it can easily be understood.

Chapter 7: Conclusions and Recommendations identifies the core answers to the research questions set and makes appropriate recommendations based on these answers. The recommendations made in this chapter are based on conclusions reached from the analysis done in the previous chapters. The recommendations are meant to be pragmatic approaches to address the pressing challenges faced by the selected SOEs in the transport sector. It is important to mention that at the end of this concluding chapter there are also recommendations for further research. These recommendations show that there are still very close and related areas that should be researched. This part also illustrates the limitations of the study and the scope to which the study was confined and why other compelling questions were avoided.

CHAPTER TWO: STATE-OWNED ENTERPRISES IN NAMIBIA – CONTEXT AND CHALLENGES

2.1 Introduction

This chapter deals with some of the major and salient issues relating to state-owned enterprises (SOEs) in Namibia. It gives a descriptive overview of the context and challenges faced by SOEs in the country, covering the history and rationale leading to the establishment of SOEs, as well as SOE performance and the difficulties they face. The chapter consciously discusses the two aspects of context and challenges to set the stage for subsequent chapters. It also sets questions pertaining to the where (context) and why (challenges) aspects that SOEs must deal with, year in and year out. This chapter sets the trajectory of the dissertation and guides the thinking of the dissertation in a systematic and coherent way – from the general to the particular.

It should be taken into account that the situation of SOEs in Namibia has been met with mixed views. These entities operate in a different context and face different challenges. Some are performing well and some are not. However, the general feeling (as is demonstrated in Chapter 5) is that, there is a need for some serious revisiting of how SOEs can operate better and be more effective and efficient as they strive towards greater productivity.

Since this chapter covers the context and challenges of Namibian SOEs, it considers the historical context that informed the formation of SOEs in the country at independence, followed by the post-independence context, where several developmental strategies were adopted and the SOE sector was progressively reformed. It was during these reform processes that the government of the Republic of Namibia (GRN) endeavoured to deal with many of the challenges that face SOEs in the country.

These challenges are multiple and may differ from one SOE to another. It is within this understanding that the chapter considers these challenges from a general perspective, where necessary and relevant; however, specific challenges for specific SOEs are also mentioned. The chapter is broadly structured as follows:

- Historical overview of SOEs in Namibia;
- Challenges of SOEs; and

- Conclusion.

A closer look is now taken pertaining to the historical overview of SOEs.

2.2 A Historical Overview of SOEs in Namibia

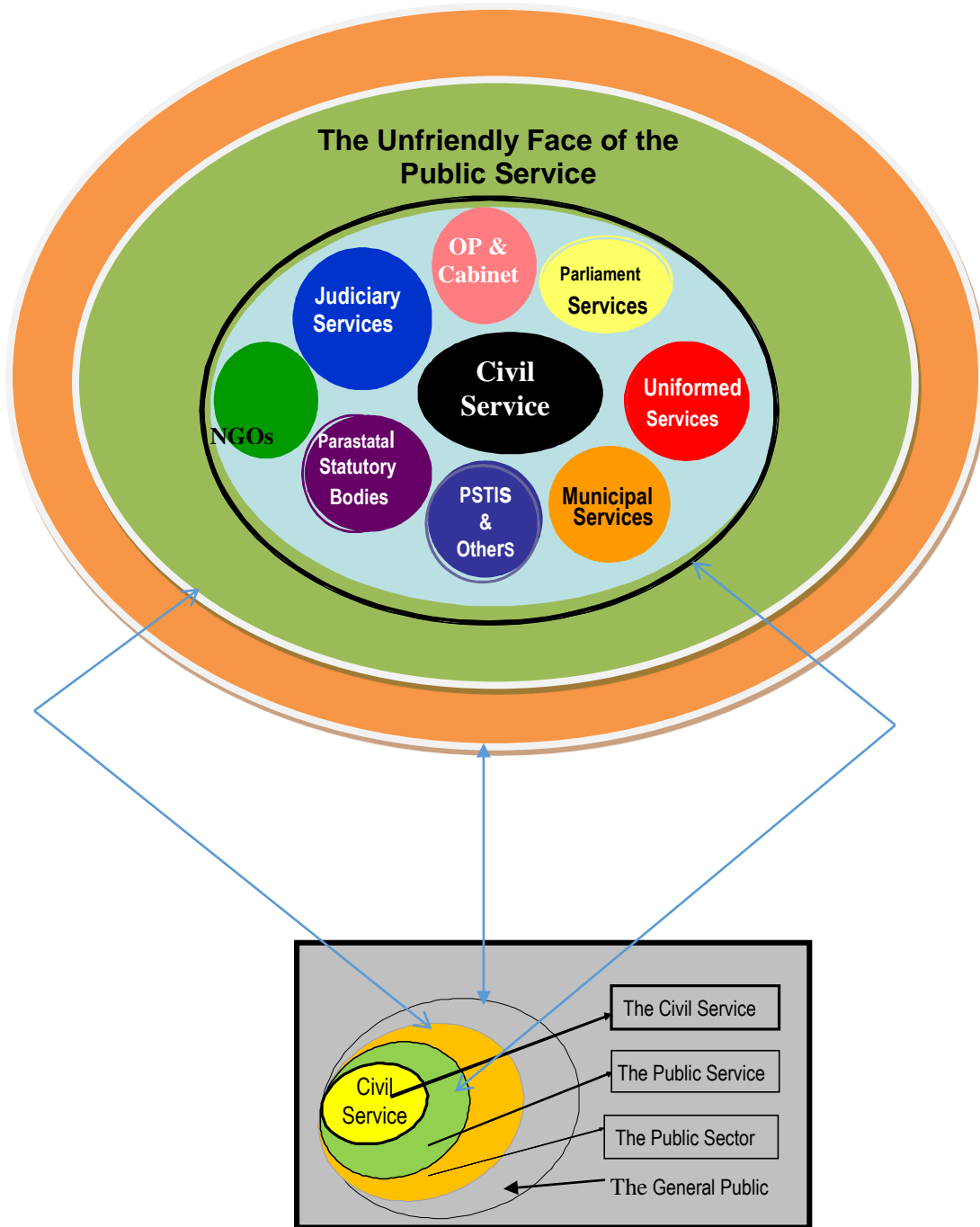
The history of SOEs in Namibia cannot be separated from the history of the struggle against foreign rule on the one hand and for socio-political and economic emancipation on the other. Many public enterprises were tied into the lives of state-run financial and economic institutions in South Africa and, therefore, did not have a life of their own in Namibia. Some of these South African organisations date back to the 20th century (IPPR, 2017; New Era Publications, 2015). Others were created in South Africa in the 21st century, indicating that they underwent some phases of transformation and restructuring that had an impact on their institutional culture and styles of operation.

Similar to many countries in post-independence Africa, the first task for the Namibian government immediately after independence was to establish a public sector that is responsive to all inhabitants of the country. Although the private sector existed prior to independence, most services were provided or regulated by the government, which resulted in a huge civil service. This civil service was set to expand even more as the new government had to incorporate those citizens that were outside, fighting for the liberation of the country, and those that were simply previously left out for political and/or racial reasons.

Taylor (2006) observes that there was hardly any distinction between Namibia's civil service and Namibia's public service, and that both operated under the same Public Service Act and were managed by the Public Service Commission, although they had different components and stakeholders. Taylor's (2006) depiction of their differences is illustrated in Figure 2.1 below.

Figure 2.1: Public Service Reform in Namibia

Source: Taylor (2006)



To address the above challenges, as well as the bloated civil service and its systemic inefficiencies, in 1995 the Wage and Salary Commission (WASCOM) recommended to Cabinet that some of the government functions be commercialised or privatised. This led to the establishment of many parastatals, such as Namibia Power (NamPower), Namibia Water Corporation (NamWater), Telecom Namibia, Namibia Post, Namibia Wildlife Resorts, Motor Vehicle Accident Fund (MVA), Namibia Airport Company (NAC), Namibia Ports Authority (Namport), Road Contractor Company (RCC), Roads Authority (RA) and TransNamib Holdings (TNH). With limited time, research and consultation, these parastatals were transformed into public and private liability entities with their own boards appointed by the respective portfolio ministers.

As a means of reinforcing the government's position, Namibia's first National Development Plan (NDP1) made the government's policy clear by indicating that the state would withdraw from activities that can be more effectively undertaken by the private sector and right-size those that would remain under government control. This policy position resulted in the establishment of more SOEs, with the number increasing from a mere 12 to 72 in 2014 (*The Namibian*, 10 July 2014:2). To date, the number has increased to 90 SOEs (IPPR, 2016).

Notwithstanding good intentioned actions, such as rightsizing, there are several factors that inform the establishment and subsequent growth of parastatals. According to Sherbourne (2017), some parastatals had to be established in the process of building the new state (Bank of Namibia is but one example), and the government was keen to move some of its non-core services towards commercialisation, taking functions that were being performed by the government and spinning them off into separate companies for improved efficiency and effectiveness. Already by the early 1990s, it was becoming clear that the Namibian government harboured intentions of withdrawing from non-core business activities.

Against the above background, the need to commence and continue the restructuring of SOEs was inevitable. In addition to the monumental political change in the early 1990s in Namibia, the government's focus on the transformation of the SOEs was also necessitated by other factors, namely:

- a) The arrival and on-going democratisation of the public space;
- b) The unprecedented modernisation and changes in technology;
- c) Changes in international economic conditions after the end of the Cold War;

- d) The realities of a Namibia sandwiched between two strong economies – Angola in the north and South Africa in the south;
- e) The economic inequalities regarding race and gender factors that came about as a result of a deliberate white supremacist and male chauvinist planning paradigm;
- f) The need to manage expectations following the arrival of democracy and a human rights culture;
- g) Changes of political and socioeconomic development imperatives;
- h) The importance of making Namibia a competitive nation based upon its economic growth and prosperity; and
- i) The need to tackle rampant poverty through, inter alia, job creation and small- and medium-scale business interventions towards self-reliance.

(New Era Publications, 2015)

The transport reforms also followed the general pattern as indicated above. With significant assistance from Sweden, the transport sector underwent a fundamental transformation in the late 1990s under the auspices of the then Ministry of Works, Transport and Communication 2000, (popularly called the MWTC2000 Project). According to Folwell (2008), the principal notion of this undertaking was to improve efficiency and effectiveness in the sector by concentrating on core functions and separating policy and regulations from implementation or operations. The policy and regulatory functions were to remain with the Ministry, while implementation was to be conducted by parastatals (SOEs).

Furthermore, governance of these parastatals was to be the responsibility of the board. The operations and performance were to be monitored through formal annual performance agreements between the Ministry of Works and Transport and the relevant parastatals. In turn, the Ministry had to table these annual reports to parliament, covering the physical and financial performance of each parastatal for which it was responsible (Folwell, 2008:1).

In the final analysis, it is noted that the on-going restructuring initiatives to be carried out by the Ministry of Public Enterprises occur in the context of a dynamic process of nation building, part of which is the on-going realignment of planning with the broader and medium- and long-term stratagems of the Namibian state to steward available resources towards the goals of development, peace, security and stability (New Era Publications, 2015; Jauch, 2012).

2.3 Challenges of SOEs in Namibia

In Namibia, SOEs play, or should play, an important role in the developmental agenda of the country. All SOEs are regulated by legislation, which, for the most part, was fragmented until the Public Enterprises Governance Act 2 of 2006 (as amended) was enacted. This placing of SOEs under one major Act raised other governance and relational issues. This Act is considered in detail later on. For this chapter, however, it is important to appreciate the functions of SOEs before considering the challenges they face in fulfilling their mandates or functions. Section 4(1) of the Public Enterprises Governance Act outlines the functions and duties of the State-Owned Enterprises Council (now replaced by the Ministry of Public Enterprises), namely:

- To establish generally accepted common principles of corporate governance and good practices for governing SOEs;
- To develop common policy frameworks for the operations of SOEs, including policies on issues relating to human resources, assets and finance;
- To determine criteria for the performance measurement and evaluation of SOEs and to develop appropriate means for monitoring SOEs' performance;
- To make determinations in relation to the number of members to be appointed to the boards of SOEs and to advise the portfolio ministers on the appointment of such members in accordance with sections to facilitate the provision of programmes for the training and development of members of the boards and management staff of SOEs in corporate governance and efficient management practices; and
- To receive and consider for approval submissions made by SOEs to the annual distribution of profits and the declaration of dividends.

It should be appreciated from the above functions of SOEs that the Namibian SOE design shows a strong developmental agenda. Thus, Murangi (2010) adds that SOEs play an important role in the national economy of Namibia in terms of economic growth and development, as well as poverty eradication. SOEs represent an extended arm of government by providing key public goods and services to the country that cannot be provided by private enterprises. However, this agenda is met with challenges. Although better governance and improved efficiency improve the Government of the Republic of Namibia's fiscal position,

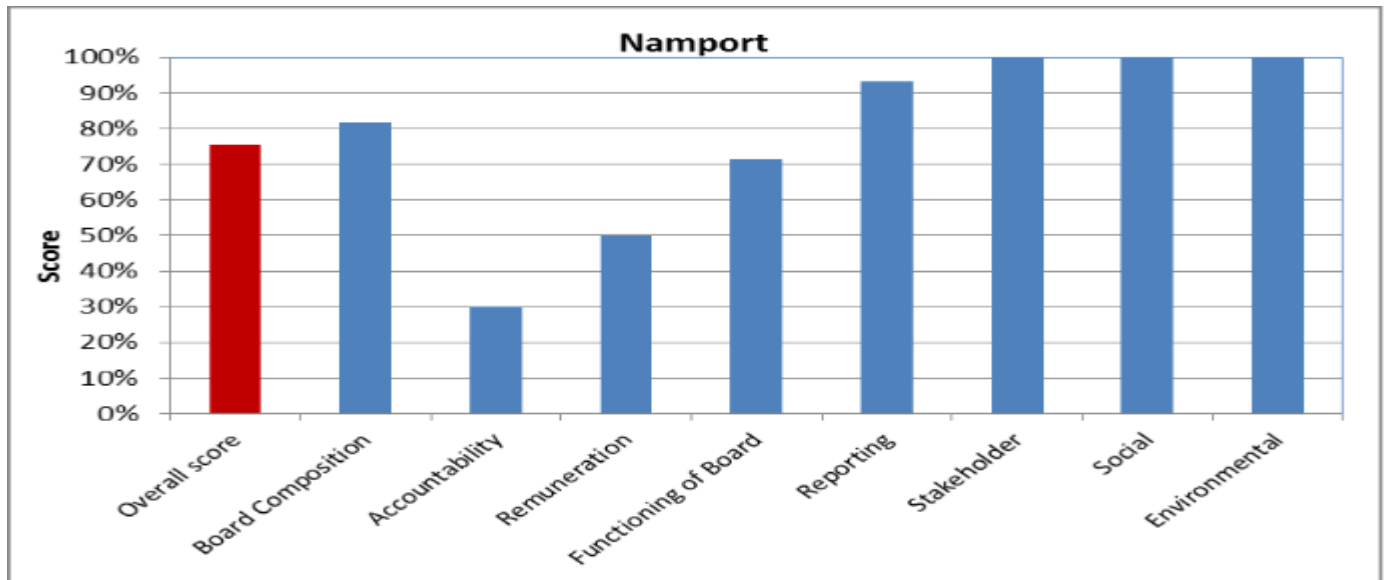
enhance delivery of service and increase job creation, the reality in 2005 showed “poor performance, mismanagement and corruption in many SOE’s (Murangi, 2010).

The SOE design in Namibia has been shown as not based on a centralised shareholder management model. Most SOEs are 100% government-owned with the voting shares held equally by two ‘shareholding ministers’, namely the Minister of Finance and the portfolio minister who is currently, as with the new government, under President Geingob and by convention the Minister of SOEs. The SOEs report to the government and the government appoints their boards. Furthermore, the legislative framework as shown below classifies SOEs into four categories. In terms of Section 4(2) of the Public Enterprises Governance Act 2 of 2006, SOEs can be classified as:

- Regulatory;
- Service rendering;
- Economic and productive; or
- General enterprises.

The South African Presidential SOE Review Committee (2012:15) calls the Namibian approach to SOE classification a progressive one, that is practical and uncomplicated not only for classifying SOEs but also for managing them effectively. The report states that the Namibian “manner of classifying SOEs is forward-looking, inclusive and sustainable” (South African Presidential SOE Review Committee, 2012:15). Despite this positive comment, SOEs in Namibia face some distinct governance challenges. The performance of SOEs in Namibia has been in the spotlight for many years, resulting in the government of the Republic of Namibia introducing interventions and strategies to address and improve their performance.

Shifidi (2014: evaluated corporate governance in SOEs in Namibia, concluding that corporate governance in Namibia “is such a serious challenge, especially in the public sector. In addition, the author offers a generic outlook on this problem without concentrating on one sector, as in this study (Shifidi, 2014). However, it is obvious that the public sector that Shifidi (2014) alludes to includes SOEs. There are, however, a few companies, such as the Namibia Ports Authority (Namport) that are doing relatively well and are close to having an annual report that is almost an integrated report (Shifidi, 2014:iv).

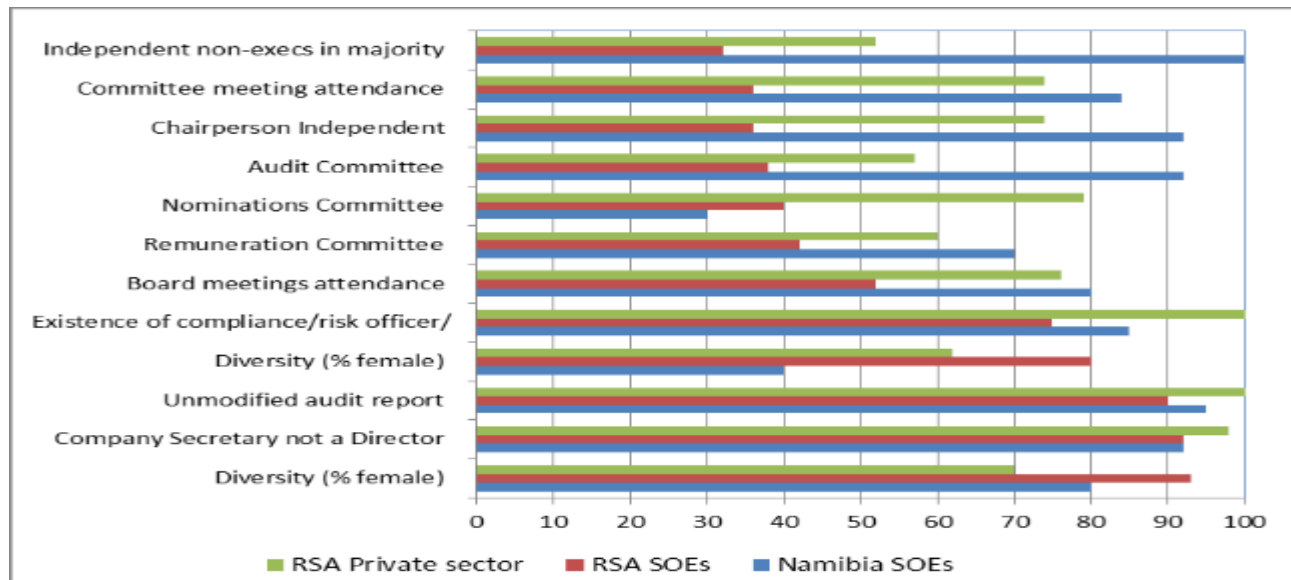
Figure 2.2: Namport Corporate Governance

Source: Shifidi (2014:46)

The author focused on the disclosure aspects of good corporate governance (see Figure 2.2 above), such as remuneration, reporting etc. Namport scores higher, about 76 % (from the 13, Tier 3 SOEs (those classified as larger SOEs in Namibia) selected by Shifindi, 2014) in most of those key governance aspects and this may explain its good performance as an SOE when compared to others in the country. From the above figure, it's clear that Namport is committed to the principles of good corporate governance as contained in the King III Report.

With regards to the sustainability aspects, it was observed that Namibia's SOEs are relatively on par with both South Africa's SOEs and the private sector when compared to the results of similar research studies in that country. This is depicted in the graph below.

Figure 2.3: Comparison between Namibian SOEs, South African SOEs and the South African Private Sector for Sustainability Indicators



Source: Shifidi (2014:46)

These kinds of results show that there is a strong correlation between Namibian SOEs and those from South Africa. These results remain relevant as they paint a general picture of the performance of SOEs that have similar problems. Furthermore, some comparative analysis help to identify common problems, lessons learnt and also best practices. This takes us directly into the important topic of this study, namely corporate governance.

With the above general overview of the performance of SOEs, some of the notable challenges with which SOEs in Namibia are faced, are considered below. These challenges have led to the poor performance of SOEs, resulting in financial reliance on state subsidies and bailouts.

2.3.1 Mismanagement

As is often noted, board members and managers of SOEs know that if they fail, they can count on a bailout from the state, which can lead to either overly risky behaviour or shoddy performance. In addition, accountability is a problem as it is often unclear to whom SOEs should

ultimately report to, in a whole array of bodies and ministries tasked with oversight, while their shareholders (i.e. citizens) have only indirect ways of holding them accountable. According to Steytler (2009:19), “[t]he poor financial performance of state owned enterprises have [sic] often been attributed to weak management practices of the CEOs of these institutions.” Despite GRN introducing several measures to ensure that SOEs perform to the satisfaction and expectations of their stakeholders, the problem still persists. It has been suggested that such risky behaviour and associated adverse [performance] outcomes should not be blamed on the incompetence of CEOs of SOEs (World Bank, 1995). In a study, titled *Bureaucrats in Business*, the World Bank argues that focus should instead be on the contradictory goals and perverse incentives under which SOEs’ CEOs operate. This research interrogated both assumptions, i.e. level of competency of CEOs, as well as SOEs’ operating environment.

The Namibian government introduced several measures to ensure the efficient governance and monitoring of state-owned enterprises and to ensure that these are performing to the satisfaction and expectations of stakeholders. These measures included the introduction of the State-Owned Enterprises Governance Act 2 of 2006, as well as governance structures to ensure that the performance of state-owned enterprises is properly maximised.

The State-Owned Enterprises Governance Act of 2006 introduced what has been called the ‘dual-governance model’. As described, this model proposed that oversight be shared between portfolio ministries (e.g. the Ministry of Works and Transport), who are the shareholders of SOEs, and the newly created State-Owned Enterprises Governance Council (SOEGC), a cabinet committee chaired by the prime minister. The SOEGC was supposed to develop a framework for the governance and determine how performance would be measured. Despite these efforts by the government to regulate state-owned enterprises with the intention to improve performance, to date the poor performance of state-owned enterprises is still a topical issue in Namibia. Almost a decade after the promulgation of the State-Owned Enterprises Governance Act of 2006, the government is still financially bailing out a number of state-owned enterprises.

2.3.2 Problems with bureaucracy

Bloated bureaucracy and overstaffing could be other contributing factors to the poor performance of SOEs. For example, although the civil service consisted of about 42,563 civil servants in 1990, with management positions occupied mostly by white people and a few coloured people, the injection of about 15 000 new posts and the need to achieve racial and ethnic balance therein raised the civil service to a level that was not sustainable (Office of the Prime Minister, 1995). To address this problem, in 1995 the Wage and Salary Commission (WASCOM) recommended to the Cabinet that some of the government functions be commercialised or privatised. This exercise led to the establishment of many parastatals that absorbed these civil servants. The transfer to these new entities was largely done without proper training, a factor that could have further compounded inefficiency and ineffectiveness of transport sector SOEs in Namibia. For example, Mubwandarikwa (2013) concludes, the weaknesses in corporate governance are one of the primary problems which TransNamib is facing. This problem, however, is not limited to a single SOE. Instead, it seems to be chronic in the whole transport sector with Air Namibia, Namibian Airport Company and others included.

Mubwandarikwa's (2013) study concentrates on investigating the impact of corporate governance on the performance of TransNamib, an SOE that is part of the transport sector and the study is thus very relevant to this research. Another perspective is provided by the Institute for Public Policy Research, who argue that [SOE] management is either unclear on how to conduct itself or make decisions based on self-interest rather than on what is best for the enterprise or the public at large.

While it is true that many SOEs have experienced governance and performance problems, it is important to note that, they are not doomed by their inherent nature. There are ways of structuring incentives that ensure good performance and methods of accountability that work, and many examples from around the world demonstrate that SOEs can be world-class competitive businesses. For example, South Korea's steel company became the most efficient in the world and state-owned Singapore Airlines is considered one of the best airlines worldwide.¹² To address these challenges, the OECD published best practices for state-owned enterprises.³

³ IPPR/Institute for Public Policy Research. 2016. Briefing Paper SOE Governance. In Namibia: Will A Hybrid System Work? Windhoek: Institute for Public Policy Research, Hans Siedel Foundation.

Furthermore, one may fairly state that, the problems with bureaucracy are historical. The young Namibian state suffered a deficit of intellectual prowess that would have seized the important and necessary function of theorising and scenario planning and, as a consequence, continued to fix the vehicle while it was moving (New Era Publications, 2015). In the absence of an alternative to capitalism, the new political elite in the country fell prey to the temptations of wealth accumulation and the banality of politics (Bayart, 1993).

2.3.3 Lack of transparency

There have been allegations of lack of transparency in some of the SOEs. For example, Kahiurika (2015) suggests that government in general has been lax in the way it treated SOEs in this respect. It is rather unfortunate that in the past few years, SOEs have failed spectacularly at providing the sort of transparency Namibian taxpayers deserve (Kahiurika, 2015). The Institute for Public Policy Research (IPPR) (2016) notes:

For a long time citizens did not even know how many parastatals they were supporting. For many years, various research publications relied on their own counts in the absence of official numbers (Links & Haimbodi, 2011). A Government Gazette from 2013 put the number at 72. In 2016, the official website of the Ministry of Public Enterprises seemed to take some time to clarify this, first saying there were “over 90” parastatals before changing the text to specify there were 98,” although it listed only 43 as of early November 2016. If citizens do not even know how many companies they own – let alone their names, functions, and details on their performance – it is impossible for them to know how SOEs are doing.

(IPPR, 2016:11)

In terms of Section 26 of the Public Enterprises Governance Act of 2006, SOEs must produce annual reports that include audited financial statements, information on their performance, as well as a statement detailing the extent to which they have met their targets (PricewaterhouseCoopers, 2015). This annual report must then be tabled in the National

Assembly so that it becomes a public document. In the past, SOEs have failed almost entirely to follow these instructions.

In late 2015 and early 2016, the IPPR attempted to track down SOEs' most recent annual reports (IPPR, 2016:12). Out of the 70 SOEs investigated, 35 had no annual reports on their website. The culprits included some of the most prominent SOEs and several only had outdated reports online. According to the report, [d]irect requests to SOEs without reports on their websites yielded only a handful of positive results, often severely outdated. It should be noted that private researchers are not the only ones struggling to get information out of SOEs (IPPR, 2016). In September 2015, Minister Leon Jooste addressed parliament to complain about "the serious non-compliance of public enterprises" after he had written to them requesting information on their remuneration practices. He indicates in the question and answer (Q&A) session that annual reports will be included in performance agreements and be subjected to sanctions (Kaira, 2015).

2.3.4 Administrative and institutional arrangements

The recently created Ministry of Public Enterprises (MPE) is mandated to ensure that Namibia's SOEs play a meaningful role in the country's development. This includes ensuring that SOEs are well managed and do not present a financial burden to the state. Whilst the SOEGC, which is mandated to provide efficient governance of SOEs on behalf of the government, is vested with powers and responsibilities for implementing an integrated governance policy framework against which to monitor compliance by SOEs, the MPE is not in denial about the challenges involved in executing its own mandate.

In its Strategic Plan 2017/18 – 2021/22, MPE cites the dual governance model of the public enterprises sector, where ownership is shared between the line ministry and the MPE, as a key hindrance to SOE efficiency. It goes on to single out the dual model with its multiple owners (Cabinet; MPE; various portfolio ministries, transport included; board of directors and management/executives of SOEs) as constituting "too many layers of authority and communication", making it difficult for the Ministry to efficiently and effectively perform its oversight functions as stipulated in the Act. "This multiple principal agency scenario blurs reporting and accountability lines due to the presence of different role players" (MPE, 2017:11).

The institutional architecture is also characterised as problematic. In particular, different pieces of legislation and policy documents of various SOEs “prescribe different governance structures which create overlaps when effecting provisions of the Act”. For example, the Companies Act 28 of 2004 differs from the Public Enterprises Governance Act 2 of 2006 and from SOEs’ constituent acts (e.g. the Roads Authority Act 17 of 1999 and the Roads Contractor Company Act 14 of 1999) in terms of risk, liability and fiduciary responsibility. For example, the Competition Act (No. 2 of 2003) makes provision for SOEs to be subject to its provisions, as the Act binds the State insofar as the State engages in trade or business for the production, supply or distribution of goods or the provision of any service, but the State is not subject to any provision relating to criminal liability.

Additionally, “the multiplicity of reporting lines and conflicting policy instruments lead to conflict between management, boards and ministers due to differing interpretations of the SOEs’ high level statements and strategic priorities” (ibid.). Finally, by its own admission, the MPE recognises that its institutional structure and competency requirements “need urgent scrutiny and capacitating to enable it to deliver on its core mandate”. The final nail in the coffin of the institutional architecture for SOEs is the admission by MPE that such a framework is “unsustainable, inadequate and unable to transform SOEs into agents of socio-economic development”.

2.3.5 Problematic monopolies

The natural monopolies that are infrastructure driven are in the areas of railways, roads, air, ports, finance, power, energy, industry and telecommunications, while some offer strategic goods and services in the areas of the post office and defence (Gaomab II, 2017:2). The Competition Act (No. 2 of 2003) binds the State insofar as the State engages in trade or business for the production, supply or distribution of goods or the provision of any service, but the State is not subject to any provision relating to criminal liability. The Competition Act further applies to the activities of statutory bodies, except insofar as those activities are authorised by any law.

Therefore, SOEs are subject to the Competition Law in Namibia when they are engaged in productive enterprising and commercial services. However, it is an open question whether one

can challenge the government for holding many monopolies through SOEs, which clearly excludes other business entities. A good example is the monopoly status of TransNamib, relating to its sole running of the railways. There is worldwide concern about whether the involvement of the State through SOEs crowds out private businesses in the private sector within a marketplace.

At present, the Competition Commission is not empowered to handle the issue of monopolies held by SOEs. However, the Competition Commission, after recognising that the Competition Act (No. 2 of 2003) applies to SOEs, has started to interrogate the importance of amending the law to further strengthen the legislation empowering it to attend to the conduct and behaviour of SOEs so that there is a level playing field for both the public and private sectors through competitive neutrality.

The commission noted that, competitive neutrality describes the aim of a level playing field in mixed public and private markets, where state-owned or quasi-public bodies line up to compete with private sector companies. These markets tend to be distorted as a result of structural and behavioural advantages enjoyed by public providers and a failure of public buyers to ensure a fair competition process and engage the private sector. Instead, market failure and anti-competitive behaviour ensues.

2.3.6 Whether or not to privatise

Having recognised the above-mentioned challenges facing SOEs in Namibia, one question lingers: is privatisation of these SOEs the answer? There is no official government programme to privatise part of, or all, SOEs, but debates have sprouted on this hot topic in the Namibian context. According to President Geingob (2009), privatisation in Namibia can be an advantage as it can lead to improved economic efficiency, cutting of waste and mobilisation of both foreign and domestic investment. There is a need to balance the participation of the private and the public sectors, thus the researcher's view is that, it is the responsibility of government to promote the optimisation of benefits accruing to Namibians through building complementarities between the private sector and the public sector.

An alternative argument suggests that, despite the apparent benefits offered by privatisation, experience from Africa has shown that privatisation is not a seamless process, at times, it has

brought problems, including increasing unemployment (Bank of Namibia, 2009:5; Geingob 2009:13-14). This view again shows the advantages and disadvantages of privatisation in Namibia and sheds important light on the fact that there is a need for this to happen, albeit subject to good justifications.

Using experiences, as well as evidence of privatisation efforts across the globe, Steytler (2009) shows historical background to privatisation of SOEs from a global perspective and notes that the major drivers of privatisation, especially in Britain and the USA, were:

1. To address the numerous, inefficient and poorly managed SOEs that had begun to drain governments' resources; and
2. The growing dominance of the neo-liberalist ideology during the time where the free market was seen as the optimal driver of economic growth; hence, the role of the state was supposed to subside.

Contrary to popular belief, empirical studies suggest that the impact of privatisation has been largely positive or neutral in most cases (Bank of Namibia, 2009:7; Steytler, 2009:21-29). Although there were job losses and price hikes following privatisation, the impact on income inequality and poverty reduction is less clear. Generally, there are no overwhelming arguments for or against privatisation. However, it seems most of the fears of privatisation might be unfounded and that, under certain circumstances, there might be modest or even big net gains, especially at firm level.

2.4 Conclusion

This chapter described the context in which SOEs operate in Namibia. It traced some selected historical events that led to the government's efforts to establish SOEs. This context was informed by both the politics and legislation of the time. Further developments that consider the SOE sector being revamped from time to time have emerged. These reforms have occurred at both legal and institutional levels.

The chapter further highlighted the major challenges facing SOEs. These challenges are multifarious and multidimensional. It is with this understanding that this chapter considered the challenges from a general standpoint. Specific SOEs may have specific problems but there are some that can be generalised. Thus, where necessary, specific problems for specific SOEs have also been considered.

CHAPTER THREE: THE PERFORMANCE OF STATE-OWNED ENTERPRISES AS GOVERNANCE AND SERVICE DELIVERY INSTRUMENTS: A LITERATURE REVIEW

3.1 Introduction

This chapter reviews the literature on the performance of state-owned enterprises as governance and service delivery instruments. The emphasis is on definitions, concepts, theories, models, frameworks and approaches. Accordingly, the chapter takes a conceptual and theoretical perspective. While there is an array of literature on SOEs (Amatori, 2017; Bance & Obermann, 2015; Florio & Fecher, 2011; Musacchio & Lazzarini, 2014; Hu, 2017; Mbo & Adjasi, 2017; Florio, 2014; Bernier, 2015), including on the performance of SOEs in Africa (MacDonald, 2014), this review mainly focuses on issues of ownership structures, managerial autonomy, and commercialisation and privatisation, as well as factors that drive good SOE performance (Mbo & Adjasi, 2017). A critical review of the rich available literature ensures a systematic analysis of themes and topics relevant to the current research. To this end, the chapter forms an important conceptual link with the rest of the chapters providing the basis for further analysis of Namibian SOEs within the economic, governance and legal framework in which they operate.

3.2 SOEs: What are they and why do they exist?

It is important to define what is meant by the term SOEs. One definition of SOEs distinguishes public enterprises from privately owned enterprises in terms of governance, attitude to risk and access to resources (Estrin, et al., 2016). The issue of ownership is fluid in the sense that the state owns or manages other organisations, such as courts. This has given rise to the notion of 'hybrid organisations' (Bruton, et al., 2015), offering a nuanced view of SOEs in which the levels of ownership and control by the state can vary, for example in terms of the proportion of the firm's total shares owned by the central or local government or authorities (Cui & Jiang, 2012; Musacchio & Lazzarini, 2012).

It is the differences in definitions that led Kowalski, et al. (2013) to conclude that a greater understanding of issues and proper definitions of state ownership and control will affect research on SOEs positively, including helping countries to understand how such organisations' performance might be influenced.

When considering why SOEs exist from a transaction cost theory perspective, it can be understood that firms adapt to economic or transaction costs in a more efficient way than markets (Coase, 1937; Williamson, 1975; Williamson, 1985). However, the emergence and persistence of SOEs are also associated with the existence of market failures (Peng, et al., 2016).

3.3 SOEs: Theoretical Perspectives

The classical view of SOEs has typically been framed around dimensions of efficiency, productivity and administrative bureaucracy (Cuervo-Cazurra, Inkpen & Musacchio, 2014). A number of theoretical perspectives, namely, the property rights school, the public choice tradition, the neoclassical approach, the behavioural approach and the budget-maximising approach, have been used to model SOEs (Lawson, 1994). Despite a long theoretical interest in modelling SOEs and their large impact on the global economy, challenges still remain and they require the development of a comprehensive theory of SOEs (Peng, et al., 2016).

Amongst property rights theorists who argue that ownership matters (Cheung, 1983; Grossman & Hart, 1986; North, 1990; Hart, 1995), the ownership of SOEs by the state is regarded as having explanatory power on the question of efficiency. Accordingly, it is argued that by virtue of their ownership and control, SOEs are relatively inefficient when compared to privately owned and managed firms. The argument advanced from the property rights perspective is that managers in SOEs have little or no incentive to reduce waste and maximise profit because they do not suffer the economic consequences of their decisions. From this perspective, privatisation, i.e. turning SOEs into private firms, would increase their efficiency – a belief not always supported by empirical evidence.

A similar argument is advanced by agency theory as well as public choice theory. Agency theory links the poor performance of SOEs to the separation of ownership and control (Jensen &

Meckling, 1976; Fama & Jensen, 1983). Managers in SOEs have weaker incentives and they are relatively less motivated to monitor and eliminate waste in order to increase efficiency. In turn, public choice theory argues that politicians, bureaucrats and government officials, as self-interested agents, pursue goals to maximise votes, power and prestige rather than broader goals, such as maximising the internal efficiency of SOEs for the public good.

With regards to privatisation as the remedy for inefficient SOEs, the main argument put forward by advocates of privatisation is one for enhancing the efficiency of SOEs (Arocena & Oliveros, 2012). As discussed, this argument is based on the belief that firms in private hands perform better than those under public ownership (Arocena & Oliveros, 2012: 458). Such transfers of ownership (i.e. privatisation) “go beyond selling of assets to include opening state monopolies to competition, contracting out, privatising the provision of public services, reducing subsidies, and increasing or introducing user charges” (Zahra, et al., cited in Kwon & Kim, 2017:187-8).

It should be noted that while the neoliberal economic theory strongly holds the tenet that privatisation enhances economic efficiency, the hypothesis that privatising SOEs would result in reducing inefficiencies, such as wastefulness, political interference and irrational fee structures in parastatals, remains an open question (Kwon & Kim, 2017). Some have gone as far as to suggest that measures other than privatisation, e.g. price deregulation, market liberalisation and increased use of incentives, can equally improve the efficiency of SOEs (Peng, et al., 2016)

3.4 Managerial Control vs Autonomy

The boundary implied by the dichotomy between SOEs and privately owned and controlled firms has recently been questioned from the perspective that ownership boundaries may not be fixed. For example, following the managerial autonomy argument advanced by Lioukas, Bourantas and Papadakis (1993), recent work on the governance of SOEs (Cuervo-Cazurra, Inkpen & Musacchio, 2014; Jiang et al., 2015) suggests that as much as SOEs can be privatised, likewise private firms can be nationalised to become SOEs. The separation of ownership and control of SOEs can give rise to state-owned and manager-controlled or state-owned and privately controlled entities. The consequence is characterised as the blurring of the

line between SOEs and non-SOEs on the one hand and among various kinds of SOEs on the other (Bruton et al., 2015; Peng et al., 2016).

3.5 Recent Extensions to Theories on SOEs

A number of extensions have recently been proposed to the dominant theories of SOEs. For example, Monteiro and Zylversztajn (2012) have proposed unbundling the concept of property rights into three elements: (1) rights to income generated from the property, (2) rights to control and use property, and (3) rights to transfer or sell property. Based on the first bundle of rights granting the state rights to income generated by SOEs, Peng et al. (2016) suggest four propositions linked to the economic performance of SOEs. These are summarised in Table 3.1.

The first proposition states that SOEs will economically outperform private firms. The alternative proposition states that SOEs will economically underperform private firms. These two hypotheses can be tested by investigating under which conditions and according to which economic performance criteria SOEs are likely to either outperform or underperform privately owned firms. The relevant conditions and economic performance criteria include: (a) the presence and relative strength of innovation incentives, (b) the relative necessity to contain costs, and (c) the time applicable to performance criteria. This argument is central to the debate on whether to privatise Namibian SOEs or not.

Based on Shleifer's (1998) and Schumpeter's (1942) arguments, and taking into account both ownership and institutional conditions, the above two propositions can further be refined into the following hypotheses: (i) when incentives to innovate are weak, imperatives to contain costs are moderate and performance criteria are more long term and non-economically oriented, thus SOEs will outperform private firms; and (ii) when incentives to innovate are strong, imperatives to contain costs are compelling, and performance criteria are more short term and economically oriented, thus SOEs will underperform private firms (Peng et al., 2016:303).

The transaction cost theory has also been extended based firstly on the proposition that SOEs are likely to emerge in economies characterised by several market failures. Furthermore, the boundaries of SOEs are determined by the trade-offs between the transaction cost savings brought about by state control and the additional bureaucratic costs brought about by state

agencies and units involved in the management of SOEs (Peng et al., 2016:304-5). Similarly, deriving from its central tenet of conflicts of interest between state owners (controlling shareholders) and SOE managers and employees (as agents), agency theory has been extended by proposing, first, that the latter are likely to experience incentive problems that do not sufficiently motivate them to strive for a high level of economic performance and, second, that principals (owners) of SOEs are likely to experience monitoring problems that lead to SOEs' deviation from the goals of state owners.

Recent research in agency theory also highlights the role that principal-principal conflict between the state and its employees as controlling shareholders, on the one hand, and citizens as minority shareholders, on the other hand, can serve to extend the interests of the former at the expense of the latter (Chen & Young, 2010; Young et al., 2008; Peng et al., 2016). This prompts a suggested extension of the agency theory by proposing: (a) that when conflicts arise between state owners and citizens, SOE managers and the SOEs themselves – are likely to make decisions to advance the interest of state at the expense of citizens, and (b) that the presence of multiple blockholders in SOEs may provide a constraint on the behaviour of the controlling shareholders and managers (Faccio, Lang & Young, 2001; Peng et al., 2016).

Additionally, the resource-based theory, which has traditionally focused on market-based resources and capabilities, has been extended to include non-market-based, political resources and capabilities (Oliver & Holzinger, 2008). Political resources and capabilities are considered to play a significant role in SOEs' performance (Li, Peng & Macaulay, 2013).

The first propositions put forward to capture this perspective state that SOEs, buoyed by their interest to enhance the value, rarity, and inimitability of resources and capabilities are likely to develop and leverage non-market-based political ties – especially in industries with strong state influence. Another proposition is that the economic performance of SOEs is likely to improve when they leverage both market-based competitive capabilities and non-market-based political capabilities. Table 3.1 below summarises the four propositions linked to the economic performance of SOEs as suggested by Peng et al. (2016).

Table 3.1: Recent Extensions to Theories of SOEs

Theory	Extension	Frontiers
Property rights theory	Proposition 1: SOEs will outperform privately owned firms	Proposition 3: When incentives to innovate are weak, imperatives to contain costs are moderate and performance criteria are more long-term and non-economically oriented, SOEs will outperform private firms
	Proposition 2: SOEs will underperform privately owned firms	Proposition 4: When incentives to innovate are strong, imperatives to contain costs are compelling, and performance criteria are more short-term and economically oriented, SOEs will underperform private firms
Transaction cost theory	Proposition 5: In underdeveloped economies infested by severe market failures, SOEs are likely to emerge	Proposition 6: Boundaries of SOEs are determined by trade-offs between the transaction cost savings brought by state control, and additional bureaucratic costs brought by state agencies and units involved in the management of SOEs
Agency theory	Proposition 7: SOE managers and employees (as agents) are likely to experience incentive problems that do not sufficiently motivate them to strive for a high level of economic performance	Proposition 9: When conflicts arise between state owners (controlling shareholders) and citizens (minority shareholders), SOE managers and SOEs themselves are likely to make decisions to advance the interest of state owners at the expense of citizens
	Proposition 8: State owners (principals) of SOEs are likely to experience monitoring problems that lead to SOEs' deviation from the goal of state owners	Proposition 10: The presence of additional blockholder(s) may provide a constraint on the behaviour of the controlling shareholders (which are state agencies) and SOE managers
Resource-based theory	Proposition 11: Driven by their interest to enhance value, rarity, and inimitability of resources and capabilities, SOEs are likely to develop and leverage non-market-based political ties – especially in industries with strong state influence	Proposition 12: The economic performance of SOEs is likely to improve when they leverage both market-based, competitive capabilities and non-market-based, political capabilities

Source: Peng et al. (2016:301)

3.6 The Concept of Corporate Governance in SOEs

A number of authors have defined corporate governance from different perspectives. According to Turnbull and Prision (2012, Corporate governance describes all the influences affecting the institutional processes, including those for appointing the controllers and/or regulators involved in organizing the production and sale of goods and services. Described in this way, corporate governance includes all types of firms, whether or not they are incorporated under civil law. For Page (2009), corporate governance is about increasing both the percentage of independence of directors and the use of independent directors on board committees. However, in reference to Namibia's SOEs, the explanation by Kefas (2014: 12) based on Du Plessis et al. (2011), defines corporate governance as:

The system of regulating and overseeing corporate conduct and of balancing the interest of all internal stakeholders and other parties (external stakeholders, governments and local communities) who can be affected by the corporation's conduct, in order to ensure responsible behaviour by corporations and to achieve the maximum level of efficiency and profitability for a corporation.

At the same time, the phrase 'corporate governance' is often applied narrowly to questions about the structure and functioning of boards of directors (Blair, 1995:3). This view is shared by some business school scholars and management consultants. Donaldson (1990:376) defines corporate governance as "the structure whereby managers at the organizational apex are controlled through the board of directors, its associated structures, executive incentives, and other schemes of monitoring and bonding". This view is also held by Hilmer (1993). Similarly, according to the King IV Report (2016), corporate governance is the exercise of ethical leadership by governing bodies towards the achievement of governance outcomes, such as ethical culture, good performance, ethical control and legitimacy (King IV, 2016:20).

Considering the foregoing, it is clear that good corporate governance goes together with good and effective leadership. There should therefore be good ethics in the governance process of the SOE, which, as the King III Report (2001) shows, includes responsibility, accountability, fairness and transparency.

3.7 Principles of the Governance of SOEs

The terms of governance and corporate governance have of late increasingly become central whenever talks of the management of SOEs emerge. However, it should be noted that these terms are not only confined to SOEs as their boundaries have been extended to include the general management of societies. For example, major donors and international financial institutions such as the International Monetary Fund (IMF) are increasingly basing their aids and loans on the condition that the country undertakes reforms that ensure good governance. The reason for this condition is that bad governance is regarded as the root of many issues within a given society.

Simply put, governance is about authority, decision-making and accountability. It refers to the system by which enterprises are directed and controlled. The governance structure specifies the distribution of rights and responsibilities amongst different participants in an enterprise. These participants include the board of directors, managers, shareholders, creditors, auditors, regulators and other stakeholders. It also specifies the rules and procedures for making decisions in corporate affairs (Strikwerda, 2001:38). Accordingly, governance provides the structure through which enterprises set and pursue their objectives, while reflecting the context of the social, regulatory and market environment.

It should be noted that the term governance is used in several contexts, such as corporate governance, public governance, private governance, international or global governance, national governance and local governance. The question that is often asked to appreciate the distinction is whether the organisation is a geopolitical entity (nation state), enterprise (an entity that is incorporated as a legal entity) or socio-political entity (tribe or family). Governance in the context of corporate governance is of interest to the current study.

According to the Organization for Economic Cooperation and Development (2004), corporate governance is a mechanism for monitoring the actions, policies and decisions of enterprises. It involves the alignment of interests among stakeholders. The importance of governance has recently re-emerged, especially after the high-profile collapses of a number of large enterprises during 2001 and 2002, most of which involved accounting fraud. These events resulted in an emphasis on and renewed interest in corporate governance practices of modern enterprises, particularly in relation to accountability.

Since there are many, sometimes complex definitions of corporate governance, this study adopts the definition by the Organization for Economic Cooperation and Development (OECD), which defines it as, “a set of relationships between an enterprise’s management, its board, shareholders and other stakeholders” (OECD, 2004:35). The OECD goes on to state that, “[c]orporate governance also provides the structure through which the objective and monitoring performance are determined”. The OECD’s definition is useful not just because it is very simple and straightforward, but because the OECD Principles of Corporate Governance (which also defines the term corporate governance) were endorsed by OECD ministers in 1999 and they have since become an international benchmark for policymakers, investors, enterprises and other stakeholders worldwide.

The OECD has advanced the corporate governance agenda and it provides specific guidance for legislative and regulatory initiatives in both OECD and non-OECD countries. Following this understanding of corporate governance, it becomes imperative to also understand what good governance, public governance and global governance are. The section below also aims to establish the links, if any, between these three concepts.

According to Surendra Munshi (cited in Committee of Experts of Public Administration, 2006:4) good governance “signifies a participative manner of governing that functions in a responsible, accountable and transparent manner based on the principles of efficiency, legitimacy and consensus for the purpose of promoting the rights of individual citizens and the public interest, thus indicating the exercise of political will for ensuring the material welfare of society and sustainable development with social justice”. The above definition is also supported by Hirst (2000) who propounds that it means creating an effective political framework conducive to private economic action: stable regimes, the rule of law, efficient State administration adapted to the roles that Governments can actually perform and a strong civil society independent of the State.

Furthermore, Heritier and Silvestri (2012) describe good governance as the manner in which public institutions conduct public affairs and manage public resources. They define its main characteristics as accountability, transparency, the rule of law, responsiveness, equitability and inclusivity, effectiveness and efficiency, and participation (UNDP, 1997). Heritier and Silvestri (2012) further explain these characteristics in detail, but, for this study, the descriptions that follow are pertinent.

In this study, accountability entails an obligation to report, explain and be answerable for the consequences of decisions an organisation has made on behalf of the community it represents. Transparency in this study entails requirements that allow the public to be able to follow and understand the decision-making process. This means that they will be able to clearly see how and why a decision was made and what information, advice and consultation an organisation considered, and which legislative requirements (if relevant) were followed.

According to Heritier and Silvestri (2012), good governance follows the rule of law, which means that decisions are consistent with relevant legislation or common law and they are within the powers of an institution. Responsiveness, on the other hand, considers how an institution or government tries to serve the needs of the entire community while balancing competing interests in a timely, appropriate and responsive manner. Equitability and inclusivity, as characteristics of good governance, refer to a community's well-being and these occur when all of its members feel that their interests have been considered by an organisation or institution in the decision-making process. This means that all groups, particularly the most vulnerable, should have opportunities to participate in the process.

The other important term is global governance. Thomas (2005) defines this as a collective effort to identify, understand and try to address global issues that are above the capacity of individual states. This is done through international institutions such as the United Nations, International Criminal Court, World Bank and IMF. However, global governance tends to have limited or demarcated power or authority to enforce compliance. It is for this reason that James Rosenau (1999) uses the term 'global governance' to denote the regulation of interdependent relations in the absence of an overarching political authority.

Public governance, according to Bevir (2007), is an interdisciplinary field of study centring on relationships of power between government authorities, civil society and the market in the context of transformations of political communities to legitimately govern themselves and act effectively. Lukes (2005) argues that these relationships may vary from state authorities to markets through the enforcement of contractual arrangements. Public governance occurs in three ways, namely:

1. Through networks involving public-private partnerships (PPP) or the collaboration of community organisations;

2. Through the use of market mechanisms, whereby market principles of competition serve to allocate resources while operating under government regulation; and
3. Through top-down methods that primarily involve governments and the state bureaucracy.

Participation means anyone affected by or interested in a decision should have the opportunity to participate in the process for making that decision. Finally, good governance refers to governance that is effective and efficient. This means that organisations or governments should implement decisions and follow processes that make the best use of the available people, resources and time to ensure the best possible results for their community.

3.8 The Seven Pillars of Good Corporate Governance

3.8.1 Discipline and shareholder activism

This concept implies an enterprise's awareness and commitment to the principles of good governance, particularly by senior management. Discipline is very important for the efficiency of SOEs. The success of an SOE will depend on the interplay between self-discipline, market discipline and regulatory discipline. Market discipline is perhaps the most essential of these. It is accordingly important to consider that in the governance of an SOE, there should be the empowerment of shareholders, which means providing the conditions under which shareholders have both incentives and the means to act in line with discipline management.

According to Turnbull (1997a), self-regulation and discipline entail that those being regulated establish the standards of performance. It is accordingly discernible that there should be a system whereby the controllers of an enterprise are appointed by the governed. Within this system, as shall be seen in the discussion of the political theory below, self-governance is important and it involves a political process within enterprises to appoint controllers responsible for regulation.

Self-governance in a political context invokes the well-known Abraham Lincoln saying: "Government of the people, by the people, for the people shall not perish from the earth." This basically describes democracy. The introduction of aspects of self-governance into institutions

concerned with industrial activities would enrich democracy. Indeed, Turnbull (1997a; 1991b:5) submits that there are arguments and evidence that self-governance produces operating advantages and, hence, better performance of SOEs.

In the Namibian case however, shareholder activists are not as active as in other countries, especially western countries. A shareholder activist is:

A person who attempts to use his or her rights as a shareholder of a publicly-traded corporation to bring about social change. Some of the issues most often addressed by shareholder activists are related to the environment, investments in politically sensitive parts of the world and workers' rights (sweatshops). The term can also refer to investors who believe that a company's management is doing a bad job and who attempt to gain control of the company and replace management for the good of the shareholders.

(Investopedia, 2016)

In shareholder activism, there is active pressure on and persuasion about the policies and practices of the enterprise through the use of ownership position (Sjöström, 2008). In this way, the shareholders discipline the management of the enterprise through the enforcement of their rights as found in Chapter 7 of the Companies Act (No. 28 of 2004). The exercise and enforcement of rights enables shareholders to enhance shareholder value in the long term (Low, 2004). Understood from this perspective, as Sjöström, (2008) submits, shareholder activism can be conducted via direct dialogue with corporate management or the board, during open sessions in corporate general meetings, writing open letters or by filing formal shareholder proposals (Logsdon & Buren, 2009; Logsdon & Van Buren III, 2008; Klein, & Zur, 2009).

It has been noted that, “[m]ost evidence indicates that shareholder activism can prompt small changes in target enterprises’ governance structures, but has negligible impact on share values and earnings” (Karpoff, 2001). Activism can be ‘defensive’ or ‘offensive’ (Armour & Cheffins, 2012). According to Cossin and Caballerro (2013:5):

Defensive activism takes place when investors holding a stake in a company (e.g. pension funds and mutual funds) become dissatisfied with corporate performance or corporate governance practices and thus react by lobbying for relevant changes. This can be done

behind the scenes or publicly challenging management; for example, activists can propose the election of directors they support. This type is defensive in the sense that activists seek to protect pre-existing investments. In offensive activism investors lacking a substantial stake in a company build up their holdings offensively on the assumption that organizational changes will overcome failures and, thus, maximize shareholder returns. Investors will agitate for change if management does not react and take the initiative.

Shareholder activism as a tool for discipline in corporate governance has, however, been met with controversy. Some authors take it to be a destructive method that causes losses to enterprises and some take it as describing a means to “take the money and go” (ECGI, 2016) or “voting with their feet” (Helwege, Intintoli & Zhang, 2012; Parrino, Sias & Starks, 2003), thus creating a threat to the job security of directors and other officers. This leads to a decline in trust in the enterprise by other potential investors. As noted already, in Namibia this is a practice seldom felt, let alone applied. In the USA, a small number of American institutional investors, largely those investing in public pension plans, spend little money on overt shareholder activism efforts.

Black (1998) notes that shareholder activists do not conduct proxy fights and do not try to elect their own candidates to the board of directors. Legal rules, agency costs within the institutions, information costs, collective action problems and limited institutional competence are all plausible partial explanations for this relative lack of activity. The same explanation can also hold true for Namibian SOEs. Activism sometimes follows a sequence of events attached to a lack of transparency and accountability. It disciplines management and raises share value if done effectively and can thus lead to better performance of SOEs.

3.8.2 Transparency

This concept refers to the ability of an enterprise to make the necessary information including annual reports and press releases that are available in an accurate and timely way. The OECD (2005) proffers that:

A crucial condition for protecting minority and other shareholders is to ensure a high degree of transparency. The OECD Principles of Corporate Governance support simultaneous reporting of information to all shareholders in order to ensure their equitable treatment. In maintaining close relations with investors and market participants, companies must be careful not to violate this fundamental principle of equitable treatment.

The OECD goes on to say that for effective performance of an SOE, the minority and other shareholders should have access to all the necessary information to be able to make informed investment decisions.

Considering the above, TransNamib, which has been making losses and has some allegations of corruption and lack of transparency levelled against it, has vowed to embark on a five-year turnaround plan to remedy their situation. TransNamib, therefore, reported in 2014 that: “Our aim is also to become an open, transparent and accessible company. We understand, and we have to help others understand, the issues in shaping the future of Namibia’s rail transport” (TransNamib, 2014:11). This is an indication of a wish to break from the past of being a failing SOE to become a more vibrant and profitable one. It is still uncertain whether this turnaround strategy from within will achieve the intended goals. This is where the controversial issue of privatisation, as discussed in Chapter 2, comes in. The question becomes whether transparency can be achieved by privatisation or commercialisation and hence lead to profitability or efficiency.

As a vital principle in corporate governance, the OECD (2005: 44) states that significant shareholders, including the coordinating or ownership entity “should not make any abusive use of the information they might obtain as controlling shareholders or board members. For non-listed SOEs, other shareholders are usually well identified and often have privileged access to information, through board seats for example.” To this end, the following information should be disclosed as per the guidelines of the OECD (2005:44-46):

1. A clear statement to the public of the enterprise objectives and their fulfilment;
2. The ownership and voting structure of the enterprise;
3. Any material risk factors and measures taken to manage such risks;
4. Any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE; and
5. Any material transactions with related entities.

In addition, whatever the quality and completeness of the legal and regulatory framework concerning disclosure of information, the coordinating or ownership entity should ensure that all enterprises in which the state has shares have put mechanisms and procedures in place to guarantee easy and equitable access to information by all shareholders (OECD, 2005:34).

3.8.3 Independence

This concept entails the extent to which mechanisms have been put in place to avoid the dominance of individual or sectoral interests (Chata, 2010:17). The questions that arise from this relate to SOE autonomy: Are SOEs sufficiently autonomous? Do they have mechanisms to be self-governing? Is there a clear distinction between SOEs and their owners? For example, it was alleged that the previous Minister of Finance fired the Road Fund Administration (RFA) Board because they charged the CEO, who was close to the minister with misconduct (*The Namibian*, 2011). This is evidence that, at least in Namibia, ownership comes together with the control of SOEs. The OECD (2005: 46) notes with regards to state ownership of SOEs that:

The potential for abuse is marked when the legal system allows, and the market accepts, controlling shareholders to exercise a level of control which does not correspond to the level of risk that they assume as owners through exploiting legal devices to separate ownership from control.

Therefore, governments should, as far as possible, limit the use of golden shares and disclose shareholders' agreements and capital structures that allow a shareholder to exercise a degree of control over the enterprise disproportionate to the shareholders' equity ownership in the

enterprise. It has been submitted that the importance of performance by SOEs necessitates monitoring by the ownership entity (South African Presidential SOE Evaluation Committee, 2014:42). OECD Guidelines (OECD, 2011:11-14) put forward an imperative that, a state has an obligation to review the performance of its SOEs. Considered closely, it is evident that the primary tasks comprise formulating reporting systems that allow regular monitoring and assessment of SOE performance. This has been the stance recommended for the improvement of SOE performance in South Africa. The South African Presidential SOE Evaluation Committee (2014:42), notes that the ownership entity must ensure that it has access to accurate and relevant information on a timely basis – this links to transparency and disclosure.

The monitoring and evaluation of SOEs should be done on an on-going and annual basis and action should urgently be taken to address any faults that are identified. There is also a need for appropriate benchmarking of SOE performance, both locally and internationally. This, according to the OECD, is particularly important for SOEs in non-competitive sectors. The case of transport SOEs in Namibia comes into view as Air Namibia has been a burden to the nation as performance has been a problem and the above principles were not adhered to.

3.8.4 Accountability

The concept of accountability presupposes that effective mechanisms exist that will allow for the accountability of individuals and groups within an enterprise. However, there are situations where a leader in an SOE, such as the CEO, acts opportunistically. For example, the Road Construction Company's (RCC) CEO was suspended and subsequently dismissed for purchasing a car for his wife and settling an overdue bond payment for one of his staff members using company funds (The Namibian, 2006). Accountability calls for such actions to cease. The CEO weighs the costs and benefits of opportunistic behaviour and, if no proper judgment ensues, the SOE can run into problems that hamper efficiency. The existence or assumption of opportunism features prominently in transaction cost theory and cheating is characteristic of the process (Williamson, 1975).

[Opportunism] implies a fairly extreme representation of human behaviour which is supposedly characterized by a tendency to cheat and even transgress ethical standards in search of personal advantage. From a methodological perspective, opportunism is

interesting because it allows for parsimonious modelling. Hence, the implementation of governance mechanisms constraining the action of a potentially opportunistic CEO can be explained by a search for efficiency.

(Wirtz, 2002)

According to Wirtz (2002), countries that hold SOEs accountable when they submit reports have proven to have their well-performing economies. However, mere reporting does not in itself improve performance. Good and accurate reporting only helps in getting the information out to relevant users. In South Africa for example, SOEs are supposed to submit quarterly reports. Often the reports are not submitted and those who submit seem to do so as a matter of formality (South African Presidential SOE Evaluation Committee, 2014:35). When considering Holland, it was observed that the government imposes penalties when entities do not meet their targets. This level of accountability resulted in high-quality content in quarterly reports, timely reporting on performance, good governance oversight, and an accountable and resourced oversight function (South African Presidential SOE Evaluation Committee, 2014:35).

3.8.5 Responsibility

This concept touches on issues such as the board's responsibility towards all stakeholders of the enterprise. Responsibility stems from the fact that the executives of an enterprise are entrusted with the management of an enterprise. The word 'manage' is often used to communicate the responsibility for executive action by, for example, a board of directors (Turnbull, 1997c). As shall be seen in the discussion on stewardship theory below, Donaldson and Davis (1994) note that managers are principally motivated by achievement and responsibility needs and given the needs of managers for responsible, self-directed work, organisations may be better served to free managers from subservience to non-executive director-dominated boards. This informs why in Namibian company law, directors and CEOs do not have to be shareholders of the enterprise they are serving.

3.8.6 Fairness

This concept relates to acknowledgment of and respect for the rights of various groups that have an interest in the enterprise, including minority groups. This is akin to transparency.

[W]hen the state is a majority shareholder or effectively controls the SOE, company objectives should be made clear to all other investors, the market and the general public. Such disclosure obligations will encourage company officials to clarify the objectives to themselves, and could also increase management's commitment in pursuing these objectives. It will provide a reference point for all shareholders, the market and the general public for considering the strategy adopted and decisions taken by the management.

(OECD, 2005)

Further, the OECD states that it is essential and should be emphasised that all board members have the legal obligation to act in the best interests of the enterprise and to treat all shareholders equitably (OECD, 2005:47-48). Furthermore, there should not be any difference between the liabilities of different Board Members, whether they are nominated by the state or whether they are any other shareholders or stakeholders.

3.8.7 Corporate social responsibility

This concept refers to the non-discriminatory, non-exploitive behaviour of the enterprise and responsibility with regards to environmental and human rights issues (King Committee on Corporate Governance, 2001). According to the OECD (2010:11-14), SOE performance should be aligned to their mandates. The mandate of an SOE should not only target its industry or sector. Instead, an SOE is expected to help the community at large, apart from its core business. This invokes the concept of social responsibility. In its 2012/2013 Annual Report, the Roads Authority stated that:

We worked to extend our social responsibility initiatives that are aimed at poverty alleviation, job creation, and entrepreneurial skills development. The Roads Authority strives to ensure transformation and black economic empowerment (BEE) is achieved

through targeted procurement. We entered into 133 (small and medium enterprise) SME contracts with a total number of 902 SME employees with our maintenance projects of which the majority are previously disadvantaged individuals. We offered pre-tender training to 394 SME contractors at various locations in Namibia, 204 Operators & Labourers from SME contractors were trained and assessed in the area of Bitumen Road Maintenance and 70 SME contractors were trained on Financial Documentation, Basic Measurement and Resource Management.

(Roads Authority of Namibia, 2013)

The OECD reports how the SOE is achieving its objectives that relate to its main line of business and, in addition, going broader than its core business. In this sense, the performance of an SOE can also be measured by other broader achievements of the national developmental objectives, such as:

1. Contribution by SOEs to job creation and addressing challenges such as unemployment;
2. Skills development to address skills shortages based on the economic development trajectory of a country;
3. The role of SOEs in addressing transformation and other economic imbalances; and
4. Rural development.

Therefore, the image and performance of an SOE should also be measured in the way it fulfils its broader mandate, namely, to develop the country. In Namibia, SOEs in the transport sector are expected under the Fourth National Develop Plan (NDP4) to contribute to two desired outcomes (DO), namely public infrastructure (DO 5) and logistics (DO 6.1). Similarly, in South Africa, as the Minister of Public Enterprises indicated: “Our challenge is ... to ensure that the contribution of our SOEs to national economic and social development is optimised, quantifiable and affects the lives of socially-excluded South Africans” (Gigaba, 2012:2).

Furthermore, SOE boards should, in principle, have the same responsibilities and liabilities as stipulated in the enterprise laws of the country. However, in practice and in terms of international best practices, board members may have a reduced liability, particularly the ones nominated

by the state. According to the OECD (2005), the responsibilities of SOE boards should be articulated in relevant legislation, regulations, the government ownership policy and the enterprise charters. Furthermore, it is submitted that to encourage board responsibility and in order for boards to function effectively, they should follow best practices adhered to in the private sector and they should be limited in size. Experience indicates that smaller boards allow for real strategic discussion and they are less prone to become rubber-stamping entities (OECD, 2005:48).

Corporate social responsibility has been traced to the European philosophy of corporatism. Like natural entity theory, corporatism recognises the role of groups such as unions and enterprises. Corporatism also “emphasises cooperative relationships among groups and between the state and the different groups” (Joo, 2010:8; Bratton & Wachter, 2008:113) in the identification and realisation of the public interest. Bratton and Wachter (2008:113) also attribute Dodd’s similar characterisation to the influence of corporatism.

3.9 Governance Principles, Models and Theories

The section above has outlined the theories of corporate governance according to a relevant literature review. Below, these theories are put in the context of Namibia and comparative economies. This assists in measuring how Namibian SOEs are faring insofar as corporate governance is concerned. Corporate governance has increasingly become central whenever the issue of SOEs management is discussed. However, it should be noted that this term is not only confined to SOEs as its boundaries have been extended to the general management of societies, including major donors and international financial institutions. In the context of SOEs, one has to note that SOEs also carry the spirit of the nation, just as Air Namibia states as its slogan “caring the spirit of the nation”. Thus, the failure of Air Namibia can be attributed to Namibia as a nation because as the airline represents the country and the image of the national figures that represent the country, that image is also tarnished. The governance of such an institution is therefore not a matter of that SOE alone but it is also an issue of whom they represent and what population they serve. This explains the essence of corporate governance in the global context. Thus, as Abdullah and Valentines (2009:88-89) state:

... corporate governance has become an important factor in managing organizations in the current global and complex environment. In order to understand corporate governance, it is important to highlight its definition. Even though there is no single accepted definition of corporate governance, it can be defined as a set of processes and structures for controlling and directing an organization. It constitutes a set of rules, which governs the relationships between management, shareholders and stakeholders.

(See also Ching, et al., 2006)

3.9.1 Artificial personality theory

It is a well-known principle that an enterprise is a separate and distinct legal entity from its members and thus members are not directly liable for the acts of the enterprise, for example debts incurred. This separate corporate existence is limited in terms of the law (Wolf, 1989). However, in certain circumstances, a court will refuse to recognise the existence of a *de jure* enterprise from its shareholders in order to hold its members liable for contracts, debts or crimes. When this happens, the court is said to be 'piercing the corporate veil' associated with the separate corporate existence that shields these members from liability (Wolf, 1989).

When an SOE has been incorporated under the relevant law, it exists as a legal person. Thus, it acquires a legal personality when the Registrar of Companies issues a certificate of incorporation. Just like with any enterprise, this is the birth certificate of an SOE (see, for example, Section 2 of the National Transport Services Holding Company Act 28 of 1998). A 'legal person' would then refer to an entity capable of having legal rights and incurring legal obligations (Cilliers et al., 2000:597-599). Like any other enterprise, an SOE is regarded as a juristic person once the proper statutory procedure that must be followed in order for it to exist as a legal persona is completed.

The SOE, as a separate legal persona, can enter into contracts and own property in its own name, unlike the partnership, business trust or sole proprietor. In the same vein, the shareholders of an SOE enjoy limited liability. Most SOEs in Namibia are regulated under the constitutive acts that created them, i.e. the Acts of Parliament. Their structures and internal functions may be regulated by such laws but this does not mean that they are not regulated by the general rules of company law under both the Companies Act, 2004 and common law.

The relevant enabling legislation determines SOEs' powers, duties and shareholding. In all the transport SOEs examined in this thesis, the state is the shareholder. The government thus exercises state power in managing those SOEs as a separate legal person from the shareholder. Thus, the 'artificial entity' theory is often invoked to justify regulation outside some normal dealings or ordinary companies in certain circumstances (Coase, 1937; Jensen & Meckling, 1976). However, it must be noted that since a company, be it an SOE or not, has no physical existence, there are certain things it is inherently incapable of doing, for example marry, be appointed the guardian of a minor, occupy land, be physically present anywhere, appear on its own behalf and represent itself in court proceedings – it must be represented by an advocate and it cannot be imprisoned (Cilliers, 2000; Marcel & Kamar 2002).

In terms of Section 38(1) of the Companies Act (2004), a company has the capacity and powers of a natural person of full capacity insofar as a juristic person is capable of having that capacity or of exercising those powers. The characteristics of such a body are that it is capable of owning property separate from its members and that it enjoys perpetual succession. It is important that its constitution explicitly states that it should have these characteristics in order for such entity to have the capacity to sue and be sued in its own name and to have perpetual succession. In the event that this is not the case, such entity will not have the same status as a person in the eyes of the law and will simply be an unincorporated body; that is to say, it will simply be regarded as an aggregation of natural persons who are acting in concert (Adams & Adams, 2012). Since a company is a separate and distinct legal entity from its members, members are therefore not liable for the acts of the enterprise, for example debts incurred.

Courts have developed what has come to be known as the rule or principle in ***Salomon v Salomon & Co. Ltd.*** In terms of this, a company is a person in law quite separate and distinct from its members, directors and anyone else and, accordingly, its assets and liabilities (and so also its profits and losses) are its own and not those of (say) its members. Nor is the situation any different in a company with only one or few members. The same principle was explained by JP Damaseb in the case of ***Oranjerivierwynkelders Koöperatief Bpk and Another v Professional Support Service cc and Others 2011 (1) NR 184 (HC)***. However, it must be noted that in some circumstances, a court will refuse to recognise the existence of a *de jure* enterprise in order to hold its member(s) liable for contracts or offences. As stated earlier, when this happens, the court is said to be 'piercing the corporate veil' associated with the separate

corporate existence that shields these members from liability (Wolf, 1989:21). This separate corporate existence is limited in terms of the law (Wolf, 1989).

Furthermore, shareholders do not have the right to manage the company or enter into a contract on behalf of the company, as was held in the case of ***Francis George Hill Family Trust v South African Reserve Bank***. Therefore, in such cases, the company contracts through a person who is duly authorised by it to contract on its behalf (1992 [1] 91 [A] 97). This was held in ***Kuwait Asia Bank EC v National Mutual Life Nominees Ltd [1990] 3 All ER 404 (PC) 423***.

Most, if not all, SOEs in Namibia have share capital, as the enabling legislation that creates them stipulates this and requires them to have it. Section 201 of the Companies Act (2004) stipulates that every member of an enterprise with a share capital has a right to vote at meetings of that company in respect of each share held by that member. In the case of SOEs, the president is enjoined to designate a minister or ministers as shareholding minister(s) who shall, on behalf of the State, exercise the rights attached to the shares of which the State is the holder and who shall perform the functions of the shareholding minister(s) in terms of any Act establishing the concerned SOE (see for example Section 3[2] of the Airports Company Act 25, 1998; Namibian Ports Authority Act 2, 1994).

There are, however, certain situations whereby the existence of an SOE as a separate legal entity ceases to exist. The Companies Act (No. 28 of 2004) provides for some exceptions to the rule of a legal personality. Specifically, directors and officers of the enterprise can be held personally liable for the actions done in the name of the enterprise. In other words, the limited liability is taken away by sections 429 to 432. Section 430 specifically states the liability of directors and others for fraudulent conduct of business:

If it appears, whether it be in a winding-up, judicial management or otherwise, that any business of the company was or is being carried on recklessly or with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the Court may, on the application of the Master, the liquidator, the judicial manager, any creditor or member or contributory of the company, declare that any person who was knowingly a party to the carrying on of the business in that manner, is personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct.

Personal liability is also found in sections 168 read together with sections 169, 170 and 171, which deal with directors' liability for untrue statements in the prospectus. This is the 'piercing of the corporate veil' as alluded to above. It must be noted that the liabilities of all directors, officers and members under the Act continue subsequent to deregistration and may be enforced as if the enterprise had not been deregistered (Davies, 1964). In South Africa, the Companies Act of 1973 has been repealed by the Companies Act (No. 71 of 2008). In ***Ex parte Gore and Others NNO 2013 (3) SA 382 (WCC)***, it was held (in paragraph 34) that the provision (the South African one is similar to the Namibian one) was supplemental to, rather than substitutive of, the common law. According to Blackmanm et al. (2002:42):

Veil piercing takes at least two forms. Firstly, there are cases where the court disregards the company and treats the members as if they had been acting in partnership (or where the company has a single member, as if he had been acting on his own behalf), with the consequence that they are, for example, held to be the owners of property otherwise owned by the company, or to be personally liable for its debts and other liabilities.

Furthermore, other examples of improper conduct on the basis of which Namibian courts have pierced the corporate veil are when a legal entity is found to be the 'instrumentality', 'alter ego', 'agent', 'puppet' or 'mask' of its shareholders. In this sense, the company does not, in truth, carry on its own business or affairs, but merely acts in the furtherance of the business or affairs of its shareholders as noted in ***Ritz Hotel Ltd v Charles of the Ritz Ltd and Another 1988 (3) SA 290 (A)***.

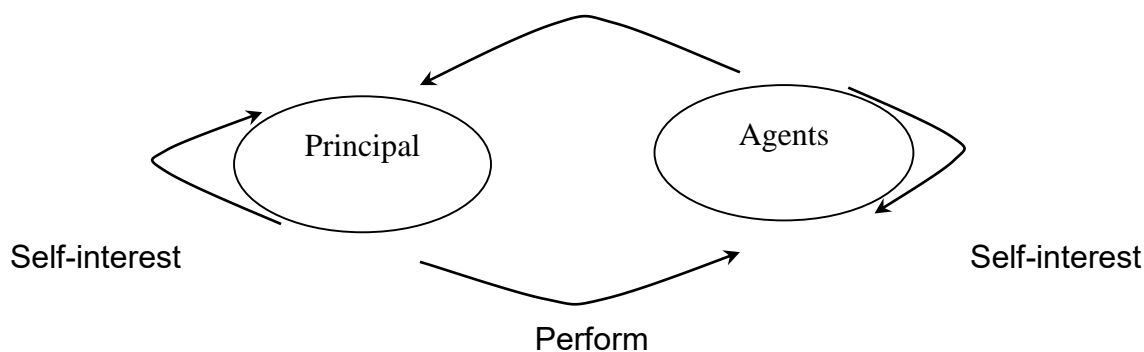
Largely, however, as was held in the case of ***RP v DP and Others 2014 (6) SA 243 (ECP)***, the point of departure is that, courts, when dealing with companies, should not lightly disregard an enterprise's separate personality but should strive to give effect to and uphold it. That said, "where fraud, dishonesty or other improper conduct ... is found to be present, other considerations will come into play" (***Ebrahim v Airport Cold Storage [Pty] Ltd 2008 [6] 585 [SCA] [2009] 1 All SA 330 par. 22***). The same principle was explained in the case of ***Sylvie McTeer Properties v Kuhn and Others 2005 NR 519 (HC)***.

3.9.2 The agency theory

Agency theory has its roots in economic theory. It was developed by Alchian and Demsetz (1972) and further expanded by Jensen and Meckling (1976). Agency theory is defined as “the relationship between the principals, such as shareholders, and agents, such as the company executives and managers” (Abdullah & Valentines, 2009:91). This theory postulates that the shareholder(s) who are the owners or principals of the enterprise hire(s) the agents to perform work. Principals delegate the running of the business to the directors or managers, who are the shareholder’s agents (Clarke, 2004).

Therefore, in the context of SOEs in Namibia, the State as the shareholder and principal hires the directors to perform the work of the enterprise. The directors are thus the agents of the state. An example of this can be found in Section 3 of all the Acts forming the transport SOEs in the country, which shows the government exercising state power through the shareholding minister who appoints directors. These directors will oversee the work of the SOE with the CEO in charge of the day-to-day running of the SOE. Diagrammatically, the relationship looks as follows:

Figure 3.1: Hire and Delegate



Source: Adopted from Abdullah & Valentines (2009:90)

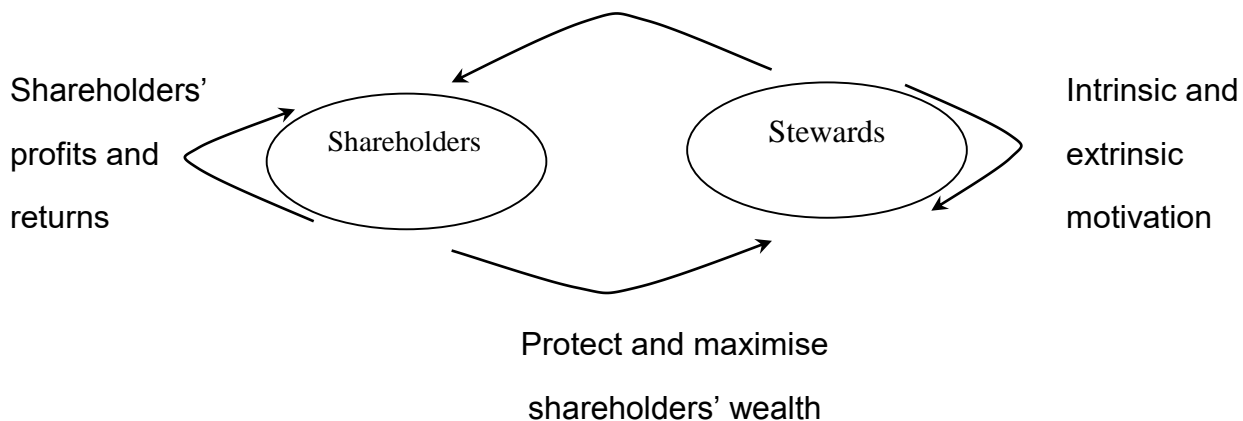
The model (theory) above, which is also reflected in Namibian SOE governance instruments, has problems which impact on the performance of SOEs in the country. According to Daily et al. (2003), two major factors can influence the performance of an enterprise under this model.

First, the theory is conceptually simple and reduces the corporation to two participants: managers and shareholders. Second, agency theory suggests that employees or managers in organisations can be self-interested. In agency theory, shareholders expect agents to act and make decisions in the principal's interest, though the agent may not necessarily do this (Padilla, 2000).

Such a problem was first highlighted by Adam Smith in the 18th century and subsequently explored by Ross (1973). The first detailed description of agency theory was presented by Jensen and Meckling (1976). The notion of problems arising from the separation of ownership and control in agency theory has been confirmed by Davis, Schoorman and Donaldson (1997).

3.9.3 The stewardship theory

The stewardship theory developed from social sciences. According to this theory, a steward, such as an enterprise executive, should act in such a way that they manage in the interest of the shareholders. As Davis, Schoorman and Donaldson (1997) state, "a steward protects and maximises shareholders' wealth through enterprise performance, because by so doing, the steward's utility functions are maximized." Therefore, SOE executives and managers are officers of the enterprise and they are workers for the enterprise working for the shareholders. They are therefore enjoined to protect and make profits for the shareholders. Diagrammatically, this can be shown as follows:

Figure 3.2: Empower and Trust

Source: Adopted from Abdullah & Valentines (2009:91)

As depicted in the diagram, those running the affairs of the SOE are, in the words of Donaldson and Davis (1994), “good stewards of the enterprises and diligently work to attain high levels of corporate profit and shareholders returns”. Unlike agency theory, stewardship theory does not stress the perspective of individualism (Davi, 1994), but rather the role of top management being stewards for and amalgamating their goals as part of the enterprise. As a result, the stewardship perspective suggests that stewards are satisfied and motivated when organisational success is attained (Abdullah & Valentines, 2009:90).

Stewardship theory recognises the importance of structures that empower the steward and offer maximum autonomy built on trust (Donaldson & Davis, 1991). It stresses that employees or executives should act more autonomously so that shareholders' returns are maximised. Indeed, this can minimise the costs aimed at monitoring and controlling behaviours (Davis, Schoorman & Donaldson, 1997). This is, for example, provided for in Section 6 of the Airports Companies Act (No. 25 of 1998), which provides for performance agreements and stipulates that the Airports Company should, after a specified period, submit a performance agreement to the shareholding minister. This performance agreement should, amongst others things, contain expectations of the government in respect of the enterprise's scope of business, efficiency and performance measures by which the performance of the enterprise can be assessed, and

including such measures as may relate to its financial, operational and service level performance and management of human resources.

Furthermore, the performance agreement should contain the principles to be followed by the enterprise for the purposes of business planning, the company's dividend policy and the company's pricing structure policy. In other words, the principles should contain such measures which are, in the opinion of the shareholding minister, necessary to protect the financial soundness of the company, including full particulars relating to the company's investment policy, indemnity insurance, a declaration of the loans made by the company and the company's cover against exchange rate risks. This shows that, in order to protect their reputations as decision makers in organisations, executives and directors are inclined to operate the enterprise to maximise financial performance as well as shareholders' profits. In this sense, as research has shown, it is believed that the enterprise's performance can directly impact perceptions of their individual performance (Daly et al., 2003).

Moreover, stewardship theory suggests unifying the role of the CEO and the chairman so as to reduce agency costs and to increase their role as stewards in the organisation. It was evident that there would be better safeguarding of the interest of the shareholders. It was also empirically found that returns have been improved by having both these theories combined rather than separated (Donaldson & Davis, 1994).

It must be noted, however, that this theory is not as it appears on paper or as expounded on by scholars. In practice, the inclination of individuals to act as stewards or self-seeking agents may be contingent upon the institutional context. The high-standard performance of an SOE may not be based on the stewardship of its officials towards the enterprise but on other factors external to it and to the whole country. In addition, individuals running the affairs of the SOE may not have the same individual agenda in this diverse world. As Waring (1973) notes, differences between individuals are significant and important because the need for money and approval, among other things, is determined and limited by the necessity for maintaining the organism in a state of dynamic equilibrium, i.e. people stand in an interactive cybernetic relationship to their community and environment. Furthermore, the need for money and approval, amongst other things, is changed as a result of any interaction and individuals are sometimes competitive and sometimes collaborative, but usually both.

Turnbull (1997a) concludes that the inclination of individuals to act as selfless stewards may be culturally contingent. The 'company man' in Japan may place his employer before family. Understood contextually, the voluntary resignation or dismissal of executives is not uncommon in the Namibian transport sector SOEs when an SOE is disgraced and in other countries instances of suicide are reported (Turnbull (1997a).

3.9.4 The stakeholder theory

The 1970s found the development of the stakeholder theory through studies in management sciences. This theory is based on the concept of accountability to stakeholders as Freeman (1984) postulates. The theory holds that "any group or individual [...] can affect or is affected by the achievement of the organization's objectives" (Abdullah & Valentines, 2009:91; Wheeler et al., 2002).

There is a network of stakeholders who affect management and the board. For instance, a board of directors has to have a holistic view of an idea on the table for them to arrive at a decision beneficial to the target, the enterprise itself or one or more of the stakeholders. In this way, boards need to obtain information from strategic stakeholders, as well as from management to avoid bias, distortion or errors, as discussed by Turnbull (1993a; 1997a, b, c).

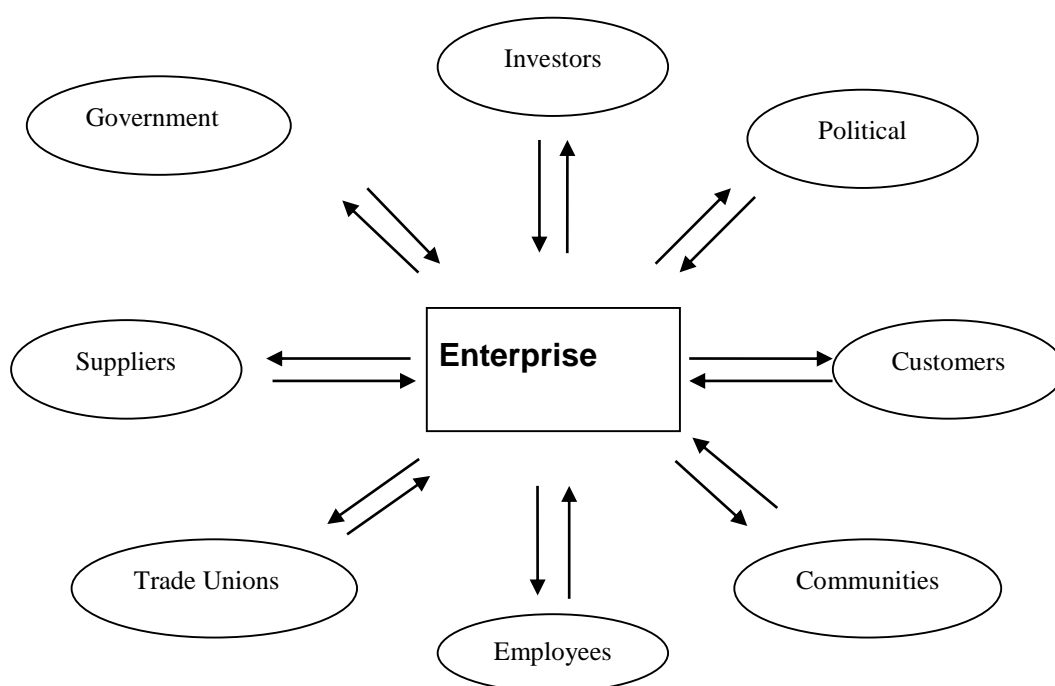
Furthermore, errors and distortions in management hierarchies have been reported by Downs (1967:116-118), Williamson (1975:122) and Demb and Neubauer (1992) and have been shown to affect enterprise efficiency and other concomitant virtues. TransNamib, for example, has been accused of losses and other ills due to bad corporate governance, and then vowed to implement a five-year turnaround plan and said:

A big part of our forward-looking approach is to become a customer-focused company. We have to structure our company in such a way that it will give clearer accountability to our employees that understand the needs of our customers, and enable them to satisfy those needs. In that way TransNamib will become a more flexible and collaborative company – which is what we strive to be.

(TransNamib, 2016:11)

It must be noted that in the context of stakeholder theory, management has to make correct decisions and structure itself in a transparent and efficient manner. TransNamib has vowed to do this in order to improve efficiency and profitability (TransNamib, 2016:11). Unlike agency theory, in which the managers are working for and serving the shareholders, stakeholder theorists suggest that managers in enterprises have a network of relationships to serve. This network includes suppliers, employees and business partners. The consequent relationships and interconnections are shown in Figure 3.3, below.

Figure 3.3: Stakeholder Theory Network



Source: Adopted from Abdullah and Valentines (2009:91)

As the diagram above shows how the enterprise (SOE) is seen as a system or network of stakeholders operating within the larger system of the host society that provides the necessary legal and market infrastructure for the enterprise's activities (Abullah & Valentines, 2009; Taylor, 2006). Therefore, an enterprise should have a mandate to create wealth or value for its stakeholders by converting their stakes into goods and services. Scholars (e.g. Blair, 1995)

have noted this important aspect, which is crucial in the evaluation of the performance of SOEs. According to Blair (1995:203):

... the goal of directors and management should be maximizing total wealth creation by the firm. The key to achieving this is to enhance the voice of and provide ownership-like incentives to those participants in the firm who contribute or control critical, specialized inputs (firm specific human capital) and to align the interests of these critical stakeholders with the interests of outside, passive shareholders.

Figure 3.3 above shows a network of players relating to a firm and who can, in any direction, affect the performance of an SOE. This kind of network is more important than other owner-manager-employee relationships as in agency theory (Freeman, 1999). However, the theories are not completely divorced from each other. Hill and Jones (1992) built on the work of Jensen and Meckling (1976) to recognise both the implicit and explicit contractual relationships in a firm to develop stakeholder-agency theory. The interdependence between an enterprise and its strategic stakeholders is recognised by the American Law Institute (1992), which states that the modern enterprise by its nature creates interdependences with a variety of groups with whom the enterprise has a legitimate concern, such as employees, customers, suppliers and members of the communities in which the enterprise operates (Turnbull, 1997c).

The basic point, however, remains, as Clarkson (1995) submits, that an enterprise is a system, within which there are stakeholders and the purpose of the organisation is to create wealth for its stakeholders. It is noted that the network of relationships with many groups can affect decision-making processes. Stakeholder theory is concerned with the nature of these relationships in terms of both processes and outcomes for the enterprise and its stakeholders (Freeman, 1984).

Critics of stakeholder theory (e.g. Sternberg, 1996, Turnbull, 1997b; Pound, 1993) argue that stakeholder theory is both misguided and mistaken. In their view, the theory's claim of accountability is unjustified since it undermines private property, agency and wealth, and is incompatible with business, as well as corporate governance.

Notwithstanding the foregoing, the Transport Advisory Board, for example, was established with a view of the various stakeholders in the whole transport sector. For example, Section 5 of the Namibian Transport Advisory Board Act (No. 23 of 1991) provides that the board shall consist of 19 members who come from various sectors, such as the public service, municipal councils, broader transport industry (i.e. persons with vested interest in the industry), tourist industry, agriculture, industrial sector, trade sector and mining industry. In addition, the chairperson of such a board is required to have the stakeholders' model in mind as they are supposed to have wide knowledge and experience of, and ability in relation to, transport, aviation or industrial, commercial or financial matters. This shows the permeation of the stakeholder theory through the Namibian transport sector and the imperatives of this theory are crucial in analysing the performance of SOEs in Namibia.

3.9.5 Political theory

Political theory concentrates on voting power. A person who has voting power in an enterprise may direct the policy and practice of that enterprise. Where all SOEs in Namibia are owned by the state, the state has 100% voting power, meaning it has absolute power to control the SOEs through allocation of corporate power, profits and privileges. Moreover, the government has political influence in all transport sector SOEs (Abdullah & Valentines, 2009:93; Hawley & Williams, 1996), meaning all leadership positions can be filled to further a political agenda – whether negative or not. According to Pound (1993), this impacts on the performance of SOEs.

Turnbull (1997c) notes that the political model is also concerned with the related issue of trading off investor voice to investment exit and institutional agents monitoring corporate agents, i.e. watching the watchers (Monks & Minow, 1996). All these issues are influenced by government laws and regulations and are therefore the subject of public policy debate for change and reform. This may enhance enterprise performance, as all efforts will be geared towards improving all aspects of such an enterprise. Hawley and Williams (1996) hold a similar perspective:

The political model of corporate governance (whether Pound's or Gundfest's version) places severe limits on the traditional economic analysis of the corporate governance

problem, and locates the performance-governance issue squarely in a broader political context. Political does not necessarily imply a government role, merely that it is non-market.

Hawley and Williams (1996:32)

In the American context, it has been noted that the government as the sole investor often seeks to change corporate policy by controlling all aspects of the enterprise. This has been met with mixed feelings as the discussion on privatisation/commercialisation in Chapter 2 above has shown. Pound (1992:83), arguing from the American experience, however, notes that “this new form of governance based on politics rather than finance will provide a means of oversight that is both far more effective and far less expensive than the takeovers of the 1980s (see also Gundfest, 1990).

3.9.6 Resource dependency theory

Daily et al. (2003) argue that the allocation of resources improves organisational functioning, the firm’s performance and the firm’s survival. This is a point that emanates from the resource dependency theory which was developed by Pfeffer (1972), Pfeffer and Leong (1977) and Pfeffer and Salancik (1978). In contrast to the stakeholder theory which focuses on relationships with many groups for individual benefits, the “resource dependency theory concentrates on the role of board directors in providing access to resources needed by the enterprise” (Abdullah, & Valentines, 2009:93). However, the resource dependency theory is similar to the stakeholder theory in that directors are influenced by external forces with regard to the securing of resources for and allocation of resources to the enterprise. According to Johnson et al. (1996), the theory provides a focus on the appointment of representatives of independent organisations as a means of gaining access to resources critical to firm success.

According to Hillman, Canella and Paetzold (2000), directors bring resources to the firm, such as information, skills, access to key constituents, such as suppliers, buyers, public policymakers, social groups, and legitimacy. Furthermore, directors can be classified into four categories: insiders, business experts, support specialists and community influential (Abdullah & Valentines, 2009).

First, the insiders are current and former executives of the firm and they provide expertise in specific areas, such as finance and law on the firm itself, as well as general strategy and direction. Second, the business experts are current, former senior executives and directors of other large for-profit firms and they provide expertise on business strategy, decision making and problem solving. Third, the support specialists are the lawyers, bankers, insurance company representatives and public relations experts and these specialists provide support in their individual specialised field. Finally, the community 'influentials' are the political leaders, university faculty, members of clergy, and leaders of social or community organisations (Abdullah & Valentines, 2009:93).

However, this theory is highly affected by the environment and culture in which the enterprise operates. According to Schmitter and Streeck (1994:6), transactions leading to the securing or allocation of resources are conducted on the basis of mutual trust and confidence sustained by stable, preferential, particularistic, mutually obligated, and legally unenforceable relationships. They may be kept together by value consensus or resource dependency – that is, through 'culture' and 'community' – or through dominant units imposing dependence on others.

3.9.7 Transaction cost theory

According to Coase (1937) and Cyert and March (1963), who are some of the earliest proponents of the transaction cost theory, an enterprise is an organisation comprising of people with different views and objectives affected by divergent factors. In this way, the enterprise and its structure can determine price and production. While accepting the neoclassical economic premise that market exchange is in theory the most efficient method of allocating resources, Coase (1937) notes that concluding business deals can in practice be foiled by 'transaction costs', such as shopping for and bargaining on deals. Coase (1937) maintains that business enterprises are usually organised as firms since carrying out large-scale production by multiple discrete market transactions would entail excessively high transaction costs. Thus, he argues, entrepreneurs brought production under the single roof of a 'firm' where production tasks were governed not by contract but by the 'fiat' of the entrepreneur (Coase, 1937).

The unit of analysis in transaction cost theory is the transaction. Therefore, the combination of people with transactions suggests that managers of transaction cost theory are opportunists

and arrange firms' transactions to their interests (Williamson, 1996). As Black (1990) submits, the transaction theory as informed by the contractarian theory postulates clearly, that the role of corporate governance law is to provide a kind of form contract that mimics the efficient governance terms that most enterprises would reach through market contracting anyway, while relieving parties of the transaction costs of actually conducting bargaining. "As transaction-cost theory and the related incomplete and relational contracting perspectives suggest, however, consenting to fiat may be an efficient way to assign corporate governance powers. Explicitly defining all rights and duties would entail prohibitive transaction costs" (Joo, 2010). Furthermore, it has to be noted that diversified investors lack the time and expertise to participate actively in governance.

3.10 The Overarching Responsibility of the Board of Directors

The concern of corporate governance has been with both accountability of the board of directors and board effectiveness (Cadbury, 2002). To ensure board effectiveness, there should be an inclusion of a sufficient number of the non-executive directors who would bring objectivity to the board's judgment. Thus, non-executive directors should make up the majority of independent directors (Cadbury, 2000; Cadbury, 2002).

According to Masawi (2001), private and public companies in Namibia are yet to make significant improvements in corporate governance and reach correlation between management and boards of directors, amidst growing calls for improved governance. This is the position as one notes that most Namibian companies do not have enough representation of qualified board members, while public institutions are dominated by political appointments, a situation that is compromising efficiency; and this is corroborated by Masawi (2001:2) who argues that: "The worst institutions in terms of adopting sound and well-crafted corporate governance policies in Namibia are the state-owned enterprises (SOEs) ... [T]hey lack clear demarcation between the duties of the appointing officer, the management and the Board.

It is reported that most companies from both the private and public sectors have adopted the King Code III as the benchmark for implementing good corporate governance policies and have also moved in line with the international monitoring trends. King Code III is the latest corporate governance policy introduced by PricewaterhouseCoopers (PWC) in a bid to enhance

management and operational structures for both public and private companies in the country and has been taken up by about 60% of companies operating in the country (Masawi, 2001).

It has been concluded that in Namibia there is a need for extensive education for board members and senior managers for companies to align their operations with good corporate governance policies (Masawi, 2001). The majority of the respondents interviewed still doubt the ability of their management and boards to operate independently while the other 45% have mixed feelings about the performances of the different bodies running their operations. It was noted that there is a need for companies to start positioning themselves in a way that also embraces voluntary empowerment of the previously disadvantaged majority in their structures.

The OECD (2005) lists the responsibilities of the boards of state-owned enterprises. The organisation notes that the boards of state-owned enterprises should have the necessary authority, competencies and objectivity to carry out their function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions. It is subsequently worth considering, in particular, the OECD's guidelines:

- The boards of SOEs should be assigned a clear mandate and ultimate be responsibility for the enterprise's performance. The board should be fully accountable to the owners, act in the best interest of the enterprise and treat all shareholders equitably.
- SOE boards should carry out their functions of monitoring management and of strategic guidance, subject to the objectives set by the government and the ownership entity. They should have the power to appoint and remove the CEO.
- The boards of SOEs should be composed so that they can exercise objective and independent judgment. Good practice calls for the Chair to be separate from the CEO.
- If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence.
- When necessary, SOE boards should set up specialised committees to support the full board in performing its functions, particularly with regard to audits, risk management and remuneration.

SOE boards should carry out an annual evaluation to appraise their performance.

Furthermore, it must be noted that directors of companies, including SOEs, are thus bound by their fiduciary duties to the enterprise and shareholders or stakeholders. These duties are *sui generis* in that they are based neither in contract nor in delict. They find application primarily with reference to the relationship between directors and their companies as was held by the court in ***Robinson v Randfontein Estates Gold Mining Co Ltd 1921 AD 168 at 242***. The same was argued by the court in ***Cohen NO v Segal 1970 (3) SA 702 (W) at 706B–F*** and in ***Du Plessis NO v Phelps 1995 (4) SA 165 (C) at 171***.

The principle in the Robinson case can be applied in the SOE-director relationship in that where directors are in a position of confidence involving a duty to protect the interests of the SOE, a director is not allowed to make a secret profit at the SOE's expense or place themselves in a position where their interests conflict with their duty. The *Robinson* case demonstrated that the concept of fiduciary duty underlies an extensive field of legal relationships in all companies, including SOEs.

All in all, directors may not: (a) exceed their powers; (b) exercise their powers for an improper or collateral purpose; (c) fetter their discretion; or (d) place themselves in a position in which their personal interests conflict, or may possibly conflict, with their duties to the SOE.

Whether a fiduciary relationship is established will depend upon the circumstances of each case ... But, so far as I am aware, it is nowhere laid down that in these transactions there can be no fiduciary relationship to let in the remedy without agency. And it seems hardly possible on principle to confine the relationship to agency cases (***Robinson v Randfontein Estates Gold Mining Co Ltd, supra, at 177-180***)

The principles so stated remain true to Namibia and beyond. It should be mentioned that the rule is a strict one that allows little room for exceptions. It extends not only to actual conflicts of interest but also to those that are real, sensible possibilities. The defences open to a fiduciary that breaches their trust are very limited: only the free consent of the principal after full disclosure will suffice (***GE Smith, Ltd v Smith; Smith v Solnik [1952] NZLR 470; Boardman v Phipps [1966] 3 All ER 721 [HL] at 737I, 743F-I, 748E-F, 756I***). The director who stands in a fiduciary position and acquires for themselves is deemed to have acquired for the enterprise, once proof of a breach of a fiduciary duty is adduced, it is therefore of no relevance that they acted honestly and reasonably.

It must be noted that, as far as companies are concerned, fiduciary duties are not limited to directors. In ***Boardman v Phipps [1966] 3 All ER 721 (HL)***, an employee was held liable to account to his former employer for secret profits made by him in breach of his fiduciary duties towards his employer. In ***Hodgkinson v Simms [1994] 3 SCR 377 (SCC)*** and (1995) 117 DLR (4th) 161, the Supreme Court of Canada held an accountant liable for breach of his fiduciary duties towards his client.

In ***Boardman v Phipps (at 482B)*** cited above, the court approved the ruling in *Hodgkinson* where La Forest J stated that it is the nature of the relationship, not the specific category of actor involved that gives rise to the fiduciary duty. Therefore, if fiduciary duties are observed, it will be expected that evils, such as corruption, nepotism, racism and the like will not cripple the performance of SOEs in the county.

3.11 State Ownership and Corporate Governance

The OECD holds that across the globe, SOEs face some distinct governance challenges. One of the major reasons for the governance problem among SOEs is about “undue hands-on and politically motivated ownership” (OECD, 2014:3). In many countries, this has led to the dilution of accountability that has been discussed above. The OECD (2014:3) further notes that:

SOEs are often protected from two major threats that are essential for policing management in private sector corporations, i.e. takeover and bankruptcy. More fundamentally, corporate governance difficulties derive from the fact that the accountability for the performance of SOEs involves a complex chain of agents (management, board, ownership entities, ministries, the government), without clearly and easily identifiable, or with remote, principals. To structure this complex web of accountabilities in order to ensure efficient decisions and good corporate governance is a challenge.

To this end, the OECD recommends that the state should exercise the ownership of SOEs on behalf of the general public. Following this there is a need for some careful evaluation by the state and a need for disclosure of the objectives of the public policy informing or motivating and incentivising state ownership (OECD, 2014:6). These needs should be reviewed on a

continuous and regular basis. Furthermore, consistent with the rationale for state ownership, “the legal and regulatory framework for SOEs should ensure a level playing field in markets where SOEs and private sector companies compete in order to avoid market distortions” (TransNamib, 2016:11).

Furthermore, ownership is very important. Viewed from financial theory, it is understood that the goal of an enterprise is to maximise the wealth of the owners for whom it is being operated (Gitman, 2009:15). As Ross, Westerfield and Jaffe (2002:815) reason, it follows that the only financial justification for corporate restructuring is if it results in a higher share value. However, there are those who support the argument that the value of an enterprise is solely a product of its investment opportunities, how an enterprise is financed and who owns it should, therefore, have no impact on the value of the enterprise. This is basically a description of the Fisher’s Separation Theorem as explained by Copeland, Weston and Shastri (2005:18-19).

The arguments about privatisation are based on the divergence of opinions with regards to ownership by the state, public sector or both, jointly in a partnership. The baseline is that ownership change may increase the profit participation of management and/or other employees. The creation of positive incentives through a change in ownership structure would be expected to increase the value of an enterprise (Jensen & Meckling 1976; Morck, Shleifer & Vishny, 1988). In general, though, theory suggests that changing the ownership of an enterprise should have no impact on its value and, as a result, one should find that share prices do not respond to the announcement of BEE transactions (Strydom, Christison & Matias, 2009: 68).

Corporate restructuring has also been topical in Namibia. It is conceivable that given the great expense involved in such corporate restructuring, if the financial benefits of BEE transactions (in the form of increased cash flow or lower risk) do not exceed the costs of these expensive restructurings, the announcement of such a transaction should lead to a decrease in share price at least equal to the net cost of the transaction. If such a transaction is interpreted by the market as a signal that management is not pursuing wealth-maximising strategies, the decrease in the share price could be even greater.

The ownership entity should be held accountable to representative bodies, such as parliament, and have clearly defined relationships with relevant public bodies, including the state supreme audit institutions (OECD, 2014). This means that the relationship of the ownership entity with other government bodies should be clearly defined.

A number of state bodies, ministries or administrations may have different roles *vis-à-vis* the same SOEs. In order to increase public confidence in the way the state manages ownership of SOEs, it is important that these different roles be clarified and explained to the general public. For instance, the ownership entity should maintain cooperation and continuous dialogue with the state supreme audit institutions responsible for auditing the SOEs. It should support the work of the state audit institution and take appropriate measures in response to audit findings, following in this regard the INTOSAI Lima Declaration of Guidelines on Auditing Precepts (OECD, 2014:17).

The ownership entity should be held clearly accountable for the way it carries out the state ownership function. Its accountability should be, directly or indirectly, to bodies representing the interests of its shareholders.

3.12 Chapter Summary and Conclusion

Despite their different perspectives on rationale, role and expectations of SOEs, there is overall consensus and consistency that SOEs, in whatever form, should result in the improvement of efficiency, effective service delivery, better governance practices, transparency, value for money, as well as independence and clear responsibility of the board of directors. Thus, stakeholder expectations require continuous oversight of SOE performance.

Therefore, performance management and monitoring is an indispensable tool to enable shareholders, directors, internal and external stakeholders, as well as public policy makers to evidence and track SOEs' performance. Such tools assess not only if an intervention (for example initiatives, projects, programmes and policies) is improving the general well-being of SOEs and the community it serves but also how much improvement is sustainable and effective.

It is evident from the literature that the society has begun questioning how efficient SOEs are in delivering the services for which they were created. It should be noted that although the studies on the performance of SOEs worldwide and in Africa have been around for some time, the spectacular failure in governance of the late 1990s and early 2000s, and the recent financial

crisis that was fuelled by excessive risk-taking, has put the question of SOEs right at the centre of all economic and social debates.

Similarly, and even more so, the significance of leadership has become even more apparent in the twenty-first century because of unprecedented changes in the world economy triggered by the financial crises and the ever-present reality of limited resources.

Because of the above factors, the trust in SOEs' leadership becomes a critical factor. If this trust is eroded, as is the case with most SOEs, both short- and long-term performance will be affected, resulting in productivity challenges and viability pressures on SOEs' leadership and management. The call for effective business decisions, strengthening the role of SOEs' leaders and implementing effective governance has now resurfaced, forcing researchers to look at the fundamental response to these challenges.

Finally, the theories and arguments discussed in this chapter provide a foundation for the discussions that follows. The next chapter provides an overview of the legal framework governing SOEs and its overall impact on their performance.

CHAPTER FOUR: TRANSPORT-ORIENTED STATE-OWNED ENTERPRISES IN NAMIBIA: A POLICY, LEGISLATIVE AND INSTITUTIONAL CURRENT REALITY PERSPECTIVE

4.1 Introduction

The preceding chapter examined the literature available on the topic under discussion. The aim was to develop a strong theoretical appreciation of SOE performance. Building on that foundation, this chapter explains the legal framework under which state-owned enterprises (SOEs) operate in Namibia, specifically those in the transport sector. It begins by giving a general overview and concludes with the institutional perspective on policy directives and related legal instruments.

Given that the main aim of this study was to examine the performance of SOEs in Namibia's transport sector, it was necessary to establish the legal environment under which they operate. Accordingly, five (5) SOEs covering all the four modes of transport are covered (selected), namely Air Namibia and Namibia Airport Company (NAC) under aviation, Namport under maritime, the Roads Authority under road, and TransNamib under railways.

The chapter is broadly structured as follows:

- Policy framework governing SOEs;
- The new framework;
- The researcher's observations of the new framework;
- The researcher's recommended performance framework; and
- Summary of conclusions and contributions.

The next section takes a closer look at the previous governance framework.

4.2 Policy Framework Governing SOEs in Namibia

Namibia has a number of SOEs in the transport sector. They include Namibia Airport Company (NAC) responsible for the maintenance of Namibian airports, Namibian Ports Authority (Namport) responsible for the management of Namibian ports, Trans Namib (TransNamib) responsible for the operations of Namibian railways, and the Roads Authority (RA) responsible for maintenance of Namibian roads. Until 2005, the policy framework governing the transport sector was the White Paper on Transport Policy of 1995. It is important, however, to appreciate the broader context that led to the emergence, growth and in some cases stagnation of SOEs in Namibia before delving specifically into transport sector SOEs.

As in most other post-colonial African countries, at independence in 1990 Namibian SOEs were, rightly or not, seen as useful vehicles for achieving certain national development objectives – primarily economic growth, employment creation, addressing inequality, and poverty reduction. With the limited reach of the private sector (owing to its colonial roots), the post-colonial state had few options outside of using state enterprises to implement its agenda.

In the transport sector, the White Paper on Transport Policy set out clear objectives that were in line with the basic objectives of the GRN, namely to revive and sustain economic growth, create employment opportunities, alleviate poverty, reduce inequalities in incomes and promote efficient use of scarce resources. A related objective was to ensure safe, effective and efficient transport services of all modes. SOEs in the transport sector were therefore established to realise these, among other objectives.

The constitutive legislation for each of the SOEs is discussed below. The objects and mandates, as well as the operational frameworks of these transport sector SOEs are also explained. It suffices here to underscore factors highlighted in the literature on performance of SOEs already reviewed that will help contextualise, illuminate and deepen subsequent discussions. Firstly, the [state] ownership-control-governance nexus is critical to understanding the SOE performance conundrum that this research addresses. Secondly, the notion that SOEs can, given the right environment, economically outperform private firms has had the effect of slowing, if not stalling, the process of SOE reforms, especially privatisation. Thirdly, monitoring SOE performance has been fraught with problems. Finally, there is a broad consensus in government premised on the resource-based theory and corporate governance argument that

the economic performance of SOEs is likely to improve when they leverage broad-based (competitive and political) capabilities.

Different forms of ownership, from sole state to wholly private enterprises (as well as everything in between) have permeated debate on SOEs in Namibia since independence. More importantly, the debate has been predominantly around issues of performance of SOEs, with ownership, control and governance seen as causal or explanatory factors. At the same time, until very recently the debate on privatisation has been characterised by ambiguity and lack of an enabling policy and legislative framework. In fact, the current Namibian president (then Minister of Trade and Industry) warned in 2009 that privatisation is a sensitive topic to discuss in Namibia (Geingob, 2009:11).

It should be noted that insofar as the concept of privatisation in Namibia is concerned, debate oscillates between the pros and cons of privatising SOEs. As a result, policy makers have tended to fall back to commercialisation as the pathway to inject desperately needed improvements into SOE performance, with very little to show for it. Equally, the capacity of the principal to effectively monitor performance of SOEs has been lacklustre due to a combination of institutional and capacity constraints. Lastly, the persistence of low performance by SOEs described in the following sections suggests the need to pay greater attention to the possibility that SOE CEOs operate under conditions defined by contradictory goals and perverse incentives.

As property rights theory suggests, state ownership and control of SOEs has been linked to broader questions of efficiency. Financial losses leading to unsustainable government bail outs, low or declining productivity as evidenced by decline in dividend from SOEs (as a percentage of revenue, dividends from SOEs were at 1.8% of state revenue during the 2009/10 financial year, compared to a meagre 0.2% during the 2016/17 financial year) and poor quality of service have served as fuel to calls on government to divesture from non-performing SOEs. Such calls have hitherto dominated policy debates on SOEs, not least in the transport sector. Again, in line with the conceptualisation of the role of managers of SOEs as agents, most vitriol for poor performance has been directed at managers of SOEs who, unlike their counterparts in the private sector, are perceived as not suffering the economic consequences of their decisions. Their principals – politicians, bureaucrats and government officials – have not been spared

either from attack given their presumed complicity seen mainly arising from their self-interested behaviour that is out of sync with efficiency maximisation goals in SOEs.

At the policy level, much of the concern and discussions have been about the responsibility of the board of directors of the various SOEs, especially those characterised as performing poorly. Specifically, the concern has been around questions of accountability of the board of directors and board effectiveness (Cadbury, 2002). A related concern has been on 'corporate governance', resulting in calls for improved governance across the board (Masawi, 2001). Such claims have not been sufficiently tested empirically in the context of Namibia's transport sector SOEs, hence this study. Although slow and far in-between, policy response to the above noted concerns has tended to conform to globally known best practices. But slow response to such initiatives, as well as the performance crises that continues to dog the SOEs has provided additional impetus for additional analysis and quest for alternative solutions. Some responses have been partial and half-hearted at best and contradictory at worst. Hopefully, recent and on-going efforts at reforming SOEs will, in spite of their shortcomings, succeed in addressing most of the challenges confronting SOEs that were discussed previously in Section 2.3.

With the above background in mind (and a clear choice for commercialisation as opposed to privatisation), it can be concluded that despite the measly performance of SOEs, the Namibian government is not prepared to privatise fully. This could be because of equity considerations and not wanting to sell off the nation's assets. Instead, the government encourages PPPs, which in some quarters are seen as what the government claims to not want to do, i.e. selling off national assets to the elite and foreigners. A closer look will now be taken at the current legal and institutional arrangements governing SOEs in Namibia.

4.3 The Legal Framework of SOEs in Namibia

4.3.1 The constitutional framework

Good corporate governance does not exist in a vacuum. This is a concept that has now been defined in a net of regulatory frameworks originating from the Namibian Constitution through the relevant statutes to policies ending with rules and policies made by various SOEs on their own. Before going into specific principles and concepts, it is important to mention that the

Namibian Constitution, especially Chapter 3, i.e. the Bill of Rights, imposes considerable substantive obligations upon the administration of any public and even private entity, including the individuals running such an entity. This is especially seen in the provisions of Article 5, which shows that both individuals and corporate bodies in the public sector are bound by it and extends the application of the Bill of Rights to private actors wherever it may apply to them.

Furthermore, and very important, is the point that the Namibian Constitution establishes the Office of the Auditor-General whose responsibility is to audit and report on the financial affairs of all ministries and government agencies, including the financial affairs of all SOEs. On a comparative note, the Namibian Constitution does not make specific rules regarding the administration of public entities. In other words, it is unlike the South African Constitution which has specific provisions for public governance, including governance of public enterprises or SOEs as they are referred to in this study. Chapter 10 of the South African Constitution entitled 'Public Administration', sets out the values and principles that must govern public administration⁴ and states that these principles apply to administration in every sphere of government, organs of state and public enterprises. This chapter also establishes a Public Service Commission to promote the values of public administration.

Moreover, Chapter 9 of the South African Constitution establishes the office of the Public Protector whose primary task is to investigate and report on conduct in public administration, which is alleged, to be improper.⁵ This office is akin to the Namibian Ombudsman but its mandate and powers are much broader. These include investigating and making decisions on what remedial action should be taken when a fault has been identified in the running of an SOE.

⁴ Section 195 of the South African Constitution (1) provides that:

"Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (a) A high standard of professional ethics must be promoted and maintained.
- (b) Efficient, economic and effective use of resources must be promoted.
- (c) Public administration must be development-oriented.
- (d) Services must be provided impartially, fairly, equitably and without bias.
- (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
- (f) Public administration must be accountable.
- (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
- (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
- (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation."

⁵ Section 182(1)(a) and (b) of the Constitution.

4.3.2 Governing acts and institutional arrangements

4.3.2.1 *The Public Enterprises Governance Act No. 2 of 2006 (as amended)*⁶

This is the main Act that regulates SOEs in Namibia. It is comprehensive in its coverage but, as will be shown below, it is not enough as the establishment or regulation of SOEs under it is not likely to result in the high performance of SOEs in the country.

Factors such as overburdening SOEs with excessive or overvalued assets, undercapitalisation, and setting up SOEs in ways that favour the ministry or department from which its assets are being transferred rather than on commercial drives (as well as in the best interest of the new SOE, its customers and its owners) need to be carefully evaluated before the regulatory framework and generally the forces behind the establishment of SOEs can be expected to impact on their performance (Asian Development Bank, 2011). Accordingly, it must be in the best interest of the new SOE, its customers and its owners (the government). Examples that illustrate this phenomenon that are cited in the literature include Tonga Airports Limited and Tonga Post Limited. Next, we consider some salient features of the Act relevant to the performance of SOEs.

4.3.2.2 *The SOE Council*

In 2001, the Namibian government published the Governance Framework for State-Owned Enterprises in Namibia. After a long period of reflection and consultation, and the publication of this framework, the legislature passed the State-Owned Enterprise Governance, 2006 (Act No. 2 of 2006) following the publication of a report on the previous five years. The Act was promulgated to set the parameters by which SOEs would be governed. As its preamble states, the main objective of the Act is to achieve or ensure efficient governance of SOEs and the monitoring of their performances. Furthermore, it was enacted for the restructuring of SOEs, to establish the State-Owned Enterprises Governance Council (hereafter referred to as the

⁶ It should be noted that this Act replaced the State-Owned Enterprises Act of 2006. For example Section 14 of Public Enterprises Governance Amendment, 2015, (Act No. 8 of 2015) amended section 50 of the principle Act by changing the short title from State-owned Enterprises to the Public Enterprises Governance Act, 2006 of the previous Act. It should further be noted that the change is rather cosmetic and doesn't go sufficient enough to address the challenges of SOEs.

Council) and define its powers, duties and functions, and to make provision for incidental matters.

In terms of Section 2 of the said Act, the Council (now replaced by and called the Ministry of Public Enterprises⁷) functions as a committee of Cabinet and performs the functions assigned to it by the Act under the supervision, and subject to the approval, of the Cabinet. Section 3 of the Act constitutes the members of the Council who are the prime minister, who is the chairperson of the Council, the minister responsible for finance, the minister responsible for trade and industry, the attorney-general and the director-general of planning. It should be noted, however, that in the current government there is a new Ministry, the Ministry of Public Enterprises, which was created specifically for the SOEs. It can be argued that the Act is deficient to the extent that it does not mention the membership of the minister (former Council) responsible for SOEs. It is imperative that such a minister be included.

Section 4(1) of the Act outlines the functions and duties of the State-Owned Enterprises Council, namely:

- “To establish generally accepted common principles of corporate governance and good practice governing State-owned Enterprises;
 - To develop common policy frameworks for the operations of State-owned Enterprises, including policy on issues relating to human resources, assets and finance;
 - To determine criteria for the performance measurement and evaluation of State-owned Enterprises, and develop appropriate means for monitoring their performance;
 - To make determinations in relation to the number of members to be appointed to the boards of State-owned Enterprises and advise portfolio ministers on the appointment of such members in accordance with sections to facilitate the provision of programmes for the training and development of members of the boards and management staff of State-owned Enterprises on corporate governance and efficient management practices;
- To receive and consider for approval submissions made by State-owned Enterprises on the annual distribution of profits and the declaration of dividends.”

⁷ Section 2 (c) of Public Enterprises Governance Amendment, 2015, (Act No. 8 of 2015), replaces term State-owned enterprise with public enterprise.

These roles of the Council are described as 'elegant' by the South African Presidential Review Committee (2012:16), which states that:

It is our submission that this is the most elegant area of Namibian legislation. Firstly, that Act defines a Portfolio Minister as the Minister responsible for the administration of the law governing the establishment and functions of the State-owned Enterprise, and a Minister holding the shares and exercising the rights attached to the shares in the company on behalf of the State. The import of this definition is that there is more than one Portfolio Minister, but the Boards that they appoint and the oversight thereof are harmonised as there is a council that sits and develops such standards. This ensures consistency in governance practices, including Board appointments, etc. Therefore, Portfolio Ministers, in overseeing SOEs, do so uniformly.

However, the Committee noted that the inelegant part of this Act is that none of the members of this governance council are non-politicians. There is no representation of the business community in this Council who could have brought a perspective outside government, especially in best practices in corporate governance. This weakness remains even if it is clear that the Act details procedures for the appointment of SOE boards (Section 14 and 15 of the Act). Board appointments are gazetted (Section 6[7]). It is not clear whether this process has been followed in the ten years since the promulgation of the Act. This might be similar to South Africa. In South Africa, although some SOE-founding Acts call for the gazetting of board appointments, such a practice is not commonly applied. In most cases, once Cabinet has approved appointments, the process ends.

The Act codifies the entering into a performance agreement between the CEO, his/her senior management and the board.⁸ A proper reading of Section 22(2) of the Act shows that government officials are allowed to sit on SOE boards. The South African Presidential SOE Review Committee (2012:17) sees this as a weakness in the Namibian Act and comparatively submits that:

⁸ Section 21 of the Act. In South Africa this is a fragmented practice. In most cases the board has no say in how the SOE executives are appointed (except the CEO). In some instances, even the board plays no role in the recruitment and appointment of the CEO.

The appointment of Government officials in SOE Boards, over and above eroding or compromising the independence of the Boards, owing to their fiduciary duty to the shareholder (as opposed to the entity), also brings about a complication of remuneration. This matter is unresolved in South Africa, as was evident in the PRC's visit to the North West Province where it became apparent that some Government officials get remunerated for sitting on Boards of SOEs despite being salaried Government Employees, e.g. the North-West Park Board.

Indeed, there is a problem with the appointment of government officials on SOE Boards, over and above eroding or compromising the independence of the board, and the fact that they owe their fiduciary duty to the shareholders (as opposed to the entity) also brings about a complication of remuneration.

Part V of the Act gives effect to the shareholders' powers in relation to SOEs.⁹ Section 29, in particular, ensures accountability by stating that "If the Council, after consultation with the portfolio minister, considers it necessary or desirable for any reason, the Council may by notice in the *Gazette* direct that a special investigation be conducted in relation to any matter concerning the business, trade, dealings, affairs, assets or liabilities of a State-owned Enterprise as may be specified in the notice." The Act lists SOEs under two schedules but not the subsidiaries. Even in its definition of SOEs or SOCs, those definitions exclude/make no reference to subsidiaries.¹⁰ The Council is further mandated to lay down directives in relation to:

- Governance agreements to be entered into by a portfolio minister with the board of an SOE;
- Performance agreements to be entered into between a portfolio minister and the individual members of a board of an SOE and between such a board and its CEO and other senior management staff;
- The remuneration levels of board members, CEOs and other senior management staff of SOEs;

⁹ Part V.

¹⁰ See schedule 1; Section 1.

- Benefits for employees of SOEs generally;
- The number of members to be appointed to the boards of SOEs and advising the portfolio ministers on the appointment of such members in accordance with sections 14 and 15;
- The furnishing of a portfolio minister with any comments it may wish to make in relation to an annual budget of an SOE submitted to that minister for approval and provided to the Council for its information and comment;
- The facilitation of the provision of programmes for the training and development of members of the boards and management staff of SOEs on corporate governance and efficient management practices; and
- The receipt and consideration for approval submissions made by SOEs on the annual distribution of profits and the declaration of dividends in terms of Section 25¹¹.

In addition, the Council is also enjoined to submit to Cabinet for decision any proposed restructuring plan prepared and approved by the Council in relation to any SOE identified by Cabinet for restructuring and to perform any other function entrusted to the Council by or under the Act or any other law.

Indeed, the introduction of the SOE Act 2006, (No. 2 of 2006) was not without challenges.¹² There are advantages and disadvantages of this Act.¹³ According to Murangi (2006, as cited by Kanguuehi, 2007), since the SOEG Act came into effect in 2006, the full implementation of the Act has been a daunting task for government. A lack of guidelines, directives and regulations resulted in the Act being amended and Cabinet placed a moratorium on board fees and executive management of SOEs until the Act became fully operational (2008). These concerns arose mainly because there was no one specific Ministry enforcing the Act at the time when it was promulgated.

Perhaps the greatest injury to the common law was committed when the State-Owned Enterprises Governance Act was promulgated, possibly in the belief that it advances the purport of Article 40(a) of the Constitution. Instead, a Minister of Public Entities could have sufficed.

¹¹ State-Owned Enterprise Governance, 2006 (Act No. 2 of 2006)

¹² In Murangi's presentation to the OECD titled "State Owned Enterprises Governance of 2006(as amended).

¹³Advantages: Overarching legislation; watchdog; uniformed way of doing things; easy to monitor; performance can be rewarded or not rewarded. Disadvantages: Increased Pressure on SOEGC; blame culture from the SOEs.

The function of the State-Owned Enterprise Governance Council and its secretariat remains a convenient mystery.

Furthermore, the Act is silent on the issue of non-compliance. This is similar to the submissions by Mubwandarikwa (2013) who argued that:

However, up to date, the State-owned Enterprises Governance Act is not fully functional. The Act stipulates, inter alia, that the Council is to establish generally accepted common principles of corporate governance and good practice governing State-owned Enterprises. The Council further sets out to develop common policy frameworks for the operations of state-owned enterprises, including policy on issues relating to human resources and asset performance.

Mubwandarikwa (2013:33)

Therefore, there is a need for the development of standards and/or benchmarks for the performance measurement and evaluation of SOEs, as well as the appropriate means for monitoring and evaluating their performance. This means that despite the State-Owned Enterprises Act No 2 of 2006 having been promulgated, there is a slow process of good governance of public enterprises as long as there are no rules and regulations put in place. The Act could also relate to the topic of privatisation, as considered in detail above, as the view exists that “[t]he essence of this law was to pave the way for the sale of equity to the private sector as part of SOE restructuring” (Mubwandarikwa, 2013:33; LaRRI, 2003).

4.3.2.3 Disclosure and related corporate governance rules

A normal rule of engagement in corporate governance in terms of Section 6(1) of the Act is that a Council member or portfolio minister who has a direct or indirect personal or financial interest in any matter being discussed at a meeting of the Council must disclose the nature of that interest and must not attend the rest of that meeting or participate in any deliberations or decision of the Council in relation to the matter, except if the Council determines otherwise, and subject to any conditions the Council may determine. Such a disclosure should be recorded in the minutes of the meeting.

The Act contains a punitive measure for non-disclosure, with Section 6(3) stipulating that a person who fails to disclose personal interest as required by the Act commits an offence and is liable to conviction and to a fine not exceeding N\$20,000 or to imprisonment for a period not exceeding two years. This raises the question as to whether this punishment, especially the fine, is deterrent enough. The Act does not go on to stipulate whether such a person is disqualified from being a member of the Council after paying the fine. Since all members of the Council are members of Cabinet appointed by the president into their ministerial positions, the question remains whether such a person also loses their ministerial position, especially when they pay a fine and are immediately free. It is an open question as to what effects this omission has on SOEs' credibility and performance in the transport sector.

The Act goes on to bind other staff members of the secretariat to the Council. Section 12(1)(a) prohibits a member of the secretariat of the Council or any consultant engaged by the Council from publishing or communicating or in any other way disclosing any information relating to the affairs of any SOE or a member of the board of an SOE or a person being considered or recommended as a candidate for appointment as such a member, that has come to such person's knowledge, in the performance of any function in connection with the functions of the Council. This also applies in situations where one gains information as a result of such a person's attendance at a Meeting of the Council or a Committee of the Council, as Section 12(1)(b) stipulates.

It may appear as if this provision negatively affects the principles of disclosure of information for good corporate governance as analysed above. However, in terms of Section 12(2)(a), the restrictions in Section 12 do not apply to information disclosed for the purpose of the proper administration or enforcement of the Act or the performance of the functions of the Council, for the proper administration of justice in terms of Section 12(2)(b) or at the request of any member of the Council or any other person authorised in writing by a member of the Council in terms of Section 12(2)(c). Therefore, the right to disclose in order to enhance principles of good corporate governance still exists, albeit within the parameters as set out by the Act.

4.3.2.4 Governance agreements

In terms of Section 17(1), within one month of being constituted, the portfolio minister must, with due regard to any directives laid down by the Council under the Act in terms of Section 4, enter into a written governance agreement with the board of an SOE in relation to, inter alia:

- The State's expectations in respect of the SOE's scope of business, efficiency and financial performance and achievement of objectives;
- The portfolio minister's obligations in relation to any function conferred or imposed by the establishing Act of the SOE;
- The principles to be followed by the SOE for business planning (17[1][c]);
- The measures that are necessary to protect the financial soundness of the SOE;
- Key performance indicators in terms of which the SOE's performance will be evaluated;
- The structure of the business and financial plan;
- The principles to be followed at the end of each financial year in respect of any surplus in the accounts of the SOE; and
- Any other matter relating to the performance of the SOE's functions under any law.

A copy of the governance agreement must be open for inspection by the public at the head office of the SOE. Some of these agreements have already been signed and made public. For example, Namibia Ports Authority (Namport), an SOE which is responsible for the development and maintenance of Namibian ports, entered into a five-year governance agreement with its portfolio minister on 20 May 2010, which outlines the roles, responsibilities and obligations of the portfolio minister and the authority respectively (Namport, 2012). As Shifidi (2014:46) reports, the authority's progress towards achieving its objectives and strategies was evaluated utilising key performance indicators set out in the said agreement, which is open for inspection at the authority's head office during business hours. In terms of the Governance Agreement, Namport has committed to the principles of good corporate governance as contained in the King III Report (Namport, 2012).

4.4 Legislation of Specific Transport Sector SOEs

4.4.1 National Transport Services Holding Company Act (No. 28 of 1998)

This Act provides for the incorporation of a holding company to undertake transport services. Since both the private and the public sector undertake transport services in the country, only those parts that deal with the public (SOEs) are relevant to this study. The Act replaces the National Transport Corporation Act, 1987 (No. 21 of 1987). The Act came into force on 1 January 1999. However, sections 5-13 and 15-19 came into force only on the date of transfer of services to the holding company, which was 1 April 1999 (GN 51/1999, GG 2075).

One interesting aspect of this Act is that in terms of its regulations, anything done under the National Transport Corporation Act (No. 21 of 1987) that could have been done under a corresponding provision of the new Act remains valid. Therefore, if any 'wrong' actions were taken, they remain valid unless successfully challenged. As a result, the performance of current SOEs may be hampered because of historical reasons. Such arguments are reflected in the writings by some authors and even in the media (Kakujaha-Matundu, 2009:61; Grobler, 2009; Melber, 2009; McClune, 2004). Thus, the trend that the laws follow is viewed as a perpetuation of the old system in disguise but nevertheless for corporate and bureaucratic expediency. This means that a legal and administrative vacuum can be avoided.

It is interesting to also point out that although Section 6 talks about performance agreements, the time frame in which the performance agreements are expected to be submitted is quite long for the line minister to take appropriate action in case remedial actions are required. The section states that "[T]he Holding Company shall, subject to Section (2), but not later than two months before the commencement of every third financial year and in accordance with such procedures as the shareholding Minister may determine, submit to the Minister a draft performance agreement" (Section 6[1]).

4.4.2 Roads Authority Act, 1999 (No. 17 of 1999)

This Act provides for the incorporation of the Roads Authority Company to manage the national road network of the country. Considering its function, the RA plays an important part in the transport network of the country and indeed the economy. It should be noted that management

of the network also includes, as contemplated in Section 16(1) (a), planning, design, construction and maintenance of roads.

One interesting aspect of this Act is that most of these functions, except planning, are usually outsourced to the private sector, therefore the company remains more focused on the monitoring aspect of the management of the road network. One aspect of the Act that may have both legal and administrative issues is the aspect of alternate directors. According to Section 8 of the Act, the minister may appoint for each director (board member), a person as alternate director when the substantive director is absent. It is the author's opinion that such a situation may erode accountability and responsibility, as the alternate directors may be allowed to come and endorse the decisions that were already taken by substantive members without proper appreciation of the background to the decision. Similarly, it may also frustrate management to explain issues to the alternate director that were already explained to the substantive director. The issues of the performance agreement, which the Act refers to as a performance statement, are outlined in Section 18 of the Act. Similar issues that were observed in the National Transport Service Holding Act, 1998 above, are observed in the Roads Authority Act, 1999.

4.4.3 Namibian Ports Authority Act, 1994 (No. 2 of 1994)

This Act is important to the topic under investigation insofar as it provides for the establishment of the Namibian Ports Authority to undertake the management and control of ports and lighthouses in the country. Considering these functions, the Namibian Ports Authority plays an important role in maritime and indeed in transport activities in general. It should be noted that the function of the organisation also includes, as contemplated in Section 3(1)(a), port management, lighthouse operation and navigational aids in Namibia and its territorial water. It is the opinion of the author that these are important objects that could easily be eroded due to specialisation of the organisation.

One other interesting aspect of this Act is that Section 21(1) gives the monopoly of constructing, developing and operating any port to the Namibian Ports Authority. This is in contrast with the free market concept as contemplated in the Constitution. It further does not allow for the Namibian Ports Authority to be competitive through innovative performance as it is the only player. It is interesting to observe that the Namibian Ports Authority Act does not refer to the

issues of the performance agreement, which the other two acts above explicitly mentioned. This is only done through the State-Owned Enterprises Act.

4.5 Chapter Summary and Conclusion

Performance monitoring is a tool that enables policy makers and decision makers alike to track performance. It assesses not only if an intervention (for example initiatives, projects, programmes and policies) is improving the general well-being of society but also how much improvement, by what means and how it could attain the result more effectively. It is evident from this chapter that the current legal and institutional framework has not assisted SOEs' performance and propelled the efficient service delivery for which they were created.

Because of the above factors, the government has enacted laws to address performance and productivity challenges of SOEs in the country. The call for effective business decisions, strengthening the role of SOEs' leaders and implementing effective governance has now resurfaced, forcing researchers to consider the fundamental response to these challenges. It became apparent in the literature review that only excellence in governance will help overcome the current crisis of confidence in leadership with the reaching of a tipping point whereby corporate governance drives corporate strategy rather than the inverse. The question, however, is whether the current regulatory framework supports these ambitions. It is the researcher's contention that this is not the case. Taking the amendment of the previous Act (State-Owned Enterprises Act of 2006) as an example, the new Act (Public Enterprises Governance Act, 2006) is simply a cosmetic exercise, wherein the Ministry replaces the Council. This is not enough to address the challenges of SOEs.

More general, although studies on the performance of SOEs worldwide and in Africa have been around for some time, the spectacular failure in governance in the late 1990s and early 2000s, and the recent financial crisis which was fuelled by excessive risk-taking, has put the question of SOEs right at the centre of all economic and social debates. Similarly, and even more so, the significance of legislation has become more apparent in the twenty-first century because of unprecedented changes in the world economy triggered by the financial crises and the ever-present reality of limited resources.

CHAPTER FIVE: THE PERFORMANCE OF STATE-OWNED ENTERPRISES IN NAMIBIA: A RESEARCH- BASED ANALYSIS

5.1 Introduction

This chapter presents an analysis of the findings and results of the performance of the transport sector SOEs in Namibia. Findings from both secondary and primary data are analysed and presented. Results of the analyses of audited financial reports of SOEs are first presented followed by results of questionnaire-based and direct interviews.

The above findings are then juxtaposed with theories and empirical results of corporate governance literature to create a deeper understanding of the level of the performance of the SOEs under investigation. The chapter reveals that the major causes of poor performance of the transport sector SOEs in Namibia include poor financial management practices, a deficient management information system, non-adherence to key performance indicators, incompetent management policies, and weak corporate governance ethics.

Lastly, the chapter identifies variables responsible for the performance of the five (5) transport sector SOEs. All the factors highlighted in the analysis provide information on, and highlight specific issues of, the performance of the selected SOEs. In summary, the chapter is structured as follows:

- Presentation of results of financial analysis of transport sector SOEs
- Summary of the data from discussions and interviews;
- Actual performance and challenges of selected SOEs;
- Revisiting the theories of SOE performance; and
- Conclusion.

5.2 Results of Financial Analysis

The efficiency and (financial) performance of transport SOEs was measured in three ways:

- 1) using return on assets ratio (ROA), which measures how effectively a SOE can earn a return on its investment in assets;
- 2) via return on equity ratio (ROE), which is a profitability ratio that measure how efficiently a SOE can use the money from shareholders to generate profits and grow the company and
- 3) operating profit margin (OPM), or operating margin ratio which is a profitability ratio that measures what percentage of total revenues is made up by operating income. In other words, the operating margin ratio demonstrates how much revenues are left over after all the variables or operating costs have been paid.

These three internationally recognised efficiency (or operational performance) measures – ROA, ROE and OPM, were used to assess the level of efficiency (i.e. operational performance) of SOEs in the transport sector in order to meet one of the research objectives, namely “to assess and objectively determine the level of performance (in terms of governance, efficiency and productivity) of Namibian SOEs in the transport sector”.

ROA, often called the return on total assets, measures the net income produced by total assets during a period by comparing net income to the average total assets. In other words, the return on assets ratio measures how efficiently a company can manage its assets to produce profits during a period. On the other hand, return on equity (ROE) measures how efficiently an SOE can use the money from shareholders (primarily government) to provide services sustainably. Unlike other return on investment ratios, ROE measures performance of SOE from the investor’s point of view - not the SOE. In other words, this ratio calculates how much money is made based on the investors’ investment in the SOE, not the SOE’s investment in assets or something else.

Furthermore, the operating margin ratio, also known as the operating profit margin (OPM) measures what percentage of total revenues is made up by operating income. In other words,

the operating margin ratio demonstrates how much revenues are left over after all the variables or operating costs have been paid.

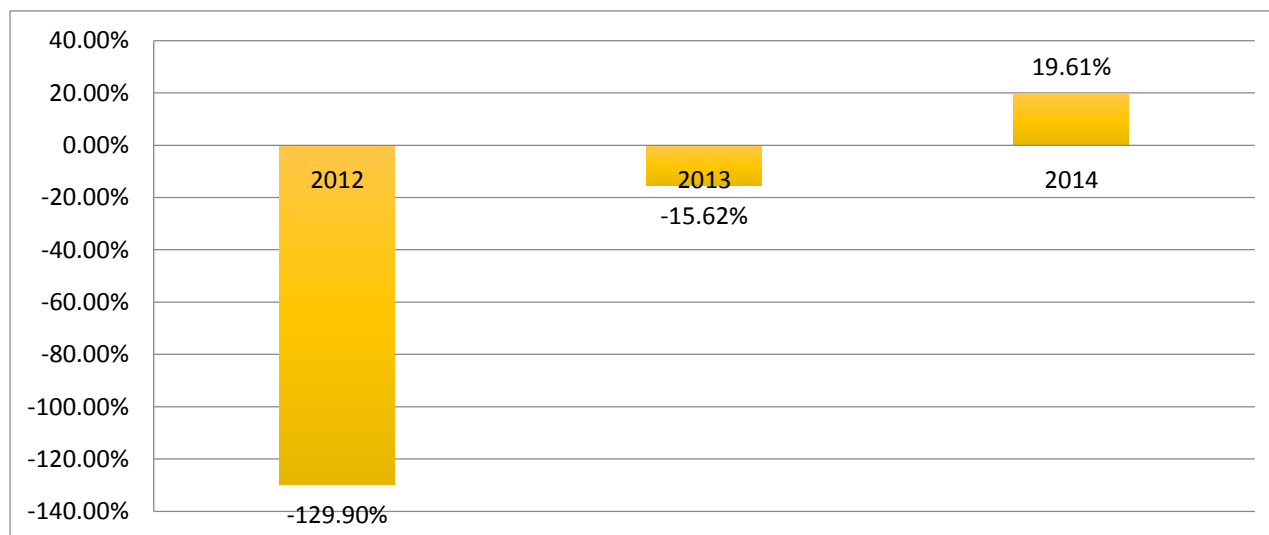
Lastly, it should be noted that not all the SOEs under investigation are profit driven. However, the concept of OPM is still relevant and applicable in this regard.

5.2.1 Air Namibia

5.2.1.1 Rate of return on assets

As a measure of profitability (i.e., per dollar profit earned relative to assets), Air Namibia's three year (2012-2014) ROA average of -42 is indicative of the level of the SOE's performance in terms of net income generated relative to its assets - primarily planes - the core revenue earner for Air Namibia. While the trajectory of the ROA has been positive, increasing from -129.9 in 2012 to +19.61 in 2014 (Figure 5.1), more recent data was not available at the time of the study to enable an assessment of the sustainability of such upward trend. However, recent media reports and the continual bailouts as indicated in the Minister's Budget speech for 2017/18 (see figure 5.4), suggest that the airlines problems are far from over.

Figure 5. 1: Return on Assets Ratio for Air Namibia, 2012-2014



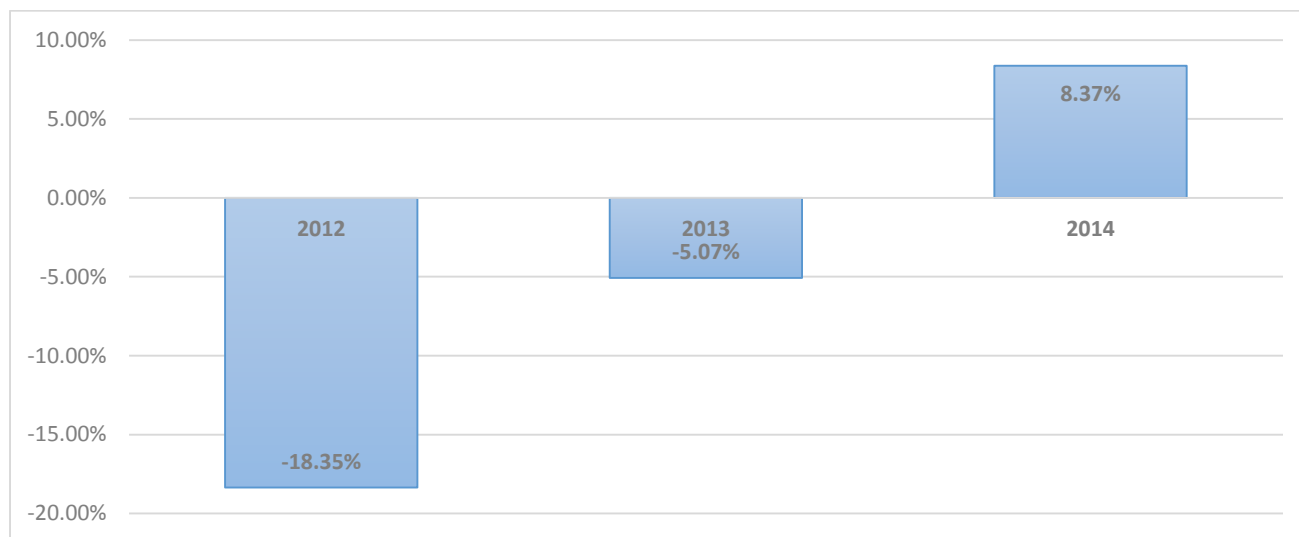
Source: Own calculations from Air Namibia's Financial Statements (2012 & 2014)

In support of the above finding (ROA), Respondent 7 indicated that the airline was optimally utilising its equipment (aircrafts) and that it expected a positive trajectory if other stakeholders, especially the tourism sector play their part. However, this view was contradicted by Respondent 3 who indicated that the airline's equipment were more on the ground (making money for airports) and not in the air to make money for Air Namibia and the Government. To corroborate that position, the Respondent cited the airline's biggest aircrafts (the two A330) which are always parked for the whole day in Germany and Namibia and only fly at night each and every day of the year.

However, according to Respondent 8, the airline is busy with market studies on how best to utilise, not only the A330 but also the A319. The Respondent cited the current negotiations to fly to Durban via Gaborone and the Legos via Accra as examples where their airline intends to begin utilising their aircrafts optimally.

5.2.1.2 Return on equity

The return on equity ratio (ROE) is a profitability ratio that measures the ability of a firm to generate profits from its shareholder's investments in the company. In 2012 and 2013, Air Namibia's ROE was -18.35 and -5.07, respectively. A slight improvement was reported in 2014 with a positive ROE of approximately 8% (Figure 5.2). This finding demonstrates Air Namibia's level of performance in terms of profit generation in relation to shareholder investments since ROE ratio shows how much profit each dollar of the common stockholders' equity generates. Investors want to see a high return on equity ratio because this indicates that the company is using its investors' funds effectively. Higher ratios are almost always better than lower ratios. Ideally, ROE of one firm should be compared to that of others in the industry. However, such a comparison could not be done considering the structure of Namibia's air industry where Air Namibia is the largest carrier.

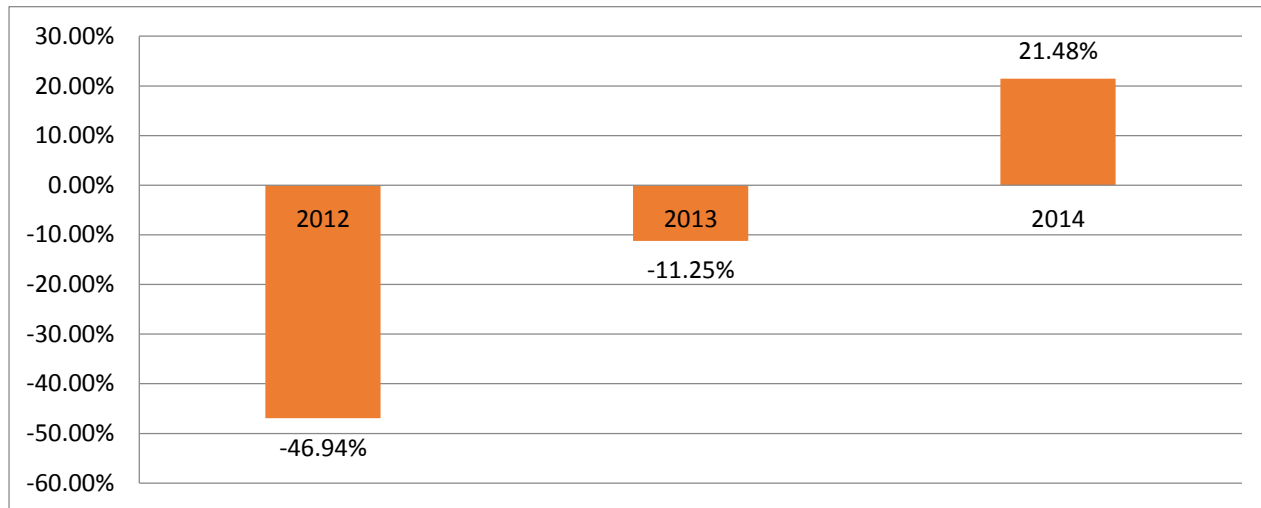
Figure 5. 2: Return on Equity for Air Namibia, 2012-2014

Source: Own calculations from Air Namibia's Financial Statements (2012 & 2014)

The above finding was corroborated by the views of industry stakeholders derived from interviewing key informants. According to Respondent 2, the government had supported Air Namibia financially and otherwise. The Respondent indicated that, annually the airline receives more than other SOEs in the sector in the hope that it will soon break even and begin to generate profit. The Respondent further indicated that the government has negotiated several Bilateral Air Services Agreements (BASA) with several countries to allow the airline to fly to different destinations and thereby make profit. All such efforts, according to the Respondent, have yet to result in something significant

5.2.1.3 Operating profit margin

The operating profit margin (OPM), also known as operating margin ratio, is a profitability ratio that measures what percentage of total revenues is made up by operating income. This ratio is important to both creditors and investors because it helps to show how strong and profitable a company's operations are. The operating margin ratio demonstrates how much revenue is left after all the variables or operating costs have been paid. Conversely, this ratio shows what proportion of revenue is available to cover non-operating costs like interest expenses.

Figure 5. 3: Operating Profit Margin, Air Namibia 2012-14

Source: Own calculations from Air Namibia's Financial Statements (2012 & 2014)

As Figure 5.3 shows, Air Namibia had a negative operating margin in 2012 and 2013. Performance improved in the following year (2014) judging by the OPM of approximately 21%. Because of its relatively weak profitability, the Government of the Republic of Namibia has had to step in to financially rescue the airline severally. For example, according to Air Namibia's Financial Report (2014), the SOE had received N\$2.4 billion from the Ministry of Finance since 2012 as bailout.

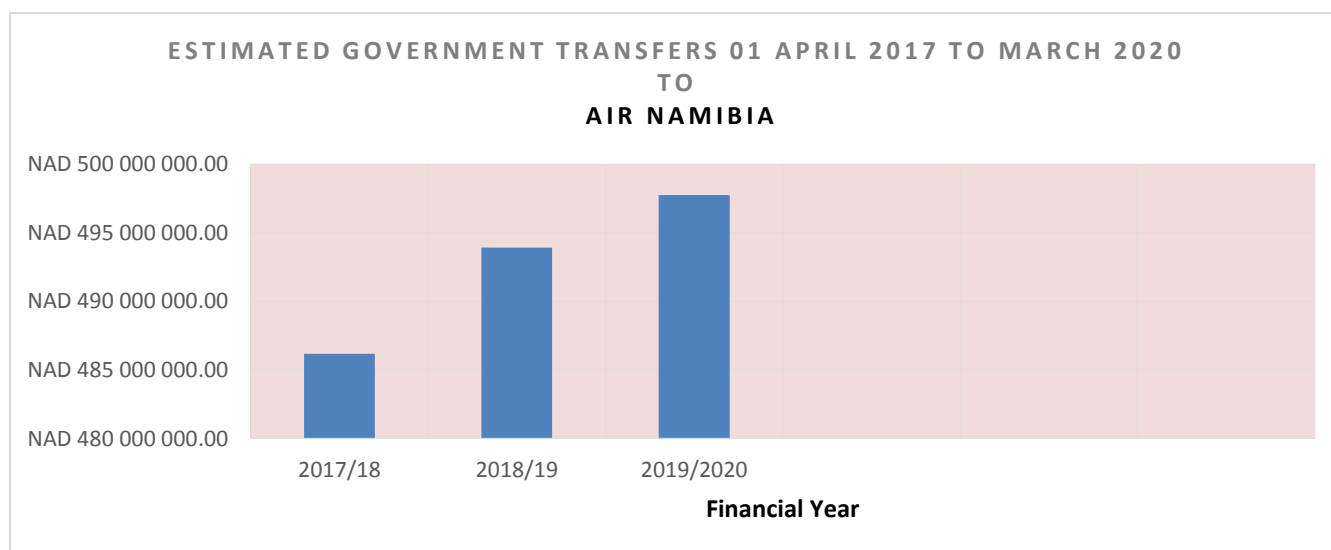
5.2.1.4 General observations on Air Namibia

The projected transfers to the company shown in Figure 5.4 below suggest that Air Namibia is unable to break even and will continue to be a burden to the state for years to come. It is important to note that until 1998, Air Namibia fell under TransNamib Holdings. The breakaway from the latter, which was an ailing SOE, did not bring any change to the financial woes of the airline. It is, thus, not surprising why some senior management officials (Respondent 7 and 8) of Air Namibia do not view (own admission) their SOE as performing well. Furthermore, interviews conducted with political and senior government officials (Respondent 1,2 and 4) show that the SOE is rated as a poor performer. One of the reasons given for this assessment

is a poor attitude towards regulatory compliance from top to bottom. Poor financial management only serves to worsen the situation, placing the SOEs in an unending downward spiral.

The forgoing explains why the airline will continue to receive government bailout for the foreseeable future. For example, in the Budget Statement for 2016/2017 read by the Minister of Finance in Parliament, Air Namibia was to be allocated N\$1, 48 billion in the next three years. In the Medium-Term Expenditure Framework for 2017/18-2019/20, it is estimated that the struggling airline will be allocated N\$486,137,300 for the 2016/17 Financial Year, N\$493,926,380 for the 2018/19 Financial Year, and N\$497,755,750 for the 2019/20 Financial Year.

Figure 5.4: Air Namibia Estimated Transfers from Government 2017-2020



Source: Republic of Namibia (Medium Term Expenditure Framework 2017/18-2019/20)

Furthermore, the airline has serious compliance issue. For example, it has not been compliant with the legal requirement (of the SOE Act) to prepare up-to-date Annual Reports. In fact, its last Annual Report was produced ten (10) years ago, which is contrary to Section 26(1) of the Public Enterprises Governance Act, 2015, which requires all SOEs to submit Annual Reports not later than six months after the end of a financial year. Such an attitude (according to Respondent 5) has resulted in the airline forgetting to renew its Foreign Operating Permit (FOP) that ended in a cancellation of one of its flights from German that was destined to Windhoek, Namibia. This was not only an embarrassment but also resulted in serious financial losses as

the airline had to reroute some of the passengers with different airlines and had to book some of the affected passengers in expensive hotels at the airline's own cost.

Concerns have also been raised regarding the migration of public service attitude and culture, as instead of inculcating a culture that is cost sensitive, this makes it impossible to trim operational expenses that are unsustainable. Air Namibia, for example, migrated with the government attitude (according to Respondent 5) towards a subsistence and travel reward system. Its crews are paid exorbitant allowances and this makes Air Namibia the only airline in the world that maintains this unsustainable practice, whilst most other airlines cover full board to keep excesses to the barest minimum and they invest in product-differentiating strategies to maintain customer satisfaction, market leadership and a service culture.

Political interference also seems to be an issue at Air Namibia. According to Respondent 5, there are some concerns that decisions on which routes Air Namibia should fly have been politically motivated. For example, burdening Air Namibia with politically motivated routes, such as the Harare-Windhoek route has created a culture of expectation for subsidies. It is noted that for the sake of profitability, decisions must be based on returns and the decisions must be taken by executives even if the SOEs are subsidised. Political interference in the appointment of management has also resulted in poor performance (Respondent 5).

5.2.1.5 Challenges and how to address them

In terms of the foregoing, the general efficiency of Air Namibia has been rated as average or fair. This is because the airline's profit margins are very thin compared to other airlines both regionally and globally. However, there are numerous opportunities for airlines that pride themselves on quality and investment in people and aircraft as their only assets to make an impact in the global arena. Thus, Air Namibia cannot be expected to become a prominent player because of the inward-looking approach of the Ministry responsible for transport and that of the Ministry responsible for SOEs to shield Air Namibia from competing fairly. This approach has distorted the market forces of supply and demand and made it very unattractive for other private investors to enter the market (Respondent 6). A recent example is the Fly Africa venture. As a result, South African carriers carry more passengers on routes and they compete head on with Air Namibia as the only player serving all routes against South Africa's designated air carriers.

This denies users the choice of better and improved offerings, limits the possibility of increased connectivity and forces consumers to pay high prices.

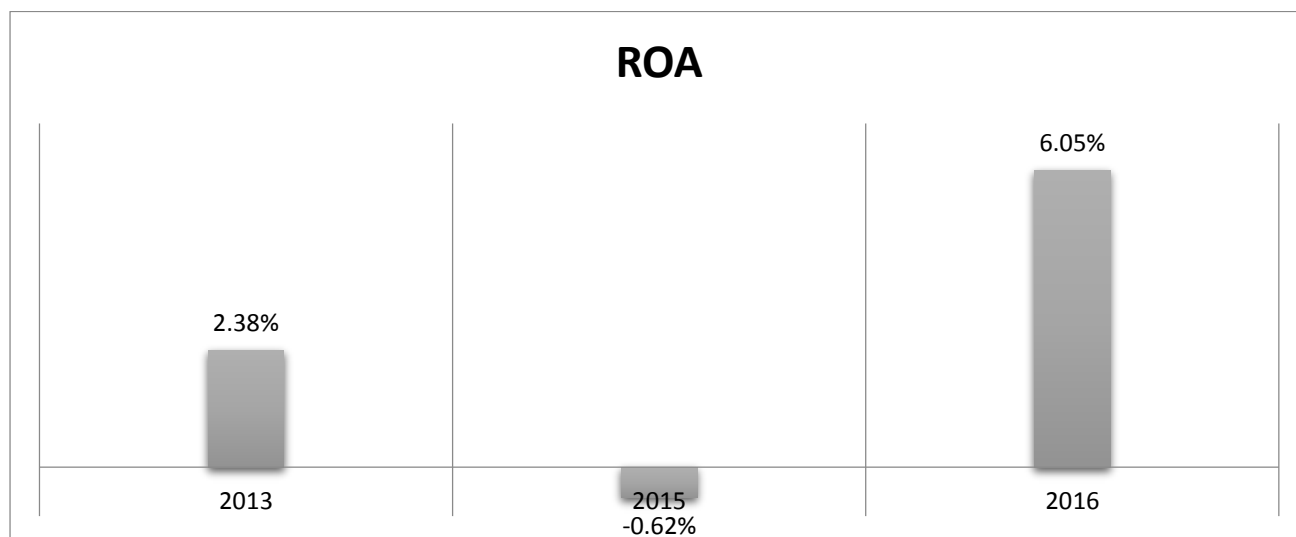
Furthermore, the small amount of revenue made by Air Namibia is not well managed, and their financial management is generally rated as poor. The overvalued executive conditions of employment without clear performance expectations have cost the airline over the years. Moreover, this has been eroded by the imbalance between assets with regard to the skill sets of competently qualified individuals, not to mention the absence of a performance culture that is even-handed and based on meritocracy. These problems boil down to the consumer service which is classified as average or fair. The appointing authority's choice of board members should reflect their expectation to see financial improvement.

This financial expectation cannot be realised when board members have no proven track records. This situation also means that the shareholder ends up with self-inflicted wounds. Boards must be appointed because they have something to offer and they must know what to expect from executives and how to monitor market excellence. This is rarely the case with all board appointments in the transport sector and the Department of Transport is viewed by many (as reflected in the interviews) as poorly staffed with an unequal distribution of the skill sets and competencies to advise the minister to play an effective economic and safety oversight role.

5.2.2 Namibia Airports Company

5.2.2.1 Rate of return on assets

NAC's three year (2013/4-2015/16) ROA average of 2.75 is indicative of the level of the SOE's performance in terms of net income generated relative to its assets - primarily landing fees (charges), which are the main income for the NAC. While the trajectory of the ROA has been mixed, the increase from 2.38 in 2013/14 to 6.05 in 2015/16 (Figure 5.4), looks promising if such a positive upward trend is sustained.

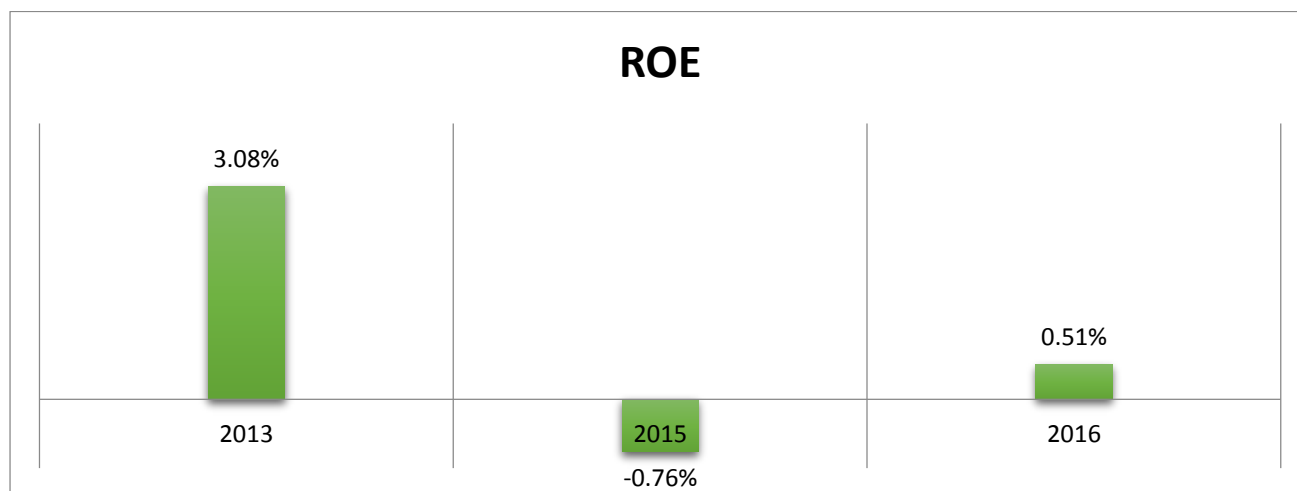
Figure 5. 5: Return on Assets Ratio for NAC, 2013/14-2015/16

Source: Own calculations from NAC's Financial Statements (2013/14 & 2015/16)

In support of the above finding (ROA), Respondent 16 indicated that NAC was looking at ways for further optimally utilising its assets, especially its commercial assets. The Respondent indicated that NAC can generate additional revenues through commercial facilities such as car rentals, parking, restaurants, duty free and lease of hangar/workshop.

5.2.2.2 Return on equity

The return on equity ratio (ROE) ratio reveals a similar trajectory as the ROA. In 2013/14 and 2015/16, NAC's ROE was 3.08 and 0.51 respectively. This finding demonstrates NAC's level of performance in terms of profit generation in relation to shareholder investments since ROE ratio shows how much profit each dollar of the common stockholders' equity generates.

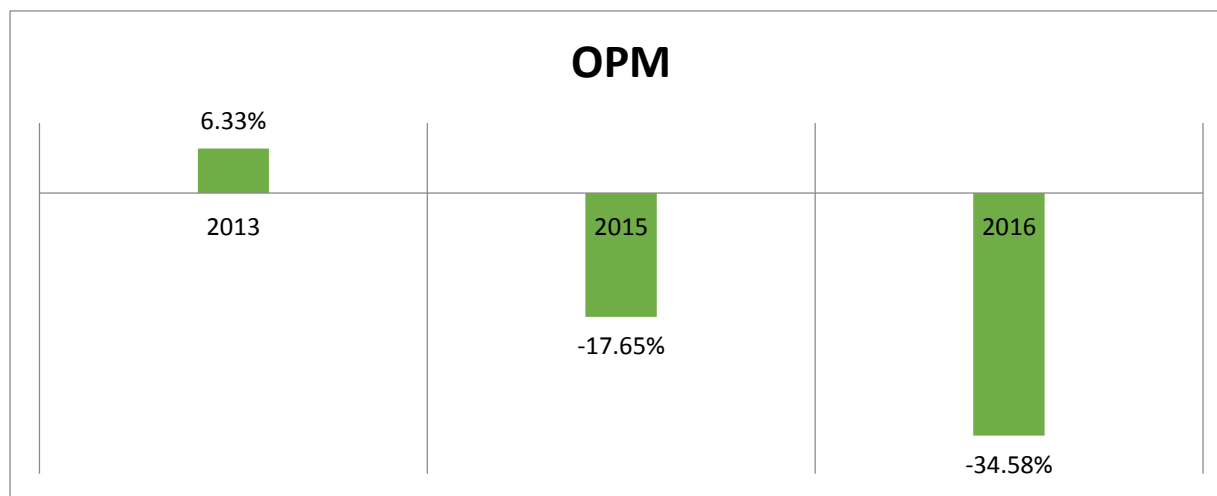
Figure 5. 6: Return on Equity for NAC, 2012/13-2015/16

Source: Own calculations from NAC's Financial Statements (2012/13 & 2015/16)

The above finding was corroborated with the views of industry stakeholders derived from interviewing key informants. According to Respondent 15, the government had supported NAC financially and otherwise. The Respondent however complained that its sister company has been reluctant to pay for services rendered. According to the Respondent, the outstanding millions if paid to them would change the financial situation of the company.

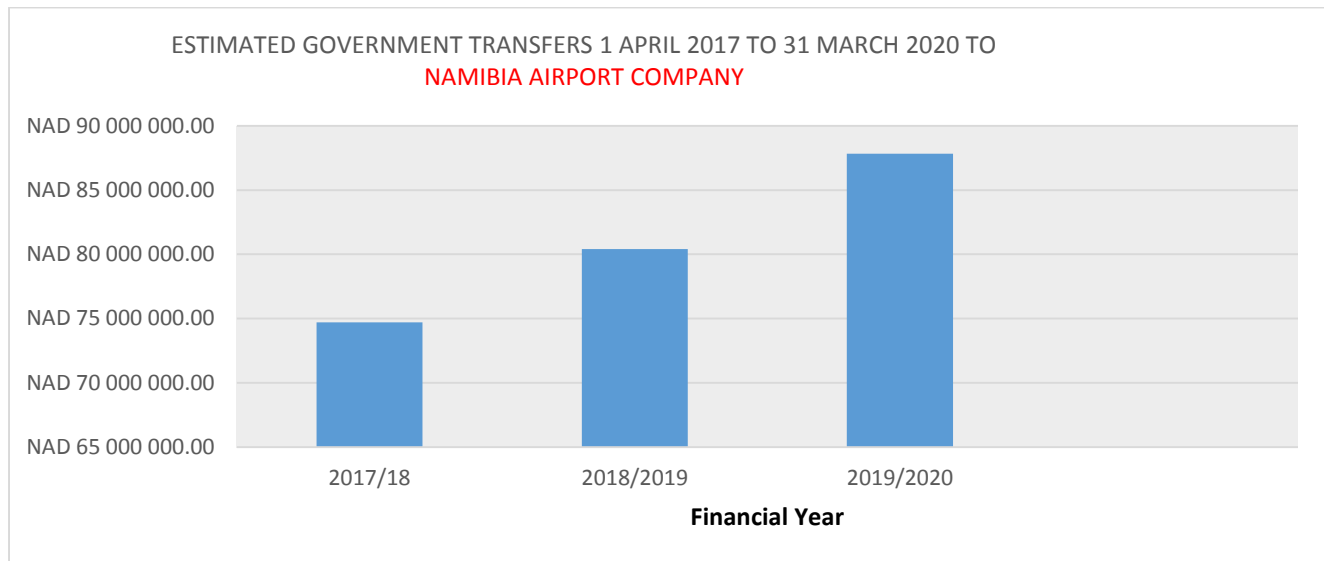
5.2.2.3 Operating profit margin

As Figure 5.3 below shows, NAC had an average negative operating margin in 2013/14 and 2015/16. A positive performance was only recorded in 2013 which was approximately 6.33%.

Figure 5. 7: Operating Profit Margin, NAC (2012/3-15/16)

Source: Own calculations from NAC's Financial Statements (2012/13 & 2015/16)

NAC's relatively weak profitability has meant that it cannot maintain most of its airports. The Government has had to step in to finance some airports. The company also relies on annual government transfers. For example, NAC will continue to receive state funding for its operations. In the Budget Statement for 2016/2017, the Minister of Finance announced that the SOE would receive another N\$242,954,570 over the next three years. The SOE would be allocated N\$74,708,700 for the 2016/17 financial year, N\$80,406,620 for the 2018/19 financial year, and N\$87,839,250 for the 2019/20 financial year (as reflected in Figure 5.12 below).

Figure 5.8: NAC Estimate Transfers from Government 2017-2020

Source: Republic of Namibia (Medium-Term Expenditure Framework 2017/18-2019/2020)

5.2.2.4 General observation NAC

Most of the concerns raised about the performance of Air Namibia can easily be generalised to the NAC as well, as the airline accounts for 60% market share of landing fees (charges), which are the main income for the NAC. Furthermore, Air Namibia depends on the work of NAC for its profitability. For example, unsafe airports may affect travellers' decision to choose Namibia as a destination or as a transit point. The two companies are thus interdependent and the events affecting Air Namibia may be very similar to those affecting NAC. However, the latter has certain peculiarities. For example, NAC can generate additional revenues through commercial facilities (car rentals parking, restaurants, duty free etc. and the lease of hangar/workshop [where repairing of aircrafts take place], monthly lease of the fuel company (including the fuel throughput) at airports under its domain.

According to the NAC Financial Report (2014/15), the organisation's performance was marked by mixed financial performance. This Report indicates that revenue was not in line with expectations, reflecting a growth of only 7% to a record high of N\$233 million compared to N\$217 million in the previous year (NAC Annual Report 2014/15). According to NAC, aeronautical revenue accounted for 67% of total revenue with the balance of the revenue coming from non-core business activities such as rent, parking and advertising. All in all, NAC's total

asset base increased from N\$2,183,058,054 to N\$2,742,074,131, which is a 26% increase (NAC Annual Report 2014/15).

Poor meritocracy also affects NAC. Politically motivated decisions (through negotiated Bilateral Air Services Agreements) regarding who should be allowed to compete with Air Namibia have also impacted the performance of NAC. The same point applies with regards to which routes Air Namibia should fly. The result is that a culture of expectation of subsidies has been created. It is noted (and supported by respondents 4 and 7), that for the sake of profitability, decisions must be based on returns and taken by executives even if SOEs are subsidised.

This equally applies to NAC which has to support airports that are not economically viable. The cost structure (business model) has not changed. For example, Hosea Kutako International Airport's gross subsidies exceed that of all other NAC-managed airports because of the Cabinet's decision to restrict aircraft with a weight higher than 5,700 kg, which has equally constrained NAC from optimally employing Eros Airport as a potentially viable profit centre. This decision displaces decisions about quality and the ability to make choices on different offerings that generally in a functional free market must be left with the board and not with the Government.

While NAC is charged with ensuring the safety of travellers, concerns were raised about a lack of a safety culture within NAC, as observed by Respondent 3. This is because the attitude at board and Executive level is that of being politically correct and not understanding the business environment within which these entities (SOEs) must compete and operate. Contracts are carelessly and improperly negotiated, poorly administrated and poorly managed. The high staff turnover of executives has compromised continuity and stifled progress because every new appointment paved the way for new executives, with each wanting to do things their own way (Respondent 3).

5.2.2.5 Challenges and how to address them

The challenge of maintaining airports comes with increased expenditure, lack of human resources and related technical issues. The officials at NAC (respondent 15 and 16) believe that the commercialisation of NAC, as well as the Ministry of Works, Transport and Communication Project 2000 (commonly referred to as MWTC 2000) created entities focused

more on the end product and not necessary on the culture and attitude necessary to succeed. This means that very little groundwork went into the psychological preparation of the individuals who were transformed almost overnight into highly paid employees and executives with regards to the sacrifices necessary to make their SOE financially sustainable and to deliver on their mandate.

A lack of service excellence at NAC compromises economic performances, especially when the wrong people are appointed based on considerations other than merit to fill significant positions. Standards in civil aviation are not optional but a lack of a business approach and a maintenance culture makes it almost impossible to strictly enforce compliance. This should not be the case in an industry that understands that safety compliance is a prerequisite for profit and rent seeking.

According to Respondent 7, in light of the foregoing, the officials feel that there is a need to attract a critical mass of qualified, experienced and competent professionals, and structures that are more responsive to the market forces of a fast-changing business environment. The appointment of board members and executives must also be based on merit. This should be a rigorous and special process.

NAC officials also see the need to empower the board and executives to take business decisions based on demand and supply. The Government's objective, however, remains solely that of creating an enabling environment. The European Union's approach to subsidies, which are encouraged but must adhere to the Market Economic Investor Principle, should be considered. This appears to have created an enabling environment for the public and private sectors to co-exist without denying the public the right to choose from different economic alternatives to satisfy their multiple demands and needs.

There are also challenges of political side-lining of the executive of NAC. It was reported that the decision by the NAC board to award a N\$150 million contract to an Egyptian businessman was done without consulting management, as required by the rules. There was a court order that the tender should be reconsidered by the NAC, but it seems this was not followed. Hence, it is clear that the politicians, for whatever reason, decided to side-line the executive of NAC (Immanuel & Kahiurika, 2016:3). If indeed the media report is correct, then there are serious problems between senior government officials and executives of SOEs in general, as this is possibly not an isolated case. This also relates to the issue of corruption.

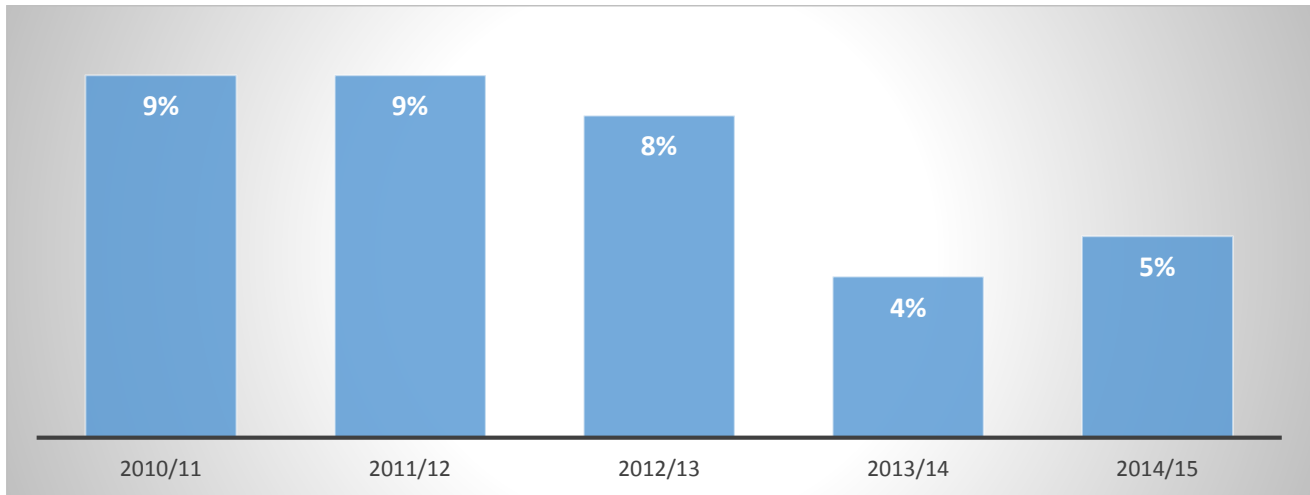
Although there are corruption allegations against the current (2016) board of NAC, it seems that this board enjoys the support of the Minister of Works and Transport. The said minister is satisfied with NAC's performance, yet the minister responsible for SOEs is dissatisfied and wants the board dissolved (Windhoek Observer, 2016). This contradiction or standoff affects the performance of the SOE.

5.2.3 Namibian Ports Authority

5.2.3.1 Rate of return on assets

In terms of capitalisation, the Namibian Ports Authority's (Namport) asset base is valued at N\$5.6 billion (2015), or N\$5.6 million per employee. An analysis of Namport's *Annual Report* (2015) shows that the SOE's rate of return on assets declined from 8% to 4% between 2011/12 and 2013/2014 respectively, before edging up to 5% in 2014/15 (see Figure 5.4 below). The decline in ROA in and of itself is not necessarily bad given that the SOE increased its asset base over the period.

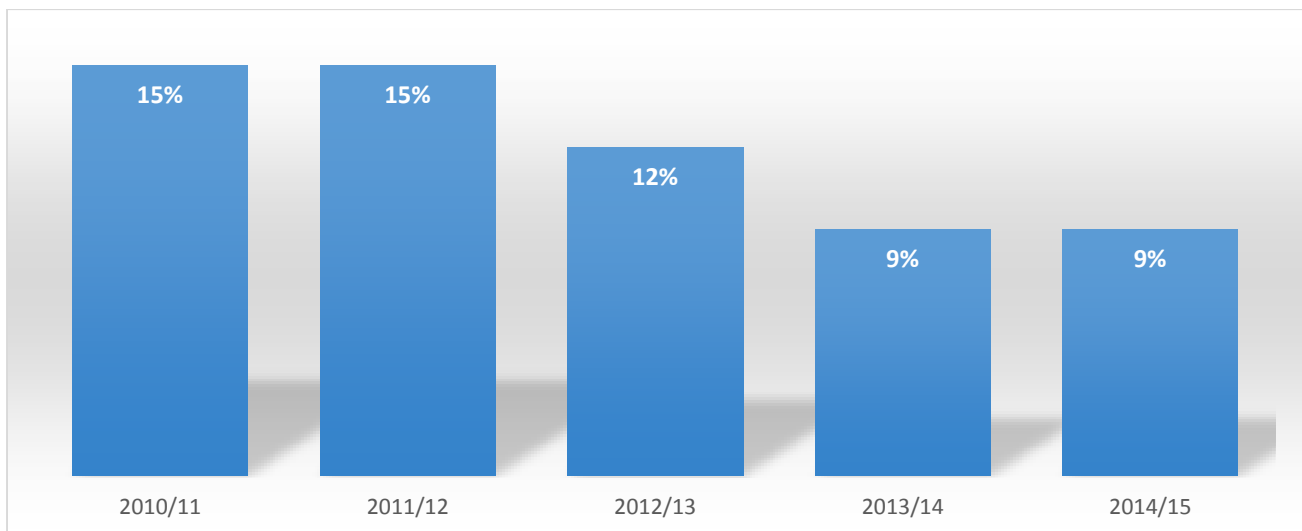
As a profitability ratio that measures the rate of return on resources owned by the organisation, Namport's ROA demonstrates the level of performance of the SOE in terms of net income generated by its assets. A five year 7% average return on assets means that Namport was able to utilise its resources well in generating income. This observation is supported by the results of interviews conducted with Respondents 1, 2, 6, 9 and 11. They indicated that the organisation's performance was very impressive. In fact, it's the only SOE in the transport sector that had managed to declare dividends to its shareholders, the government.

Figure 5. 9: Return on Assets for Namport (2010/11-2014/15)

Source: Own compilation from Namport Group Annual Report (2014/15)

5.2.3.2 Return on equity

The return on equity (ROE) ratio reveals a similar trajectory as the ROA. As expected, Namport achieved an average ROE of approximately 12% between 2010/11 and 2014/15 (Figure 5.5).

Figure 5. 10: Return on Equity for Namport (2010/11-2014/15)

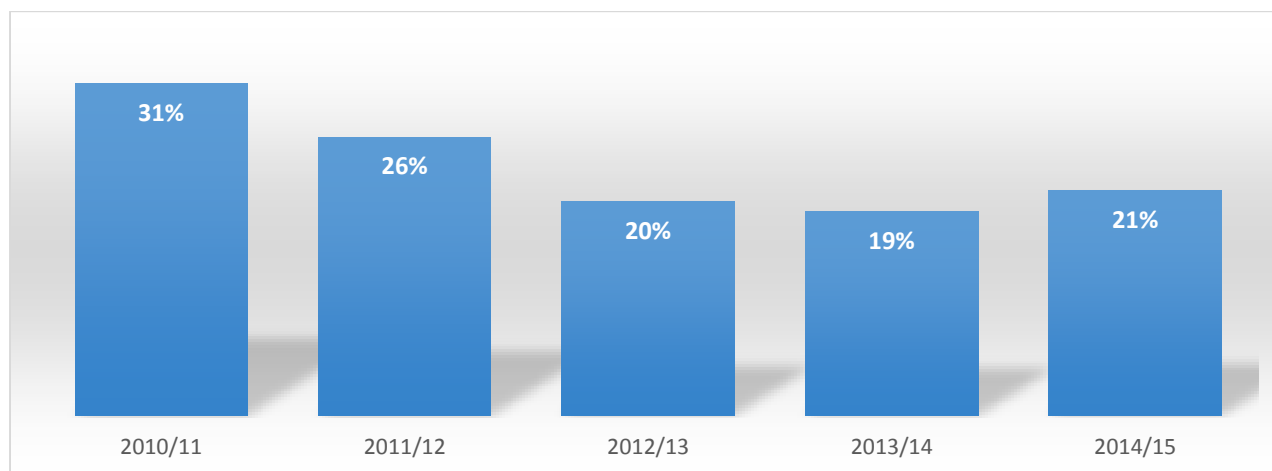
Source: Own compilation from Namport Group Annual Report (2014/15)

The ROE shows the level of profit that each dollar invested in the SOE generated. The general healthy performance in terms of Namport profitability is further corroborated by the level of operating margin ratio, also known as operating profit margin.

5.2.2.3 Operating margin profit

As seen in Figure 5.6 below, Namport maintained an operating profit margin of approximately 23% during the period 2010/11-2014/15. Naturally, investors want to see a high return on equity ratio because this indicates that the SOE is using its investors' funds effectively. They would equally be in favour of a high OPM result as this shows that the company is making enough money from its ongoing operations to pay for its variable costs as well as its fixed costs. This could explain why Namport continues to receive funding for investment from its main shareholder – the State. For example, in the Budget Statement for 2016/2017, the Minister of Finance announced an allocation of approximately N\$1.1 billion to the profitable SOE in the next three financial years to expand some of its critical infrastructure.

Figure 5. 11: Operating Margin Profit for Namport (2010/11-2014/15)



Source: Namport Group Annual Report (2015)

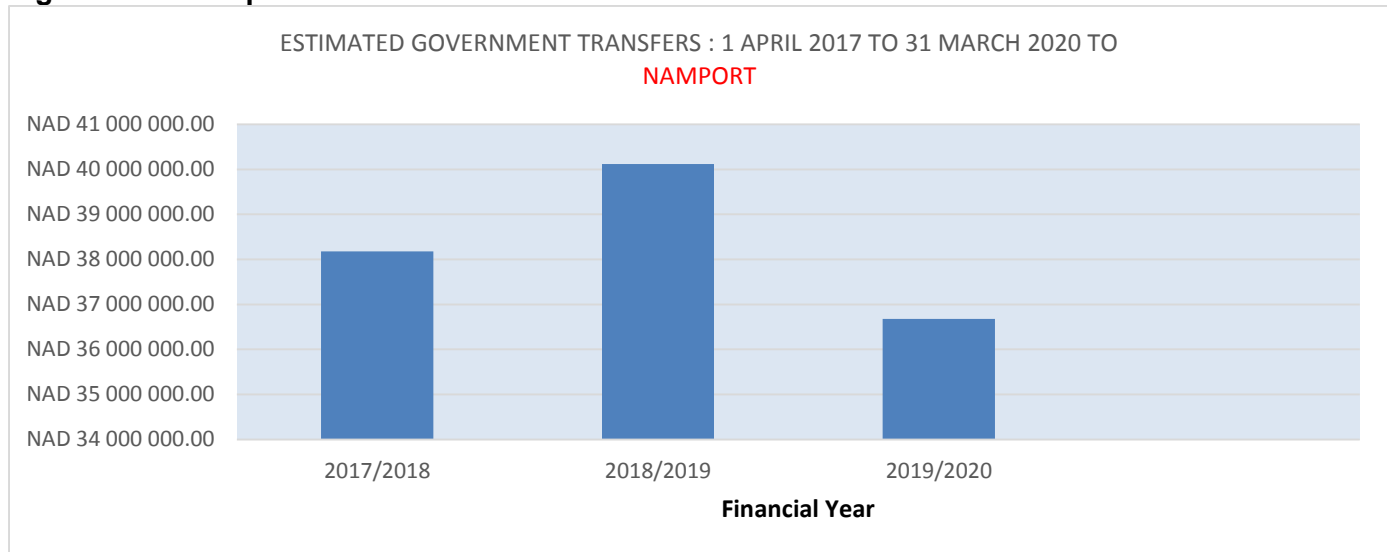
5.2.3.4 General observation on NamPort

As already noted above, the performance of NamPort has been fairly good. It has not had record losses like the other SOEs in the transport sector. Namport has been one of the top-performing SOEs for many years in terms of profitability and infrastructure development. It has a healthy balance sheet and a good local and international credit rating. The reasons for Namport's good performance are, amongst others, sound management systems and structures with a strong performance-focused culture (Respondent 11).

According to Namport's Annual Report (2014/15), the organisation's total assets exceeded N\$5 billion, with a turnover of N\$917 million. This makes Namport the best-performing organisation in the transport sector. The organisation's national long-term Fitch rating has also gone up from AA- to A+ (Namport Annual Report, 2014/15:21). The organisation also achieved the syncrolift and handled 290 vessels during the reporting period compared with 273 vessels in 2014.

Namport has seen a surge of consignments to be transported to and from the port over the years. Thus, it has consistently performed well in terms of volume growth and cargo-handling efficiency, which has put it in favourable positions on the global indexes related to ports infrastructure and shipping liner connectivity. Furthermore, Namport boasts an efficient auditing system which has enabled them to manage their resources very well. However, for the 2015/16 financial year, Namport had to use their reserves as some of the funds promised by the government, which is the SOE's major stakeholder, was not transferred to the port operator, hence they faced some difficulties.

Regarding financial performance, Namport will also receive state funding. In the Budget Statement for 2016/2017, the Minister of Finance announced that the SOEs would get another N\$1,142,972,000 in the next three years. The SOEs would be allocated N\$38,177,000 for the 2016/17 financial year, N\$40,119,000 for 2018/19 financial year, and N\$36,676,000 for the 2019/20 financial year (as reflected in Figure 5.12 below).

Figure 5.12: Namport Estimated Transfers from Government - 2017-2020

Source: Republic of Namibia (Medium-Term Expenditure Framework 2017/18-2019/2020)

According to Respondent 6, the above transfers should be seen in light of the infrastructure developments that the SOE is undertaking and not as bail outs. Namport has been able to identify and invest in critical infrastructure projects with the view to achieving the national developmental objective of positioning Namibia as a regional logistics hub, and the port of Walvis Bay as the gateway to Southern Africa. Namport has embarked on the following strategic maritime infrastructure projects:

1. Port of Walvis Bay new container terminal;
2. Port of Walvis Bay SADC gateway;
3. Walvis Bay waterfront and marina development;
4. Deepwater port area at Angra Point; and
5. Port of Angra Fria.

The above scenario (transfers) can suggest that government transfers are not for bail outs but also to reward performing entities to further their mandates.

5.2.3.5 Challenges and how to address them

Respondent 12 reported that there are certainly challenges regarding management staff in Namport, but that the board and shareholders know of the reporting channels and their respective roles. Furthermore, there is a lack of enough resources to run certain projects, thus the government is urged to avail the necessary funding for certain projects that are beyond the SOE's resources but are necessary for the development of the country.

Similarly, there appears to be a lack of coordination of projects and their implementation since Namport is not the only SOE dealing with cargo movement from the ports – all transport SOEs are involved in one way or another. There is, thus, a need for joint planning amongst these transport sector SOEs. This will ensure that all of them may know what is happening in other organisations and coordinate projects or share ideas on implementation as these SOEs are interdependent.

The ports operator, however, complains about the lack of resources to run the rail system more efficiently (Respondent 11). There is also a problem of staffing. It appears that there is not enough experienced technical human resource capital to run the company more efficiently while at the same time labour expenses are increasing. Thus, Namport needs to keep an eye on its labour costs which have grown to more than half of its operating expenditure.

In a similar vein, it appears that the mandate of Namport is too wide. The officials at Namport submit that if Namport is to deliver on its mandate successfully, there is a need to separate the authority from operations. This could be done by creating a port-operating company that focuses on managing the business part of the equation. Oversight, policy and infrastructure planning and related issues would then reside with the authority.

Another challenge is the overreliance on road transport infrastructure to transport local and transit cargo. This does not only place a burden on the roads, but also presents a business and economic risk to positioning and sustaining Namibia as a regional logistics hub as there are no reliable alternatives to road transport. This, as is shown in the concerns of TransNamib discussed below, affects the volume of goods transported by TransNamib and thus the SOE's low profit levels. As a result, there is a need to ensure that port infrastructure development and marketing take place in tandem with rail and road development in order to balance the use of

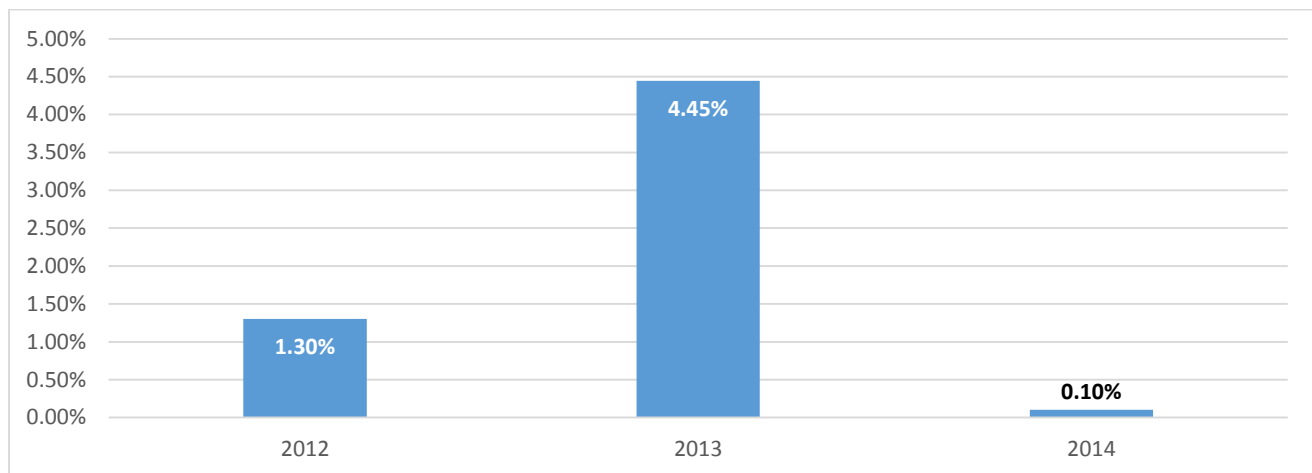
the transport modes, promote intermodals and create effective rail and road transport connections with Namibia's neighbouring countries.

Another more complex challenge faced by Namport is climate change. A study commissioned by the Ministry of Environment and Tourism on climate change suggests that by 2030, Walvis Bay will be the most-affected coastal town, especially the areas at the seashore interface including port infrastructure. The study suggests that the sea will encroach and severely affect current port facilities and seawater will flow over quay walls, making it impossible for ships to come alongside them. Greater focus and specific studies are required in order to implement adaption measures to address this serious phenomenon.

5.2.4 Roads Authority

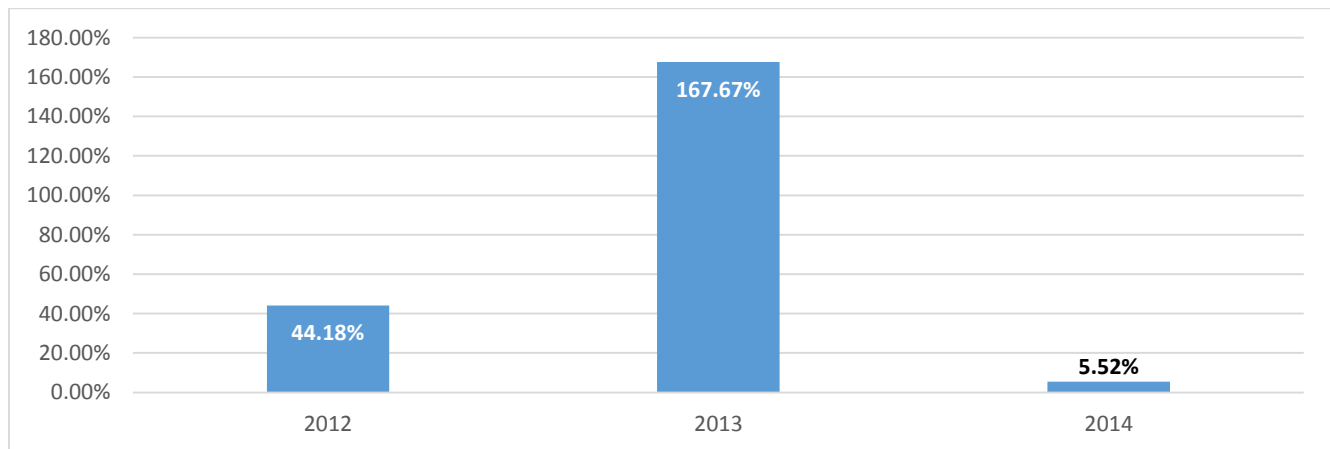
5.2.4.1 Return on assets

The computed return on assets ratio for the Roads Authority covering the period 2012-2014 is shown in Figure 5.7 below. The ROA ratio increased from 1.3% in 2012 to 4.45% in 2013, before dropping to a paltry 0.1% in 2014. The financial performance of the RA has to be seen within the context of the SOE's functional responsibility, which is to manage the national road network. In that regard, as an indicator of how profitable RA is relative to its total assets, the ROA ratio for 2014 shows that the SOE was able to earn more income relative to investment in 2013, and therefore performed better relative to 2012 and in 2014. In the latter, RA earned one-tenth of a percent in profit on the resources that it owned.

Figure 5. 13: Return on Assets for the Roads Authority (2012-2014)

Source: Compiled from Roads Authority Annual Report (2015)

5.2.4.2: Return on equity

Figure 5. 14: Return on Equity for the Roads Authority (2012-2014)

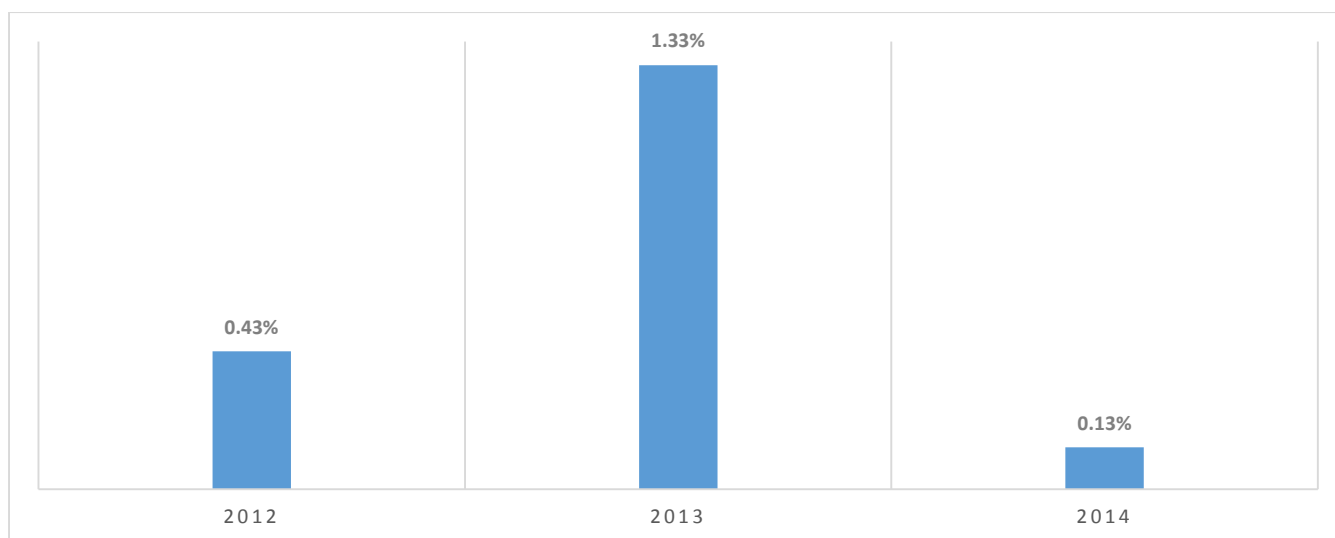
Source: Compiled from Roads Authority Annual Report (2015)

Whereas the underlying logic of the ROE is to gauge the profit-generating efficiency of an organisation, and therefore it's competitive advantage, the spike in 2013 up from a low of 44.2% is all the more confounding given that the ratio plummeted in the following year to 5.5% (Figure 5.8).

5.2.4.3 Operating profit margin

According to available data analysed in this study, less than 1½ percent of RA's revenue (0.43% in 2012, 1.33% in 2013, and 0.13% in 2014) is left over, after deducting direct costs and overhead, and other indirect costs such as interest (see Figure 5.9 below). More than measuring the pricing strategy, these numbers show the level of RA's operating efficiency. Intuitively, a high or increasing OPM is preferred because if the operating margin is increasing, the company is earning more per dollar of output. In the case of RA, the data points are too few to draw a trend line.

Figure 5. 15: Operating Profit Margin for the Roads Authority (2012-2014)



Source: Compiled from Roads Authority Annual Report (2015)

5.2.4.4 General observation on RA

In discussing the performance of RA, one needs to have regard to the reasons it was established. The Roads Authority (RA) was created by the Roads Authority Act (No. 17 of 1999). This Act gives RA the mandate to manage the national road network of Namibia in terms of sections 16 to 18 of the said Act, with a view to achieving a safe and efficient road sector. Currently, the proclaimed road network falling under the RA comprises about 45,000 km (all the

proclaimed roads excluding the farm roads category), ownership of which continues to be vested in the government of Namibia.

The Roads Authority has played a pivotal role in road safety in Namibia. Although there has been a large increase in road traffic accidents, Namibia's road network has been ranked among the safest, most efficient and sustainable, and it is the envy of many countries (Respondent 14). This shows that, in general, the SOE is managing to execute its mandate. According to the Roads Authority Annual Report (2015/16), the organisation achieved an overall performance of 76.6% (i.e. a strategic score of 3.83 out of 5). It extended the road network with 141 km of gravel roads (compared to the target of 90 km), while 230 km of road were upgraded to bitumen standards as opposed to the 100-kilometre target (Roads Authority Annual Report, 2015/6:10). However, the

RA admits in the same annual report that there is a lack of adequate funding and slow progress in the efficient utilisation of small and medium enterprise (SME) contractors.

Apart from government subvention, the RA's main income source is from revenue collections through cross-border, domestic (e.g. permits and application) and abnormal loads. The annual report reflects a decline of those key revenues from N\$19.24 million in 2013/14 to about N\$14.21 million in 2015/16, which might suggest inefficiency in revenue collections.

It should be noted that through partnerships with construction companies locally, from across the region and globally, the RA has managed to handle multimillion-dollar construction contracts. According to Respondent 13, one of the biggest projects started in 2016 is the TR1/6 from Windhoek to Okahandja, section 4A, which is being upgraded to a dual carriageway freeway standard. The road from Windhoek to Okahandja is about 80 km long and it is said that it will create more than 250 local jobs:

It is an objective of this project to provide the opportunity for technology transfer and capacity building for Namibian small-scale contractors; as well as to employ as many labourers as possible from the local communities. It is explicit in the contractual requirements, that 15 percent of the total value of the work is subcontracted to Namibian small and medium enterprises.

(Shikongo, 2014)

Another project is the envisaged phase 1 of the road from Windhoek to the Hosea Kutako International Airport. The third big project is the first phase of the MR44 from Swakopmund to Henties Bay, which is to be upgraded to a bitumen-standard road. Several other projects are being handled across the country.

In keeping up with global technological advancements, the RA introduced a Road Referencing System (RRS). The RRS is a computerised location-referencing system for the road network of Namibia. It is already fully operational and has proven itself in the management of the approximately 48,000-kilometre national road network. It is also operated as a subsystem of the RA's Integrated Road Management System (IRMS) in 2016. This is a unique initiative that took Namibia to the forefront of a road asset management system's development and implementation.

Financially, the officials working at the RA are satisfied with the way funds are being handled. However, one concern is that some projects are delayed because the Ministry of Works and Transport does not disburse the necessary funds in time (Respondent 14). Furthermore, the RA's financial obligations seem to be well met. For example, the RA is required to prepare a five-year budget in consultation with various stakeholders, based on justifiable and economically optimal operational levels in constructing, rehabilitating and maintaining the road network. All of this is done together with the rendering of other transport-related activities.

It should be noted that the RA's budget is submitted to the Road Fund Administration (RFA), the third entity, formed during the restructuring process during the late 1990s (GRN, 2000). After further rationalisation of the optimal budget, especially with due regard to the implications on the charging instruments, the RFA accepts and finances the budget with funds collected through the various road user levies, charges and fees. This process of accepting and financing the budget has been successfully implemented. The only problem is the bureaucratic speed which is generally slow.

It also appears that the RA has managed to submit the Performance Statement of the Authority to the minister and this has enabled successive ministers to assess the performance of the RA. Furthermore, from the annual reports it is discernible that the RA maintains updated statistical and operational information on the performance of its service providers. There has been a general efficiency gain, especially in road maintenance operations (Respondent 10).

5.2.4.5 Challenges and how to overcome them

Just like any other country in the developing world, and a young country for that matter, there are always problems of old inherited infrastructure. Old roads will always present a problem in the sense of calls for maintenance, including resurfacing of old bitumen roads which is an expensive process. There are also new roads to be opened, as new access should be created to reach the remote areas. In relation to this, Runji (2003:12) says:

There are other immediate challenges that RA faces which include the success in hiring competent personnel especially in the technical fields, the full establishment of customised operational policies and guidelines, and the entrenchment of corporate culture in the workforce. The issue of the proper role of politics and hence corporate governance could also present a special challenge.

The official at the RA also aired the same sentiments (Respondent 9). However, as Runji (2003:12) submits, the RA will continuously be required to demonstrate in measurable terms, to its client, i.e. the road user, that the reform process has real and achievable benefits to the economy. Runji (2003:12) notes that in terms of the expectations of the reform process, “[s]uch expectations will have a strong influence on the way the Authority performs its business, including the continuous effort to justify its policies regarding the management of the road network”.

In the medium to long term, as the effects of globalisation set in, the RA may be expected to rationalise the network’s level of service in an effort to meet more internationally driven standards and needs. Structural adjustment within the local economy, in response to a more competitive international market, could place special demands on road transportation infrastructure. This is a challenge that the RA still experiences hence the dualisation of roads and the implementation of the Road Referencing System (RRS) as a measure to keep up with the globalised world. It is expected that the RA will continue on this trend.

There are also concerns of political interference which affects the operations of the RA. First of all, the top management is overstaffed, thus it is encouraged that it be trimmed and some members be deployed elsewhere where they will be more useful. Secondly, politically motivated

appointments should be avoided as they may compromise independence of thought and performance in general.

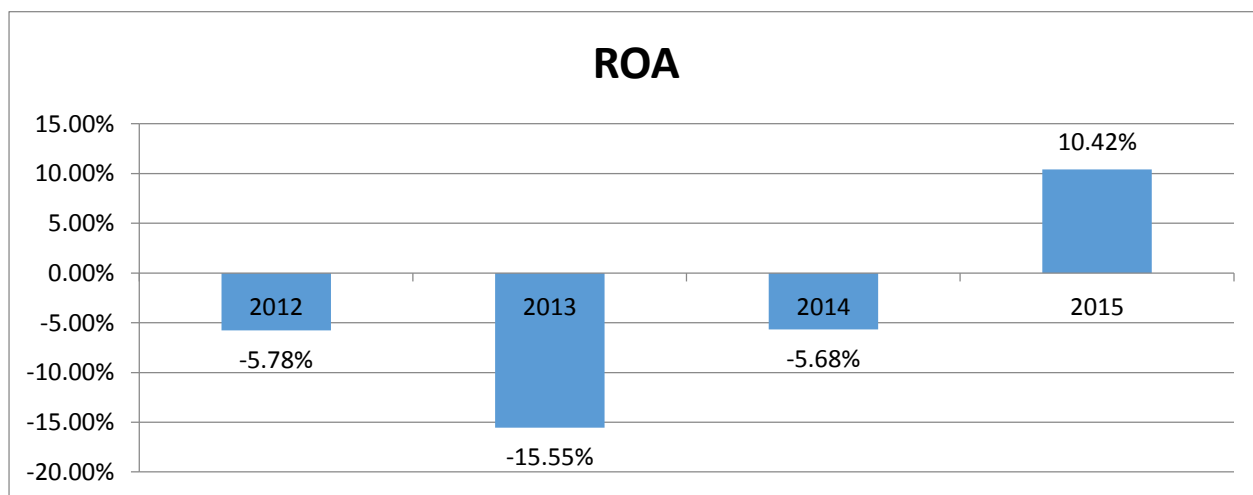
Not least is also recognition that the poor performance in rail transport has unfortunately also paved the way for road transport operators to transport significant volumes of rail-friendly cargo on the already strained road network, at a higher cost to importers, exporters, consumers and taxpayers. There is therefore a need for a movement towards a more balanced transport industry structure. In this sense, the better TransNamib performs, the better this is for the RA and other Road transport SOEs.

5.2.5 TransNamib

5.2.5.1 Rate of return on assets

TransNamib's four year (2012-2015) ROA average of -4.25 is indicative of the level of the SOE's performance in terms of net income generated relative to its assets. While the trajectory of the ROA has been negative, positive results were recorded in 2015, which is a promising sign if the positive upward trend is sustained.

Figure 5. 16: Return on Assets Ratio for TransNamib, 2012-2015



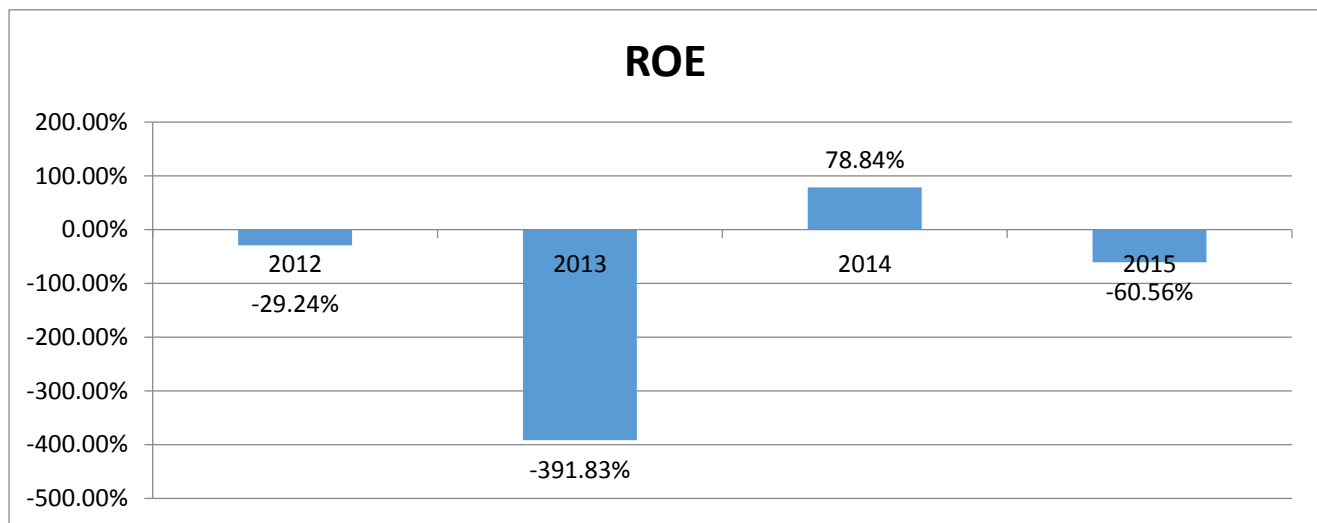
Source: Own calculations from TransNamib's Financial Statements (2013 - 2015)

Commenting on the above finding (ROA), Respondent 9 indicated that the organisation would do better if it outsources the management of some of its assets and only focusses on the locomotives. The Respondent also indicated that because of the age of most of its locomotives, their objectives of optimally utilising their assets are limited.

5.2.5.2 Return on equity

Between the 2012/13 to 2014/15 period, the return on equity ratio (ROE) of TransNamib was, on average negative. This means that the organisation was unable to generate profits from its shareholders' investments. In fact, the shareholder which is the government had to step in to rescue the organisation.

Figure 5. 17: Return on Equity for TransNamib, 2012-2015



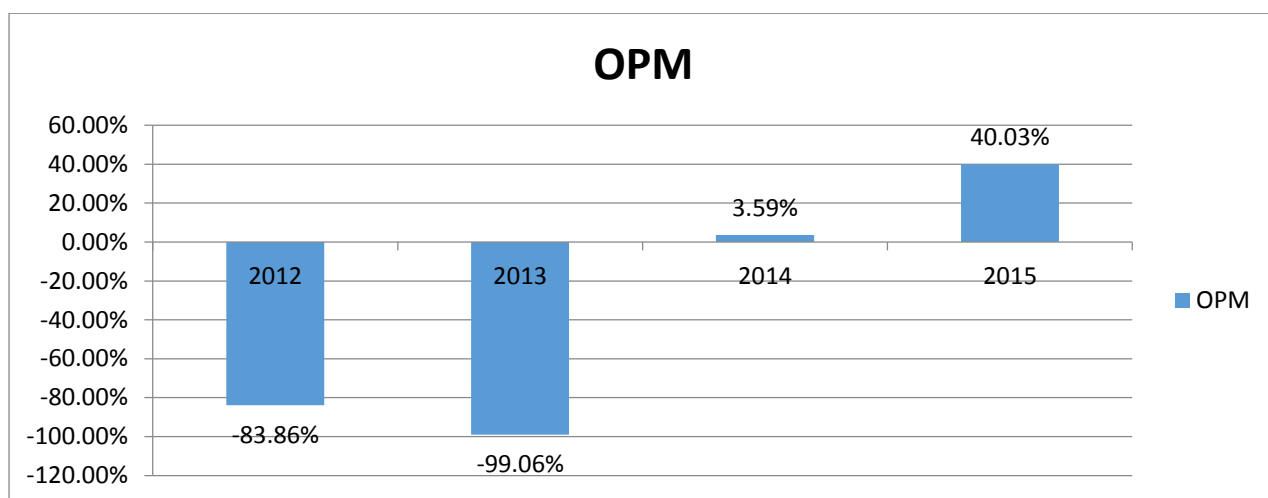
Source: Own calculations from TransNamib's Financial Statements (2012 - 2015)

The above finding was corroborated with the views of industry stakeholders derived from interviewing key informants. According to Respondent 5, the government had to pay not only for TransNamib's operation but also the salaries of its employees. The Respondent further complained that some of the funds that were intended to lease locomotives (to allow the organisation to generate its own revenues), were diverted to salaries and bonuses.

5.2.5.3 Operating profit margin

As Figure 5.3 below shows, TransNamib had a negative operating margin from 2012/13 to 2014/15, and only recorded a positive margin in 2014/15. Again, because of its relatively weak profitability, the Government of the Republic of Namibia has had to step in to financially rescue the SOE on severally occasions.

Figure 5. 18: Operating Profit Margin for TransNamib (2012-15)



Source: Own calculations from TransNamib's Financial Statements (2011 -2015)

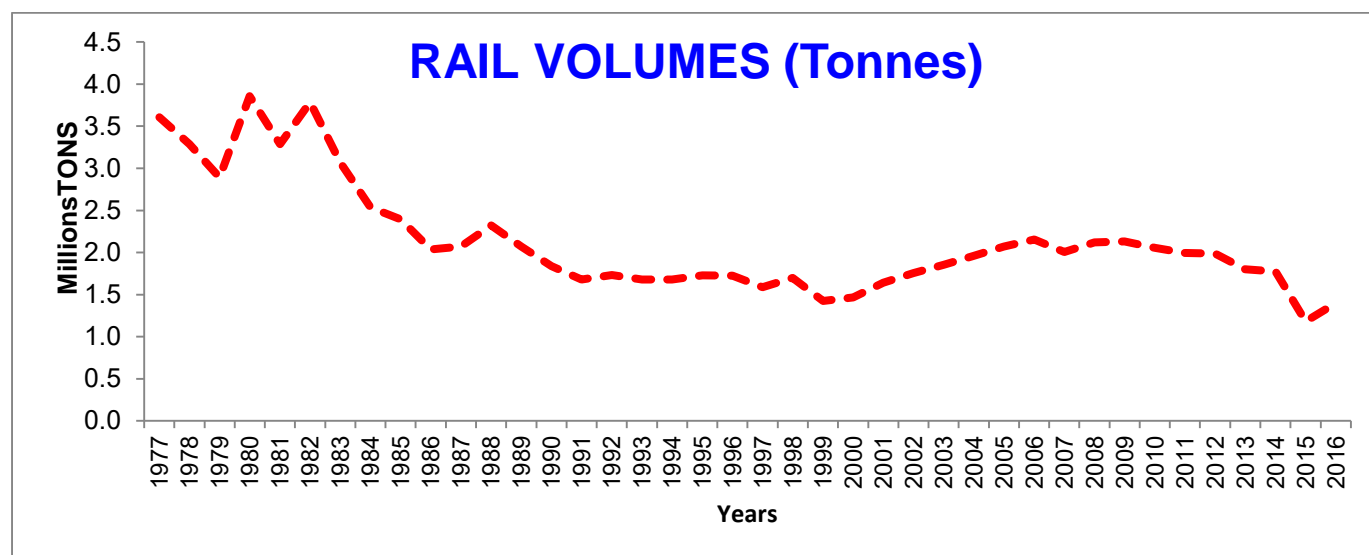
As the Figure above shows, TransNamib had an average negative operating margin from 2012 and 2015. A positive performance was only recorded in 2014/15 which was approximately 40.03%. This according to Respondent 10 is the sign that the organisation is able to sustain itself if recapitalised. The Respondent indicated that because the government managed to assist it in funding the lease of the locomotives from TransNamib to the neighbouring South Africa, the organisation was able to move more volumes on rail.

5.2.5.4 General observation on TransNamib

As indicated in the previous chapters, TransNamib operates all rail systems in the country. It is clear that it holds a monopoly as there is no private operator in this industry. Yet, it has not been performing too well. One visible example is the dramatic decrease in the volume of cargo transported by rail as reflected in the Figure below. Unlike in the past, goods like fuel and cement are now being transported by road. Therefore, TransNamib now only has a market share of about 20% of total freight volume.

From the figure above, it's clear that the SOE has subsequently been plagued by poor financial performance over many years. According to Respondent 9, the organisation is technically insolvent because of many years of incompetent appointments, government interference in its governance and management appointments, and dilapidated infrastructure, amongst other issues.

Figure 5.19: Railway Volumes

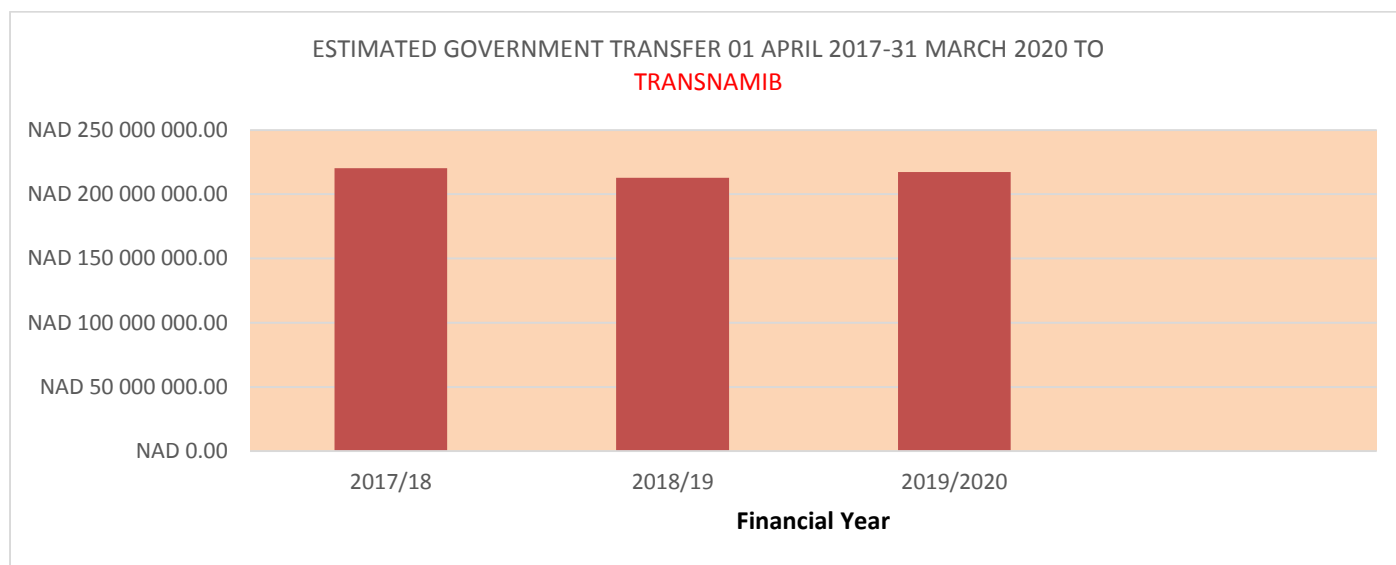


Source: TransNamib (2016)

With regards to financial performance, TransNamib will, as expected, continue to be a burden to the state. In the Budget Statement for 2016/2017, the Minister of Finance announced that TransNamib would get another N\$650,345,000 million in the next three years. Namibia's SOEs

will be allocated N\$220,245,000 million for the 2017/18 financial year, N\$212, 892,000 million for the 2018/19 financial year and N\$217,208,000 million for the 2019/20 financial year (as reflected in Figure 5.15 below).

Figure 5.20: Government Estimated Transfer to TransNamib 2017-2020



Source: Republic of Namibia (Medium-Term Expenditure Framework 2017/18-2019/2020)

According to TransNamib's Financial Report (2013), the organisation revenue (own revenue generated from its operations) decreased by 6.7% from N\$565 million to N\$527 million, while operating costs increased by 10% from N\$474 million to N\$522 million, which caused the net loss to increase from N\$67 million to N\$183 million. The company admits that with this trend, its share of the transport market will in all likelihood continue to decline unless dramatic interventions take place (TransNamib Financial Report, 2013:10).

The position of TransNamib is informed partly by historical factors. The movement of goods by rail has not been impressive. This is due to less investment in the railway network over the last 40 years. If one compares investment in road transport to that of rail transport, road transport receives much more funding (Respondent 10). Officials at TransNamib blame this largely on political interference as they say that they cannot be efficient if the Ministry and politicians keep interfering in what needs to be done in the company. This becomes ironic, as the rail operator

depends on the central government, which is the primary shareholder to pay for salaries and avoid overcommitting its balance sheet to finance infrastructure.

TransNamib does not also have business performance indicators such as cost per kilometre for the conveyance of goods (Respondent 9). This makes it difficult to monitor and evaluate its own performance. As a result, the rail operator has registered losses hence admitting that they have been performing poorly as per the generally observable indicators.

5.2.5.5 Challenges and how to address them

TransNamib is facing a variety of challenges as the above-mentioned shortcomings show. As a result, the company considers it important for the government to give mandates to SOEs with capital to implement projects and fulfil those mandates. Furthermore, the government and TransNamib should consider separating the tourism business and the bulk movement of goods. This will allow the government to pay for non-profitable activities that they want to promote.

There is a challenge with reporting to the ministry responsible for transport and at the same time reporting to the ministry responsible for SOEs. This issue creates unnecessary bureaucracy and potential conflicts as there may be different opinions on things that have to be done. It is even more difficult for staff members as they need to report to the board and to two ministries. TransNamib notes that this situation should be addressed.

According to TransNamib, the government should allow SOEs to operate as a business at a profitable level. It appears that there is no motivation for officials to see to it that their company makes profit from its operations. One of the reasons for this is a lack of clear mandates for SOEs and, more importantly, because there is a need to recapitalise them and then demand results. It appears this is seldom done, which is why monitoring and evaluation is a non-existent practice at TransNamib. As a result, there is a need for the development of clear performance indicators to track performance on a quarterly basis and rectify problems before it is too late. In the process, there is also a need to avoid political interference.

Furthermore, TransNamib follows the traditional incremental budgeting system for its operations. Budgetary control is exercised through the financial review, which is an appropriation account reporting deviations between the budget and the actual expenditure. In

the absence of key performance indicators, a meaningful input-output budget model cannot be implemented. Furthermore, the management accounting system is obsolete when no mechanism exists to differentiate between fixed and variable costs of an operation or activity. Resultantly, the cost of important business activities such as train operations cannot be determined. These practices have serious financial implications.

5.3 Evaluation

5.3.1 General observations

The bulk of SOEs are not performing satisfactorily in many areas, especially in regard to profitability and wealth generation (a sustainable business model) for the investor (government). The financial performance of SOEs since 2001 has been mostly disappointing, with the government expenditure and lending to SOEs growing in leaps and bounds. The major causes of these losses have been identified as bad financial management practices, a deficient management information system, non-adherence to key performance indicators and incompetent management policies.

The non-performance or unsatisfactory performance of three out of five SOEs covered in this study is historical. In fact, it is one of the reasons why the government decided to create a ministry that specifically looks into the issues of SOEs in Namibia. The idea, according to Kahiurika (2003), was envisaged more than a decade ago. It is reported that the financial performance of SOEs since 1993 has been disappointing in most instances, with government expenditure on, and lending to, SOEs increasing significantly (OECD, 2001:25; Gaes, 2009). Furthermore, government expenditure and lending showed a significant shift away from capital transfers to SOEs towards increased lending and spending on salaries and wages. Many SOEs experience high levels of debt as well as declining levels of capital productivity growth, development and poverty eradication (Gaes, 2009:10).

Namibian SOEs have proved to contribute very little to the national output. Comparatively, it has been established that in 1997 it was estimated that SOEs contributed 2.3% towards national output and 2% towards total employment – relatively low percentages compared to their contribution in African countries such as South Africa (14.9%), Zimbabwe (11.3%) and Malawi (4.3%) (OECD, 2001:25). The Namibian situation compares with situations in first-world

economies such as the United Kingdom (3.4%), stronger South American economies such as Argentina (1.3%) and developing Southeast Asia countries such as the Philippines (2.2%). However, given their significant role in the national physical and logistical infrastructure, SOE operations fulfil a strategic function in the national economy in terms of economic development (Gaes, 2009:10).

Furthermore, SOEs in the transport sector, with the exception of Namport, are not getting good publicity due to bad performance, malpractices and bad corporate governance in general. They are deeply implicated in most fiscal problems because of their inefficiency, political interference, losses, budgetary burdens and provision of poor products and services including bad prioritisation. This is not unique to Namibia. Just as in other countries in Africa, they achieve non-commercial objectives occasionally, which are used to justify their poor economic performance (Nellis, 1991).

Depending on what they were created for, i.e. if they were created to increase shareholder value, most of them have failed and continue to do so. Most have instead turned the shareholder into a lax majority shareholder, i.e. unable to demand dividends due to the poor financial performance. None of the SOEs (e.g. Air Namibia, TransNamib, the RCC and NAC) have to date declared any dividends, but they keep requiring additional funding from the state. State aid should be targeted and controlled to avoid stifling competition and discouraging private sector participation. This means that the terms and conditions of state aid to SOEs must always be discreet and likened to what would be considered acceptable if it were a private investor operating under normal market conditions. Subsidies are nowadays given to SOEs that should be able to fund their own operational expenses, least to mention being unable to pay their own salaries, yet overvaluing executives that are unable to turn the tide.

5.4 Revisiting the Theories of SOE Performance

Empirical studies and theories have been fundamental in trying to explain the performance of SOEs. This study examined the fundamental drivers of SOEs' performance in Namibia by testing various theories such as the agency theory, public choice theory, stewardship theory, the stakeholder theory and the resource-based theory. A brief look will now be taken at each.

According to Jensen and Meckling (1976), agency theory has often been used to examine and explain governance relationships between the owners of the companies and those entrusted with the responsibilities of managing them. Robert (1998) explains the complexity of this relationship (agent and principal relations). Robert (1998) indicates that the problem that typically arises is when the agent fails to balance their own interests with those of the owners, which is why the board of directors is often expected to play an oversight role, keeping in mind the interest of the principal. The agency theory, therefore, according to Robert (1998), makes the argument that shareholder interests require protection by separating the roles of the board from those of management.

Contrary to agency theory, in stewardship theory, Wicaksono (2009) argues that managers are good stewards of the firm, and they want to perform well and cooperate with all stakeholders towards the common goal of attaining the firm's overall objectives. This view is supported by Yang et al. (2009), who find that in the modern world, the relationship between the board and the CEO is no longer one of a supervisor and supervisee but rather one of cooperative engagement.

The stakeholder theory, in turn, is underpinned by the assumption that values are necessarily and explicitly part of doing business. This theory puts pressure on management to articulate the manner in which they want to conduct business. Under this theory, Freeman (1994) argues that organisational behaviour and performance are predicted and explained on the basis of the organisation's stakeholders, their values, their relative influence on decisions and the organisational situation.

The public choice theory makes the assumption that political leadership has some concern for the interest of others. Such concerns, according to Shaw (2008), are limited as their primary interests are their own. A key underpinning of public choice theory is the lack of incentives by voters to monitor the actions of the government and politicians in general. This lack of incentives, according to Anthony (1957), is often blamed on a rational ignorance on the part of the voters and, thus, weakens the incentive for good management in public interest.

Finally, resource-based theory sees organisations as bundles of resources that, depending on how they are uniquely combined, produce different results. According to Hamel and Prahalad (1994), these combinations are critical as they make one firm perform better than others. Consistent with such a proposition, Grant (1991) holds the view that a firm's resources are its

primary source of good performance. With the above background in mind and the findings presented, it is opportune to consider the drivers of performance related to the five SOEs under investigation.

5.5 Drivers of SOEs' Poor Performance – The Analysis

5.5.1 General

It is rather complex to generalise the causes for the poor performance of SOEs in this study. Some are enterprise-specific and some cut across problems of the government in general. Therefore, one cannot propound one theory to explain all causes or provide solutions for these based on one model. According to Bozec, Breton and Cote (2002), there is a quest in the academic literature as well as in policy endeavours to explain that SOE performance has not yielded much consensus, given the inability of certain theories to adequately explain SOE performance. Whilst empirical evidence exists on how well or poor SOEs have performed over the years, what remains largely unresolved, at least in the context of sub-Saharan Africa, is a comprehensive test of which factors drive good SOE performance.

Whilst various countries have, in concert with the agency theory, embarked on performance contracts in an effort to improve SOE efficiency, these efforts have failed fundamentally because such attempts have underestimated the implications of other competing theories that explain organisational performance. According to Shirley (2008), Chile is a good example showing the contradictions among the competing organisational performance theories. In that country, whilst the exemplary efficiency of SOEs was brought about in compliance with the tenets of the agency theory, the provisions of the stewardship theory were rather undermined. Conversely, good performance was ensured through restrained political influence, with boards being held more accountable, a scenario supported under the public choice theory. However, socioeconomic dimensions coming with the existence of SOEs were ignored, thereby giving much less attention to the needs and interests of various stakeholders (Shirley, 2008:18).

Mwaura (2007) suggests that SOEs' poor performance can be blamed on the boards and attributes their inability to resolve the agent-principal problem to the existence of multiple agents, as discussed earlier. Mwaura (2007), however, warns against attempting to resolve the

agency problem purely by giving the boards autonomy because boards are appointed by the political leadership to facilitate political mileage through directives not necessarily in the best interest of the SOE's performance (Mwaura, 2007).

5.5.2 Off-the-mark policymaking, shareholding and regulation practices

All five SOEs have boards and an executive management team or something in that line under the leadership of the CEO. The CEO and his/her team ensure that the SOE succeeds in achieving its strategic objectives. The board of directors is regulated by statutes that apply to each SOE. Generally, however, they are responsible for the preparation and fair representation of the company's financial statements that must be prepared in accordance with the International Financial Reporting Standards. The work of the board of directors focuses on strategic issues, business orientation, financing and reporting thereof.

However, not everything happens according to what it should be in terms of the applicable laws and international business practices. The data above shows many discrepancies. In general, the review of board practices reflected the following weaknesses:

- A lack of consistently applied criteria and processes in the recruitment and appointment of boards of directors.
- Board members are not sufficiently exposed to training and development programmes.
- Fundamental policy contradictions are often left unresolved, leading to contradictions, overlaps in mandate and lack of coordinated projects among transport SOEs.
- Many boards do not maintain an appropriate balance in terms of, for example, executive vs. non-executive directors, public vs. private sector representatives, and the distribution of skills.
- Policymakers often misunderstand the role for, and strategies to achieve, market-based competition to deliver desired policy outcomes out of the businesses of SOEs.
- Regulatory accountability is limited, hence laxity in operations and patronise accompanied unaccounted heavy benefits, which become a burden to the SOEs.
- Regulatory independence and capacity is compromised by the nature of appointments.

- Risks of conflicts of interest exist where individuals are serving on the boards of both holding and subsidiary boards in the same group of companies.
- Senior government officials often undermine the separation of powers established for the effective functioning of policy formulation, SOE operations and corporate governance.
- Some individuals such as *ex officio* state representatives having to serve on multiple SOE boards are subject to onerous responsibilities.
- Some SOEs such as TransNamib are often under-resourced, lack internal checks, overspend and ask for more, revealing a lack of enough financial accountability.
- The finalisation of policy and regulatory frameworks for SOEs has often been subject to inordinate delays.
- The mandates and objectives given to SOEs are often too broad and lack monitoring and evaluation mechanisms, let alone internal checks.

The above-mentioned are just a summation of some of the shortcomings affecting the performance of SOEs. The boards play a significant role in shaping the corporate governance structure and culture within the SOEs. Their failure or disturbance affects the whole SOE. This explains why research has proven that corporate performance management in the Namibian SOE context is suffering through among other factors, a lack of effective performance management interaction between the government as the owner, and SOEs, largely due to a lack of capacity and information at the owner level to effectively take part in this process.

The general practices listed above are not unique to Namibia. In South Africa, which is very much similar to Namibia in its framework, Van Basten (2007) produced a concept research paper entitled 'Economic Regulation of SA's public utilities'. One of its key findings relates to the respective roles of policymaking, shareholding and regulation performed by the state:

Government has not found a definite solution to its multiple roles as shareholder and policymaker, or reconciled this with the state's decisions to allocate economic regulatory functions to an independent regulator. Current role confusion potentially limits the effectiveness of this governance system. A Regulator needs to have a clear and unambiguous mandate in order to fulfil it effectively. The regulator also needs to be provided

with the tools to fulfil its mandate. This can entail as per sector analysis of the multiple roles of different entities and recommendations on how the roles can be ring fenced practically.

(Van Basten, 2007:40)

The report also highlights the “[g]overnment’s seemingly indecisiveness on certain policy issues” which tends to hamper performance in key SOEs. The issue of an independent regulator came up during the discussions with Respondent 2. According Respondent 2, this body will help improve the performance of SOEs in Namibia. For this outcome to be achieved, strong organisational allegiance (SOE) as opposed to political obligation should be the criteria for appointment to such a body warned Respondent 2.

5.5.3 General lack of adherence to good corporate governance principles

The World Bank Report (2000 describes corporate governance as concerned with holding the balance between economic and social goals and between individual and communal goals”. In this sense, the corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interest of individuals, companies and society. Therefore, a lack of satisfaction on the part of the shareholder and recipients of the services and goods is a signal of corporate failure.

As indicated earlier, most SOEs have generally failed to meet the expectations of their creators and funders. Generally, in Africa, SOEs are deeply implicated in most fiscal problems of African governments because of their inefficiency, losses, budgetary burdens and provision of poor products and services. Governments end up considering privatising SOEs as a way of making them more efficient and profitable and easing the tax payers of the burden of always bailing them out (Louw, 1999; Mwaura, 2007:34). Occasionally, they achieve some non-commercial objectives which are used to justify their poor economic performance. This can be related to the experiences of Air Namibia and TransNamib.

The government of Namibia has been the primary stakeholder/shareholder in all the SOEs in the country. When a loss is made by an SOE, it is willing to and always does bail out those that

are making losses. This has not brought about the much-needed change to these SOEs. In fact, it has further downgraded the principles of transparency and accountability, which are, as shown in the previous chapters, the cornerstones of good corporate governance. This downgrade has further come with a loss of confidence by the public in the ever-mal-performing SOEs, including loss of morale by disgruntled officials working for those SOEs, whether at management or lower level (Respondent 1).

As transparency comes with trust, “[i]t is hard to overstate the importance of reputation in a market economy. Rules cannot substitute for character” (Greenspan, 2003:23). This explains why travellers end up not using their own airline, Air Namibia, and why those with cargo at the port will prefer road transport over TransNamib, even though rail transport is much cheaper. It is true that when markets lose confidence in the integrity of information provided by a firm, i.e. when they can no longer trust the firm, the negative effects are likely to be dramatic. This is particularly the case for financial institutions for which the loss of reputation can mean the failure of the company.

Nellis (1986) observes that there were some SOEs in Africa that performed adequately, at least for a time, and sometimes very well by the most stringent of standards. Namport is such an SOE that has thrived to maintain good reports and financial stability or efficiency and profitability in general. However, the good performers were heavily outnumbered by the bad in any SOE group of companies in most developing countries. For example, a 1985 survey of the transport sector SOEs’ performance in 18 Francophone African countries found that only one-fifth generated revenue sufficient to cover operating costs, depreciation and financial charges (World Bank, 1985:36). Another fifth covered variable costs plus depreciation but not finance charges. A further 40% covered only operating costs, while the final fifth did not even cover these (World Bank, 1985:36). In a great number of African countries, the financial burden posed by poorly performing SOEs, particularly those in infrastructure, caused macro-fiscal problems.

The responses from the officials in the SOEs covered by this study had the confidence to show their problems but were not as willing to reveal the causes. This is a recurrent problem in a research of this nature. According to Nellis (1988), many studies point to the fundamental problems of SOEs, of which the main ones are multiple and conflicting objectives of SOEs, especially those in the infrastructure and manufacturing sectors. Government owners decreed that their SOEs operate in a commercial, efficient and profitable manner, but at the same time

insisted that they provide goods and services at prices less than cost-covering levels, serve as generators of employment, receive their inputs from state-sanctioned suppliers and choose location based on political rather than commercial criteria (Nellis, 1988:28).

Nellis (1988) argues that the mixing of social and commercial goals inevitably led to political interference in SOEs' operational decisions to the detriment of managerial autonomy, commercial performance and economic efficiency. These decisions further resulted in issues such as poor initial investment decisions and inadequate capitalisation. With respect to the latter, few African governments were able to endow their SOEs with proper levels of initial and working capital, forcing them to rely heavily on debt to finance basic operations. Other issues have been identified by IFIs. These issues include collection deficiencies, poor reporting systems, deficient boards of directors and other shortcomings, such as SOE managers being untrained and who owed their posts to political connections rather than technical skills. Thus, weak management was as much caused by the dysfunctional general system, as it was a cause of it. These issues have resulted in huge losses by SOEs, which have to be covered either through direct transfers from the budget or through indirect subsidies.

5.5.4 Corruption and political interference

It has been instilled in the minds of some interested in issues surrounding the poor performance of SOEs in Namibia that “[p]olitics protects poor performers” (Smit, 2011:1). This is because, as reported, the process of appointing senior managers at Namibian SOEs has become politicised to the extent where political patronage has created a culture that protects poor performers and those engaged in corruption from exposure as their political ties outweigh the need for accountability. This is a damning report by the media in 2011, which to a great extent reflects the reasons why there has been a record of poor performance culture, not only among transport sector SOEs but also others that are not covered in this study (Smit, 2011:1).

There have been official reports too on the same aspect by independent bodies. The Institute for Public Policy Research (IPPR, 2011) investigated corruption, transparency and accountability at the senior management level of SOEs and identified trends plaguing the SOE sector and made a number of recommendations to improve the governance of SOEs (Smit, 2011:1). With regards to the performance of the SOE sector as a whole, the IPPR regarded it

as having been plagued by a perception of poor management, non-accountability and generally non-transparent practices, with political interference an ever-present reality (IPPR, 2011). There are also internal interferences, for example between the board and management, which can stifle performance. At Air Namibia, there has been a lot of drama, leading the former CEO to say: “This eternal turf war between the board and management, in my view, is responsible for the woes of Air Namibia” (Kahiurika, 2015:6).

Widespread poor management and mismanagement in the SOE sector is an indication that the sector is operating in an environment that suffers from poor and under-regulation and lax oversight, which by extension can be argued creates the perfect climate for corruption. (IPPR, 2011). To this end, it is reported that between 2008 and 2009, SOEs accounted for 22% of the 117 cases of alleged corruption that were recorded.

The IPPR identifies political patronage, moral hazard and a culture of secrecy and poor record-keeping as issues related to corruption in the SOE sector. In the first instance, a reality of Namibia’s SOE and government appointment processes is that senior management positions have been politicised from the start as the ruling Swapo Party has sought to impose itself on state processes (IPPR, 2011). According to the IPPR, the situation is that political, and in some cases personal affiliation and connectedness “ha[ve] consistently trumped experience, skills and expertise when it has come to the appointment of SOE[s] managing directors or CEOs. As a result, political protection and interference lower the probability of detecting and punishing corruption and heighten the risk of corruption taking place. Moral hazard is the practice whereby one party takes a risk or decision for which, should it backfire, another party would bear the cost. Moral hazard has become a defining characteristic of the SOE sector in Namibia, as the taxpayer, through government, is consistently and continuously called on to bail out a host of SOEs long plagued by bad decision-making, weak management, poor planning and lax financial controls (IPPR, 2011).

These allegations have hardly brought about changes to date. They are reflected in the responses in the interviews (Respondents 1 and 2). It is evident that a culture of secrecy prevails, which is characterised by poor record keeping and financial reporting. Such a culture is also closely linked to political patronage “because SOE managers, who because of their political affiliation – and thus performance and accountability do not come into it – arguably enjoy the benefits of an environment marked by altogether lax oversight, do not feel pressed to

adhere to financial reporting standards” (Smit, 2011:1). These concerns are genuine because, as Witherell (2003) notes, this:

Involves the role that market discipline and transparency – the subjects of this roundtable – can and should play in strengthening corporate governance. The ways that the corporate governance system and practices, in turn, affect the functioning of markets must also be important considerations for policy. These relationships operate within the regulatory and legal framework, which should be designed to support the corrective forces of markets and enhance incentive structures. After further developing these concepts, I will discuss some of the supporting empirical evidence and the insights arising from recent experience. These are leading to an improved understanding of what constitutes ‘good corporate governance’ and how market forces can contribute to the achievement of such governance. I will close with some remarks on the need for continued international dialogue on these issues.

The IPPR regards the government’s slow response to the governance shortcomings and challenges experienced by parastatals as the result of a legislative and regulatory environment which remains inadequately circumscribed (IPPR, 2011). According to the IPPR (2011), this state of affairs suggests that the State is an active participant in the undermining of governance at public entities with a mandated and significant public service delivery task, and by extension an accomplice in corrupt activities and practices and mismanagement.

5.5.5 Poor asset and risk management systems

A proper asset and risk management system is crucial for the successful operation of any business. It becomes even more important in large organisations such as SOEs whose assets are distributed across the country and whose businesses span across the country’s borders. The improper management of assets at TransNamib could be one of the factors contributing to the loss of revenue and efficiency. There appears to be no proper system existing to monitor and evaluate the maintenance and replacement schedule of various items of assets. For example, locomotives and carriages are allowed to wear out due to poor maintenance up to a point where they cannot remain operational. The resultant effect is a substantial and gradual decline in TransNamib’s earnings. Customers are pushed to road transport as a result of the

state of the locomotives or the risk involved in using the rail system. This explains why the officials say that cargo has substantially reduced over years. All of this inevitably leads to gradual losses, some of which have already been recorded.

Related to the above-mentioned is the risk management system, which is also not well considered in most of the SOEs under scrutiny in this study. Air Namibia, for example, has a problem of opting for non-profitable routes, such as the Namibia-China trip that they based on political reasons and is a burden for the airline. The risk was taken for convenience and expediency but it leads to losses in the end. There was no proper risk analysis or, if there was, political interference trumped it. To this end, it must be noted that shareholder intervention must be targeted (i.e. shareholder intervention must be limited to investment or operational aid to airports without discouraging the entrepreneurial drive within SOEs and in a mature system aid aimed at encouraging the development of new routes) because the objective is to improve connectivity and increase shareholder value.

The NAC has the problem of not doing their upgrades and maintenance works on time. The nation was informed that certain aircraft (A330 and larger) could not land in Namibia anymore because there is a risk (lack of fire tracks) for the safety of international travellers. This led to the downgrading of the airport, meaning loss in parking and other charges the NAC would have received apart from other losses to the country (such as extra costs because Air Namibia had to pay to pick up passengers from Gaborone in Botswana using their A319).

It is noted that organisations should have a proper risk management strategy in place to address critical risk issues in a timely manner. At the NAC, the responsibility of risk assessment and strategy formulation lies with the board comprising of civil servants with limited knowledge of airline operations. This explains why an official who was interviewed complained about meritocracy by saying:

The interference of Politics and the choice of Executives and Board Members based on tribal, political and race without merit has excluded the best and talented nationals from playing a transformational role to the economic well-being of SOEs.

(Respondent 1)

Besides, these civil servants may be transferred too frequently on political and administrative grounds. The NAC has suffered from this recently with corruption charges hanging on all members of the board. The matter has been a hot issue in cabinet with ministers divided on the issue (Informante, 2016:1). This means that some improvement in the recruitment procedures and introduction of a performance-based salary structure may significantly improve the productivity of the workforce. This may also reduce cases of wilful corruption by the officials, whereby the attention becomes the personalities involved and not the main goal of the SOE. These lax ways of dealing with problems may dig a deeper hole of losses for the SOE. Air Namibia is an example where nothing seems to be happening to rescue the airline. One politician was quoted as saying:

The company has not done anything to make sure it climbs out of its problems. They have had about five turnaround strategies, which never seem to work out. They have in fact not done anything to make sure they work out. I think if they enter into agreements with other successful airlines, they can learn from them and become profitable.

(Kahiurika, 2015:6)

The economic objective or social objective of each SOE must be very clear, namely the relentless search for the best-qualified men and women to be appointed and empowered to manage the resources entrusted to them. Similarly, the regulatory mechanism must be equally empowered and resourced to play a meaningful oversight role that will enable the ministers involved to account to the public. The wrangle between the two ministers unfortunately can cripple the progress of some transport sector SOEs.

5.5.6 Poor internal control systems

The internal control systems of an SOE may determine its overall performance standards and what system the organisation needs to maintain. TransNamib appears to be lacking an efficient system. It appears the rail company inherited a good system from the South African system and generally the TransNamib business was small. TransNamib has had some challenges that

include economic viability and long-term survival associated with operating losses and escalating debt. According to Dierks (2006), managerial governance lies at the root of the situation where the management support systems and internal controls disintegrated in the past.

Over time, the complexity of business operations, increases in the volume of transactions and non-adherence to these controls have led to the controls gradually losing their utility and efficacy. This has been the trend in rail systems that were inherited from the colonial masters (Chartered Institute of Management Accountants, 2012). From the responses outlined above, it can be observed in many instances that there has been failure of internal control. The officials do not even do internal checks to see the cost of fuel that they use (Respondent 2).

There are many other issues that may be prevalent. These may include procurements at inflated rates, pilferage of inventory from the stores, embezzlement of earnings from railway stations, passengers travelling without tickets, stealing of oil from the locomotives and stores, and employees claiming overtime without performing actual work. Without speculation, and given the information gathered, these issues may be contributing to the decline of business at TransNamib. The effect is a substantial increase in annual financial losses. A study of past annual reports corroborates these findings. It is therefore credible to say that there is a need to create these mechanisms and ensure that there are benchmarks and monitoring and evaluation.

5.6 Conclusions

The results of the analysis shows that nearly all transport SOEs perform poorly in terms of return on assets, return on equity, and operating margin ratio. This finding is not entirely unexpected given the “public goods” characteristics of the infrastructure and services provided by transport SOEs, which generally leads to market failures. These assertions were also confirmed by other studies on governance of SOEs in Namibia (Hekandjo et al., 2014).

Another problem in geographically extensive and sparsely populated countries such as Namibia is low density, which means that the unit cost of providing transport services and related infrastructure tends to be relatively high. Given the revenue model or structure that SOEs typically pursue (i.e., economic efficiency prices cannot cover the costs and ensure profitability),

it is not surprising that they struggle to remain financially sustainable due to misalignment between their costs structure, investment requirement and capital structure. As the result of the financial analysis shows, transport SOEs tend to be inefficient in terms of return on assets, return on equity, as well as operating profit margin. This level of performance means that transport SOEs such as those covered in this research require general tax revenue to remain afloat (refer to government transfers or bailout to SOEs).

Moreover, the issue that may be of interest to the study is the consistency in the relationship between poor performance of those institutions and their non-compliance with agreed governance principles. For example, poor performing SOEs such as TransNamib and Air Namibia have failed to comply with the governance arrangements that compel them (according Section 17[1] of the SOE Act), as indicated earlier, to enter into performance agreements with the minister. In turn, those SOEs performing well, such as Namport and the RA have complied with the said provision.

Similarly, the above assertion and trend can be observed in the overall non-compliance to the Public Enterprises Governance Act of 2006, such as the governance agreement with the board, section performance agreement (Section 18 [1] and Section 19[1], which deals with annual and business plans) with the SOE Act. Again, poor-performing SOEs such as TransNamib and Air Namibia have poor compliance attitudes as opposed to the performing SOEs. In a nutshell, the findings of this study suggest that the reform process has failed, mainly because of non-compliance with corporate governance, poor capitalisation of SOEs and a lack of skills in this organisation. Although this chapter was not focused on providing recommendations, it has identified some areas where certain recommendations can be made.

In conclusion, the foregoing analysis shows that, aside from one SOE, all transport sector SOEs investigated have not been performing according to their owner's expectations. While there have been efforts to make these SOEs more profitable and efficient, such initiatives are either inadequate or ineffective and will not realise the intended objectives unless the top management of these enterprises is hired on a competitive basis, given more autonomy and the government commits not only to design performance contracts that set realistic standards, but also enforce them strictly. Still, there is a need to streamline the multiple regulations that govern SOEs and reform the corporate regulatory framework similar to those of the private

sector in order to raise standards of corporate governance. This will ensure that the services they provide are managed prudently, resulting in higher productivity.

The following chapter builds on the above proposal, leading up to the last chapter with complete conclusions and recommendations. A model was also developed on how to improve the performance of SOEs in Namibia and globally where applicable.

CHAPTER SIX:

A NEW APPROACH TO THE PERFORMANCE OF STATE-OWNED ENTERPRISES IN NAMIBIA

6.1 Introduction

This chapter proposes a performance model (Figure 6.2) that can be used to enhance Namibia's state-owned enterprises performance in the transport sector. It builds on the analysis presented in previous Chapters. After reviewing the existing framework, the focus then shifts to the new proposed model. Given the findings of the study presented in Chapter Five, it is reasonable to suggest that past and present efforts aimed at improving the performance of SOEs in the country have had little positive effect. Taking the gap (desired/ideal vs. the current reality) into account, the study goes on to propose a new model to improve the performance of SOEs in the country.

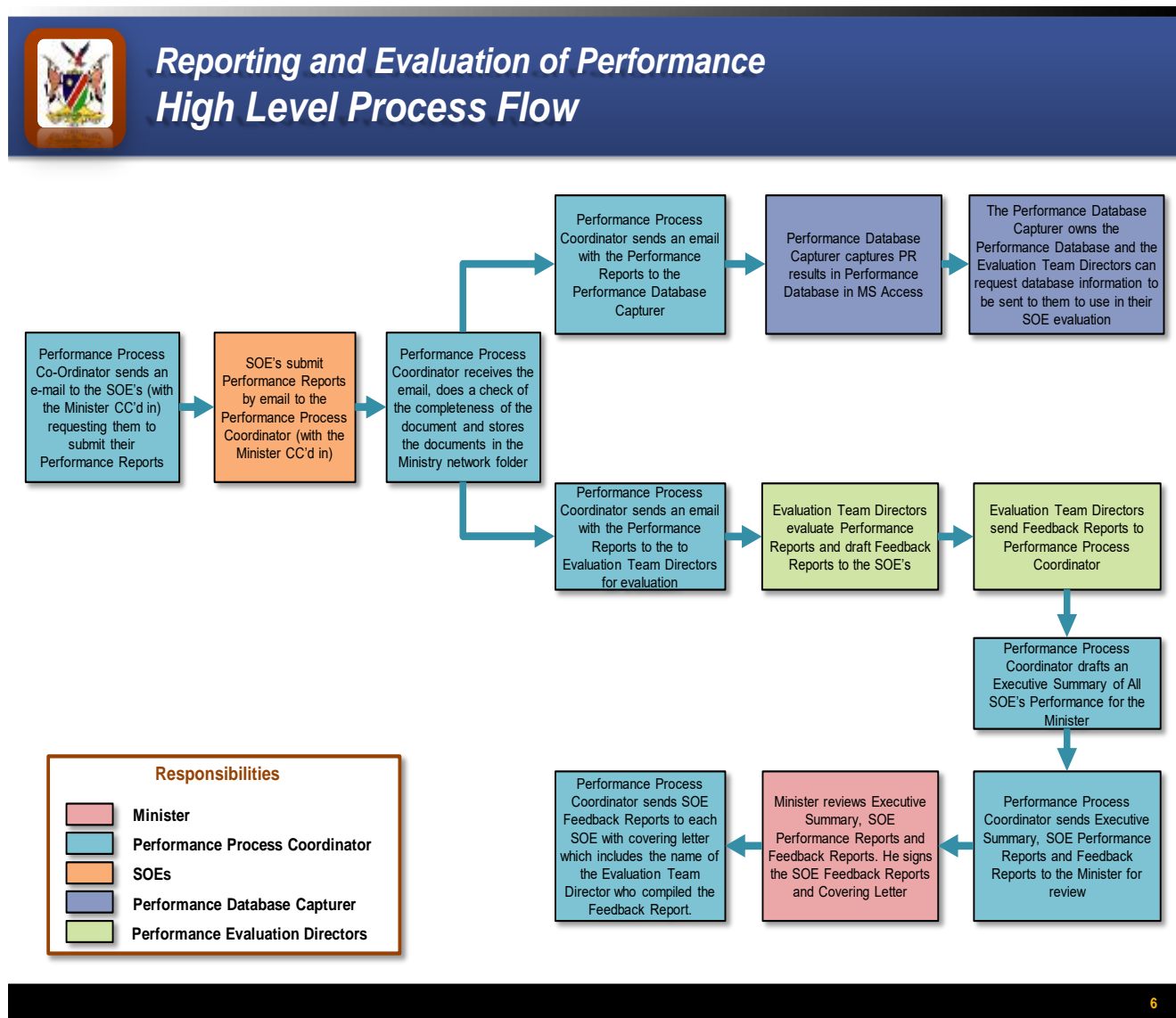
The chapter is structured broadly as follows: The first part presents a critique of previous and current framework. The second part discusses the proposed framework/model intended to assist in enhancing the performance of transport sector SOEs.

6.2 Previous Framework

Performance monitoring in Namibia is currently done under governance contracts between SOEs and the line ministry represented by the board and the minister respectively in accordance with the State-Owned Enterprises Governance Act, 2006 (as amended by the Public Enterprises Governance Amendment Act, 2015). There are three important source documents used to monitor the performance of SOEs. These are the governance agreement (GA), performance contract (PC) and key performance indicator (KPI) sheet. The GA is signed by the relevant minister and the board Chairperson on behalf of the relevant ministry and the respective SOE, while the PC is signed by the relevant minister and individual board members. However, these processes have not been effective, hence the on-going reform process.

The KPI sheet is an attachment to the GA, reflecting the performance levels of the specific SOE. Figure 6.1 below summarises the flow of the process relating to reporting and the evaluation of SOE performance.

Figure 6.1: PA Process Flow



Source: MWT (2012)

6.3 The New Framework

After 16 months of research, benchmarking and consultations, the Ministry of Public Enterprises (MPE) has identified the most suitable Governance Model for our current condition.

(Jooste, 2016)

This was a striking point from the statement of the Minister of Public Enterprises when he introduced the new governance model for public enterprises that he termed the 'Hybrid Governance System'.

In 2015, the Public Enterprises Governance Amendment Act effectively did away with the State-Owned Enterprises Governance Council, replacing it with the newly created Ministry of Public Enterprises. With this legal amendment in place and as part of his appointment condition, the Minister of Public Enterprises and his team came up with a reform drive that is considered below.

The first step entailed research, benchmarking and consultations, a process that took approximately 16 months. This process entailed, amongst other things, understanding and appreciating the current governance and previous governance models (Respondent 1). But the history of the governance model in Namibia began immediately after independence when SOEs in the country were completely decentralised. Under the decentralised model, line ministries were responsible for all functions (governance and operational oversight to be specific) related to SOEs under their jurisdictions.

The "decentralised model" was then followed by the "dual governance model" that was a result of a remuneration survey rather than governance reform. Be that as it may, it resulted in a governance system where line ministries (or portfolio ministries), together with the State-Owned Enterprises Governance Council, were both responsible for SOEs' oversight in the country. Under this dual governance model, the Prime Minister served as the Chair of the Council.

With the creation of the Ministry of Public Enterprises, however, a new governance system that the Minister of Public Enterprises termed the 'Hybrid Governance Model for Namibia Public Enterprises' was introduced in 2016. This new governance model divided SOEs into three categories, namely commercial, non-commercial and financial. Below is the new classification of Public Enterprises as per the new governance model.

Table 6.1: New Classification of SOEs

Commercial Enterprises	Financial Institutions and Extra-budgetary Funds	Non-Commercial Enterprises
<ul style="list-style-type: none"> • Air Namibia • Epangelo Mining • Henties Bay Waterfront • Lüderitz Waterfront • Namcor • Namibia Airports Company • Namibia Industrial Development Agency • Namibia Institute of Pathology • Namibia Ports Authority • Namibia Wildlife Resorts • Nampost • NamPower • National Fishing Corporation • Roads Authority • Roads Contractor Company • TransNamib Holdings • Zambezi Waterfront • National Fishing Corporation 	<ul style="list-style-type: none"> • Banks • Road Fund Administration • Motor Vehicle Accident Fund 	<ul style="list-style-type: none"> • Communications Regulatory Authority of Namibia • Electricity Control Board • Namibia Fish Consumption Promotion Trust • Namibia Press Agency • Namibia Statistics Agency • Namibia Training Authority • National Art Gallery • National Commission on Research, Science & Technology • NBC • UNAM • Accreditation Board of Namibia • Diamond Board of Namibia • Fisheries Observer Agency • Karakul Board • Meat Board • Namibia Agronomic Board

Source: Jooste (2016)

According to the new model, as explained by Jooste (2016), SOEs were to be divided as follows:

- Commercial public enterprises - entities wholly or partially owned and/or controlled by the state which, guided by market principles, are to provide a product or render a service in the interest of the public and have the potential to generate a sustainable profit while promoting economic growth and fulfilling its mandate;
- Non-commercial public enterprises entities of non-financial nature (these are more regulatory); and
- Financial institutions and extra-budgetary funds – i.e., public enterprises of financial nature.

Similarly, under this new governance arrangement, commercial public enterprises would report directly to the Public Enterprises Ministry, while non-commercial public enterprises are to report directly to line ministries, whilst financial institutions and extra-budgetary funds public enterprises shall report to the Ministry of Finance. Finally, a reward system linked to performance management was proposed.

As noted by Respondent 1 during interview, “it is envisaged that the performance management system with real KPIs will be an integral part of the SOEs’ governance together with an incentivised remuneration system”. In the respondent’s perspective, “this (i.e., the new SOE governance model) is a commendable exercise that will ensure that SOEs are not seen as rewarding failure as has been the case for some time now. The past system has allowed executives to receive bonuses when SOEs were not making any profit and even when some were on a lifeline from government in the form of bailouts”. This perspective is reflective of the Ministry of Public Enterprises’ (MPE) position on having identified the most suitable governance model for SOEs in Namibia. However, this study unearthed the following outstanding challenges.

- Firstly, there is a potential conflict in reporting. It is envisaged that non-commercial public enterprises shall report to the line ministry but will still adhere to issued principles of corporate governance and reporting remuneration guidelines. This could be considered a dual system from which the public enterprises are actually trying to move away.

- Secondly, the definition of commercial and non-commercial public enterprises is ambiguous. For example, the Roads Authority is responsible for road management but is classified as a commercial public enterprise while it does not have the potential to generate a sustained profit.
- Lastly, the issue of capacity is not addressed. Some fields will require highly specialised and skilled personnel in order to effectively supervise these technical institutions. These skills and capacity are not in the government and neither can the government remuneration packages attract them from the private sector.

The preceding analyses in the previous chapters have partly shown that SOEs' poor performance can be blamed not only on their boards, but this is also attributable to their own inability to resolve the agent-principal problem due to the existence of multiple agents as discussed earlier. Robert (1998) explains the complexity of this relationship (agent-principal relations) between the state and the board or management of the SOE. The author warns against attempting to resolve the agency problem purely by giving the board more autonomy because boards are appointed by politicians to facilitate political mileage through directives not necessarily in the best interest of SOE's performance.

In addition, poor performance by boards of SOEs has been attributed to the existence of multiple agents (Brumby & Hyndman, 1998:38-41). Unlike a private enterprise which has a single principal (shareholders) and agent (managers), an SOE is governed by multiple agents, namely managers and the state or public officials. Even allowing for some degree of variability between SOEs, the analyses and findings of board practices show the following general weaknesses:

- Lack of consistently applied criteria and processes in the recruitment and appointment of boards of directors.
- Board members are not sufficiently exposed to training and development programmes.
- Fundamental policy contradictions are often left unresolved, leading to contradictions, overlaps in mandate and lack of coordinated projects among transport SOEs.
- Many boards do not maintain an appropriate balance in terms of, for example executive vs. non-executive directors, public vs. private sector representatives, and the distribution of skills.

- Policymakers often misunderstand the role for, and strategies to achieve market-based competition to deliver desired policy outcomes out of the businesses of SOEs.
- Regulatory accountability is limited hence laxity in operations and patronage accompanied by unaccounted heavy benefits is a burden to the SOEs.
- Regulatory independence and capacity is compromised by the nature of appointments.
- Risks of conflicts of interest exist where individuals are serving in the boards of both holding and subsidiary boards in the same group of companies.
- Senior government officials often undermine the separation of powers established for the effective functioning of policy formulation, SOE operations and corporate governance.
- Some individuals serving as *ex officio* state representatives serve on multiple SOE boards subjecting them to onerous responsibilities.
- Some SOEs such as TransNamib are under-resourced, lack internal checks and balances, and overspend and ask for more, which reveals a lack of enough financial accountability.
- The finalisation of policy and regulatory frameworks for SOEs has often been subject to inordinate delays.
- The mandates and objectives given to SOEs are often too broad and lack monitoring and evaluation mechanisms, let alone internal checks.

The above summarises the shortcomings affecting the performance of SOEs covered in this study. Clearly, not all the responsibility for the underperformance of SOEs can be adduced to shortcomings of the various boards of directors. While the board is the ultimate entity answerable for SOE performance, the causes of poor performance may emanate from sources beyond the immediate control of the board.

6.5 Synthesis: Towards an Alternative Performance Model/Framework

The weaknesses responsible for the poor performance of transport sector SOEs presented above can further be distilled into three key factors, namely governance, resources, and regulatory oversight. These are discussed in the context of the recommended performance

model presented below. While it cannot be denied that there might be other factors also influencing SOEs performance, this study submits that the three elements – governance, resources, and regulatory oversight – are at the core of the state of performance of the studied SOEs. The model (Figure 6.2) proposes a solution to the poor performance of transport sector SOEs in Namibia by identifying three pathways of moving from low SOE performance to high SOE performance. The proposed model not only addresses identified performance deficiencies in SOEs, it also bridges the value deficit faced by SOEs, thereby enabling high and sustained performance in state owned enterprises. Figure 6.2 below depicts the relationship between the three performance-enabling elements in bridging the gap between low SOE performance and high SOE performance.

Figure 6.2: Recommended Performance Model



Source: Author's construct

“Governance” plays an important role in steering an organisation. It is important to note that the boards of directors are at the core of governance in an organisation. The board is the body that will shape, renew and modernise the governance structures. Therefore, it is important for such a body (directors) to be accountable, efficient, ethical, independent and transparent, as per the OECD and King’s Report V principles. These fundamental governance principles go to

the heart of performance of any organisation. The Greek word, as explained by the Centre for Corporate Governance in Africa (2012), 'kybernete' refers to a helmsman or steersman helping a ship to reach its destination (performance) without running into troubled waters (conformance).¹⁴

Confirming the foregoing, and as observed in the findings, SOEs such as Namport, with good internal governance performed well while the opposite is true for SOEs such as TransNamib, with weak internal governance. It can accordingly be concluded that there is a direct between governance and performance of SOEs. This shows that SOEs that are managed better have a better operational performance. This view is also supported by other researchers such as Brown and Caylor (2004)¹⁵.

Furthermore, governance, according to Gregory and Simms (1999)¹⁶, also increases the firms' responsiveness to the needs of society and results in improving long-term performance. It can thus be said that SOEs will do well to ensure proper adherence to governance principles (both internal and external).

Secondly, **Resources** - The study suggests that SOEs require better resources to perform optimally. Resources, both human and financial, play an important part in the performance of any organisation, including SOEs. They assist in the payment of services (the finance aspect) and implementing organisational policy, strategies and activities (the human resources aspect). From the viewpoint of the resource-based theory, resources influence the extent and direction of the performance of the organisation. For example, even a well-performing SOE such as Namport's, performance was affected negatively when the government failed to provide sufficient capital for its capital projects. Furthermore, it also complained about the lack of qualified staff as one factor hampering its performance. Similarly, TransNamib has also attributed its troubles to a lack of capitalisation.

Therefore, it can be concluded that the government (as the shareholder) will do well to recapitalise these institutions so that they can perform optimally. However, due diligence should be done to avoid mismanagement. Most SOEs have had misdirected resources, especially

¹⁴ Centre for Corporate Governance in Africa. 2012. Rating Corporate Governance of SOEs: Moving towards improved performance. Stellenbosch University through its Centre for Corporate Governance in Africa and the Hanns Seidel Foundation, Cape Town, Bellville.

¹⁵ Brown, LD and Caylor, M.L. 2004. Working Paper, Georgia State University

¹⁶ Gregory H.R and Simms M.F .1999. Corporate governance: What it is and why it matters. Paper presented to 9 International Anti-corruption conference. Kuala Lumpur

financial resources, resulting in their poor performance. Furthermore, the poor appointment of human capital has resulted in poor performance of these SOEs as indicated in the earlier chapters.

Finally, **regulatory oversight** has a direct impact on performance. Almost all SOEs under investigation indicated that the lack of an oversight function or a weak oversight function (from both government and the boards) has resulted in poor performance. Taking Air Namibia (which is one of the relatively poor performing SOE) as an example, the government has been pumping millions (subventions and bail outs) to this SOE but yet the government failed to demand annual reports for the last 10 years. This is in clear violation of both the SOE and the Companies Act and yet no penalties have been meted out to the said SOEs. One would have expected the government as a principal shareholder to act, even with some basic threat of consequences, to such non-compliance and violation of the laws. The government will do well if it ensures proper oversight of the boards, which, in turn, will then efficiently manage these institutions (SOEs).

Hence, it can be concluded that the absence of oversight or weak oversight contributes to the poor performance of SOEs in the country. This view is in line with the OECD's Recommendation of Council on Regulatory and Governance Policy (2012), which argues that good regulatory outcomes depend on more than well-designed rules and regulations. SOEs need strict supervision to adhere to the reasons for why they were created. Furthermore, the role of an independent regulator as discussed in Chapter 5 could be helpful in improving SOEs' performance. It is not enough for the government to design laws and policies. Instead, the government should ensure that these laws and policies are implemented through the government's regulatory oversight function. Putting SOEs on autopilot will not assist nor guarantee their performance.

In a nutshell, the model indicates that governance, resources and regulatory oversight have key effects on SOEs' performance. Similarly, the model/framework indicates that there is a direct relationship between the above elements (governance, resources and regulatory oversight) and SOE performance. For example, if governance is improved, performance will improve. The reverse is also true. Poor governance will result in the poor performance for these SOEs. This is also true for the other two elements (resources and regulatory oversight) discussed above. All in all, the model shows that by altering any of these elements, this can alter the performance of the SOE.

6.6 Chapter Summary and Conclusion

The implementation of interventions in SOEs has become a major preoccupation of governments. This is due, among other reasons, to SOEs' poor performance. However, most of these interventions have simply not worked because of a lack of evidence-based interventions (EBIs) in the practice settings. The adoption of interventions can pose challenges simply because this involves change. Change is a delicate process that can be effective and sustained only if it is properly facilitated and managed. As this research shows, only a well-facilitated reform will result in good performance of SOEs. This should include attitudinal, organisational (both oversight and internal) and legislative reforms.

It is evident from the literature that society has begun questioning how efficient SOEs are in delivering the services for which they were created. It should be noted that although studies on the performance of SOEs worldwide and in Africa have been around for some time, the spectacular failure in governance in the late 1990s and early 2000s, and the recent financial crisis which was fuelled by excessive risk-taking, has put the question of SOEs right at the centre of all economic and social debates. Similarly, and even more so, the significance of leadership has even become more apparent in the twenty-first century because of unprecedented changes in the world economy, triggered by financial crises and the ever-present reality of limited resources.

This study developed a model to address the persistent problem of poor performance by transport sector SOEs. The proposed model offers a solution to the performance problems of SOEs by identifying three pathways (i.e. "performance-enablers") to address the core problem of poor SOE performance. The proposed model not only addresses SOE performance deficit, it also establishes a strong foundation for sustained high performance by SOEs in the transport sector. The next chapter provides a summary of the findings and conclusion, leading up to recommendations for future research.

CHAPTER SEVEN: SUMMARY, CONCLUSION AND RECOMMENDATIONS

7.1 Introduction

This chapter summarises the main arguments and research findings within the framework of the research problem and objectives identified in Chapter 1. The primary objective of this research was to analyse the performance of SOEs in the transport sector. The aim was to highlight factors that have contributed to the performance of selected SOEs in the transport sector.

SOEs are viewed, at least in theory, as having the potential to provide certain goods and services that would otherwise not be made available through the market, thereby propelling rapid economic growth. This notion has been a key driver for governments to commercialise some of their departments. However, this picture has been far from ideal in the Namibian case if one considers the resource inputs to these SOEs versus their performance and the general public outcry regarding their poor performance and limitations. This study confirmed this view, i.e. that transport sector SOEs in the country are performing poorly.

Given the issues discussed in Chapter 5, the major task of this chapter is to identify the core answers to the research questions and, on that basis, to make appropriate conclusions and recommendations. This final chapter further provides pragmatic approaches to address the pressing challenges faced by SOEs in the transport sector.

The chapter starts with general reflections on the contents of the previous chapters before going on to provide some insights into the reasons for the findings. The reflection below will help the reader understand the overall conclusions. The conclusions show the challenges and their solutions, as well as recommendations for enhanced performance of SOEs.

It should be noted that, there are recommendations that touch on several challenges identified in this study. These are accordingly spread over the chapter and discussed contextually. For example, some recommendations may be based on short-term while others are based on long-

term solutions to the challenges identified, but there has not been an effort to differentiate between these. The reason for this approach is that it would be for the managers and policymakers to find an appropriate method or approach for the reform of each and every SOE in its context, as there is no uniform turnaround strategy for all SOEs. Ultimately, this dissertation aims to provide direction in addressing the challenges faced by at least the selected transport sector SOEs.

It must be further noted that one cannot propound one theory to explain all the possible solutions for all the identified problems. In other words, there is no one-size-fits-all approach to the challenges faced by SOEs in Namibia, not even to those in one sector such as transport. The quest in the academic literature as well as in policy endeavours to explain SOE performance has not yielded much consensus, given the inability of certain theories to adequately explain SOE performance. Whilst empirical evidence exists on how well or how poorly SOEs have performed over the years, what remains largely unresolved, at least in the context of the selected SOEs, and which may be generalised to other SOEs in Namibia and the rest of Africa, is a comprehensive test of factors responsible for driving SOE performance.

Put simply, this chapter presents the key arguments and conclusions that became apparent during the analysis of the performance levels of the selected entities. The chapter is structured broadly as follows:

- Chapter summary of the research;
- Summary of the research findings;
- Summary of conclusion and contributions; and
- Suggestions for further research.

A summary will now be provided of each chapter of this study.

7.2 Chapter Summary

Chapter 1 highlighted various steps that the GRN has taken over the years in order to try and address poor performance of SOEs. In order to make a contribution to this important policy area, this study set out to investigate the performance of selected SOEs in the transport sector by answering the following questions:

- What has been the performance of SOEs?
- What are the major challenges of SOEs in realising the mandates they were created for?
- Are there accountability mechanisms to address these challenges?
- Are stakeholders and their interests being addressed (satisfied) by these SOEs? and
- What mechanisms can be put in place to promote, improve and enhance the performance of SOEs?

Chapter 2 provides some of the major and salient issues relating to SOEs in Namibia. It gives a descriptive overview of the context and challenges faced by SOEs in the country. The context aspect describes the history and rationale of establishing SOEs in the country, while the challenges aspect covers the performance issues and difficulties with which SOEs are faced. The chapter deliberately decided to discuss the two aspects (context and challenges) so as to set the tune for the preceding chapters. It set the usual questions pertaining to the where (context) and why (challenges) aspects with which the SOEs must deal with year in and year out.

The chapter suggests that the commercialisation policy was adopted by the Namibian government on the recommendation of WASCOM without due or sufficient regard to the economic and social (i.e. skills) realities of the country. This chapter basically sets the trajectory of the dissertation and guides the thinking of the dissertation in a systematic and coherent way from the general to the particular.

Chapter 3 provides the theoretical and empirical literature. The available literature is of high quality and relevant to the research questions as it informs the Namibian SOEs' economic, governance and legal framework and other related issues under investigation in this study. Further, historical literature shows that, studies on the performance of SOEs worldwide and in

Africa have been around for some time. In fact, some of this literature dates back as far as the early 1950s and gained momentum throughout sub-Saharan Africa by the 1980s.

Chapter 4 breaks down the policy and legal framework and several theoretical and practical aspects relevant to the governing of SOEs in Namibia. The chapter also considers the gaps in existing legal instruments, as well as probable implications on SOE performance. It further, covers the environment and models governing SOEs and contextualises to Namibia. It must be noted that the observations made in this chapter make it clear that reforms are possible at any time in the corporate world and so too are reforms in public enterprises but such changes are sometimes not supported by the necessary legal and environmental framework.

Chapter 5 deals with one of the cornerstones of this study, namely the presentation of empirical data collected through interviews and questionnaire surveys on the performance of selected SOEs in the transport sector. This chapter provides a synopsis of the performance of SOEs in Namibia. An analysis of audited financial reports on the respective SOEs is also presented. The key finding is that most SOEs investigated have been rated as fair to below average in terms efficiency. The other key finding is that, political interference in these SOEs has created a culture of expectation of subsidies because their profit margins are very thin when compared to others both regionally and globally.

Beside the above key findings, there are numerous opportunities for these Namibian SOEs, which pride themselves on quality and investment in their operations, to make an impact on the global arena. The chapter however, makes it apparent that they (SOEs) cannot be seen becoming a prominent player because of the inward-looking approach.

Chapter 6 contains a proposal of an innovative model that could be used to enhance the performance of SOEs in Namibia's transport sector. It builds on the previous chapter by doing a gap analysis. The chapter concentrates mainly on the old framework and then moves to the new proposed one. The question that this chapter ends with is whether these approaches have helped improve the performance of SOEs in the country. With the gap (desired/ideal and the current reality) taken into account, the author proposes a new model that can help to improve performance of SOEs in the country.

All in all, the chapter intends to come up with a simple but useful innovative model to assist the performance of SOEs in the transport sector. The model is easy, contains sufficient details and can easily be understood.

Last but not least, answers to key research questions are provided in Chapter 7, alongside recommendations based on conclusions reached from the analyses and findings on the previous chapters. The recommendations are meant to be pragmatic approaches to address the pressing challenges faced by selected SOEs in the transport sector. In addition, recommendations for further research are also provided at the end of the chapter. A closer look will now be taken at the summary of the research findings.

7.3 Summary of the Research Findings

Overall, the results (as reflected in Chapter 5) showed that most SOEs (except Namport) are far from being economically efficient, suggesting a preponderance of wastefulness, political interference and irrational fee structures in state-owned enterprises (Kwon & Kim, 2017). Four out of five (80%) of Namibia's transport sector SOEs showed low capability in terms of utilising resources to generate income as measured by return on assets ratio. In addition, the generally low and negative operating margins observed in most SOEs are indicative of their poor performance and level of economic [in]efficiency. These findings were amply corroborated through interviews and documentary evidence.

It should be noted that there have been several attempts to try and address the persistent poor performance in state-owned enterprises. These include, for example, the various policy and legislative initiatives discussed under Section 6.2. Despite their good intentions, previous measures aimed at reforming the SOE sector have not borne fruit and the problem of poorly performing SOEs has remained, especially in the transport sector. However, after careful analyses of both quantitative and qualitative data, the study was able to isolate a number of factors contributing to this impasse (refer to Section 6.4). These were further distilled to three key factors, namely governance, resources and regulatory oversight. These three factors are then used to design a new framework for SOE performance management (Figure 6.2), which entails using governance, resources and regulatory oversight as pathways (or enabling elements) to bridge the gap between low and high SOE performance.

7.3.1 Responsibility sharing for the performance of SOEs

The analyses in Chapter 5 above suggest that SOEs' poor performance can be attributed in part to their boards and in part to the agent-principal problem. The 'agency' problem raised a number of challenges due to the complexity of this relationship between the state and the board or management of SOEs. Efforts, including attempts to resolve the agent-principal problem by giving the board more autonomy have not borne fruit.

Evidence provided in the preceding Chapters shows that transport sector SOEs' performance is generally poor with the exception of Namport, and to a lesser extent, the RA. Such poor performance is mainly attributed to the poor board performance. In turn, the poor performance of the boards of directors of parastatals has been attributed to the existence of multiple agents (Brumby & Hyndman, 1998:38-41). It is noted that, unlike a private enterprise, which has a single principal (shareholders) and agent (managers), an SOE is governed by multiple agents, namely managers and the state or public officials. In the Namibia case, this situation is further complicated by having multiple public officials from different ministries over and above the boards.

However, responsibility for failure of SOEs should not be entirely on the shoulders of the board of directors. While the board is duty bound to answer to some failures, it should be borne in mind that, the causes for poor performance may emanate from sources beyond the board's control. The question of who bears what responsibility therefore becomes an important part of the governance architecture that must be gotten right.

7.3.2 Accountability mechanisms to address SOE performance challenges

The NamCode spells out a number of accountability mechanisms, which, if followed, may improve the performance of SOEs. The philosophy of the NamCode revolves around leadership and corporate citizenship with a sustainability goal (NamCode, Principle C1-1). To facilitate an understanding of the thought process, debate and changes, the NamCode provides that, good governance is essentially about effective leadership. Accordingly, Leaders should rise to the challenges of modern governance. Such leadership is characterised by the ethical values of responsibility, accountability, fairness and transparency, and based on moral duties that find expression in the concept of *ubuntu* or humaneness.

In general, the NamCode, like other codes elsewhere and in particular the King Reports of South Africa on which it is based, 'apply or explain' the basis of accountability and show the practical execution of the principles embodied therein.:

However, and in spite of the government's majority ownership of the SOEs studied here, the shareholder (government) often cannot influence or monitor management and lacks access to information, with the cost of overcoming these hurdles being considerable. Monitoring corporate governance characteristics, such as fairness, accountability, responsibility and transparency faces many obstacles and challenges. While the shareholder wants rights to be upheld (e.g. prices set to reflect social marginal cost), they cannot be certain that they will be. However, being passive or apathetic is not an option (Naidoo, 2003).

While the NamCode is not legally binding, it nonetheless sets the standards derived from the common law and the statutes, which already exist. As a result, it supplements the law, which incorporates the best practices of governance principles. For example, the concept of fiduciary duties is further cemented as part of the corporate governance principles and a cardinal concept when considering accountability.

7.3.3 Improving internal governance

The findings (Chapter 5) of the study showed that there is a clear deficiency in the effectiveness of the internal management mechanisms of the SOEs studied. This needs to be improved. It seems Namport has improved on its own without much state involvement. In order to improve internal management mechanisms, one has to deal with the three segments on which internal corporate governance mechanisms are centred – the board of directors, executive management and independent control functions – each with its own set of vital and unique responsibilities (Namport, 2014). In many systems, the activities of the three segments are reinforced by codes of conduct that are intended to promote proper behaviour.

If the corporate responsibilities associated with these functions are too vague and diffused, subject to too much interpretation, or not diligently followed, the governance process is vulnerable. If they are too rigid and onerous, enforcement costs mount up, shareholder returns decline and actions centred primarily on form (rather than substance) may result. Banks (2005) argues that internal systems must achieve an appropriate balance of flexibility and rigour.

Naidoo (2002) states that, internal governance is based on specific mechanisms and actions taken by individual firms to enforce control and accountability. These can vary according to enterprise, industry and country, but, broadly speaking, include:

- Establishing a capable and unbiased board of directors;
- Creating appropriate responsibilities and norms within the ranks of executive management;
- Developing independent control groups, including finance/accounting, legal, risk management and internal audits; and
- Creating and promulgating a code of conduct.

(Naidoo, 2002)

Such internal governance mechanisms stand a good chance of succeeding in transforming corporate governance if buttressed by external mechanisms.

In Namibia, the board of directors and senior executives should be held to certain standards in order to enforce proper accountability. These standards revolve around attention to business, fidelity to cooperate interest and exercise of reasonable business judgment. Theoretically, if these are upheld, shareholders and other stakeholders should be protected. In summary, the board of directors, having considered the nature and requirements of stakeholders, defines the purpose, mission and ethical values of the SOE, creates an appropriate business and risk strategy, discharges duties to management, ensures proper controls are in place, monitors management through use of various mechanisms and makes adjustments as necessary.

7.3.4 Supplementing internal governance

In order to improve corporate governance in the Namibian SOEs covered in this study, there is a need to supplement the internal governance processes mentioned above. Supplementing internal governance processes are external forces that establish overarching frameworks that define, or operate with internal mechanisms. According to Dimsdale and Prevezer (1994), key forces include establishing appropriate regulatory oversight, among others.

Dimsdale and Prevezer (1994) note that corporate governance is concerned with the way in which corporations are governed, in particular, the relationship between the management of an enterprise and its shareholders. On its part, the OECD (1999) hints at a wider network of relationships, while maintaining the emphasis on the relationship between shareholder and director, defining corporate governance as “[a] set of relationships between an enterprise’s management, its board, its shareholders and other stakeholders”.

Timothy (2007:89) posits that, “[c]orporate governance also provides the structure through which the objectives of the enterprise are set, and the means of attaining those objectives and monitoring performance are determined”. This incentivises the corporate governance process, which is one important aspect for better performance of corporate institutions such as the SOEs selected for this study. This remains relevant as it is evident that good corporate governance also includes external issues and should provide proper incentives for the board and management to pursue objectives that are in the interests of the enterprise. Shareholders should also facilitate effective monitoring; thereby encouraging firms to use resources more efficiently.

The introduction of other stakeholders raises the question of where exactly the shareholders’ interests rank in terms of directors’ priorities, notwithstanding the emphasis subsequently placed on the primacy of shareholders’ interests in what the OECD (1999) perceives as good corporate governance. The OECD (1999:102) to some extent answers this question in its remarks on the role of stakeholders. The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active cooperation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises.

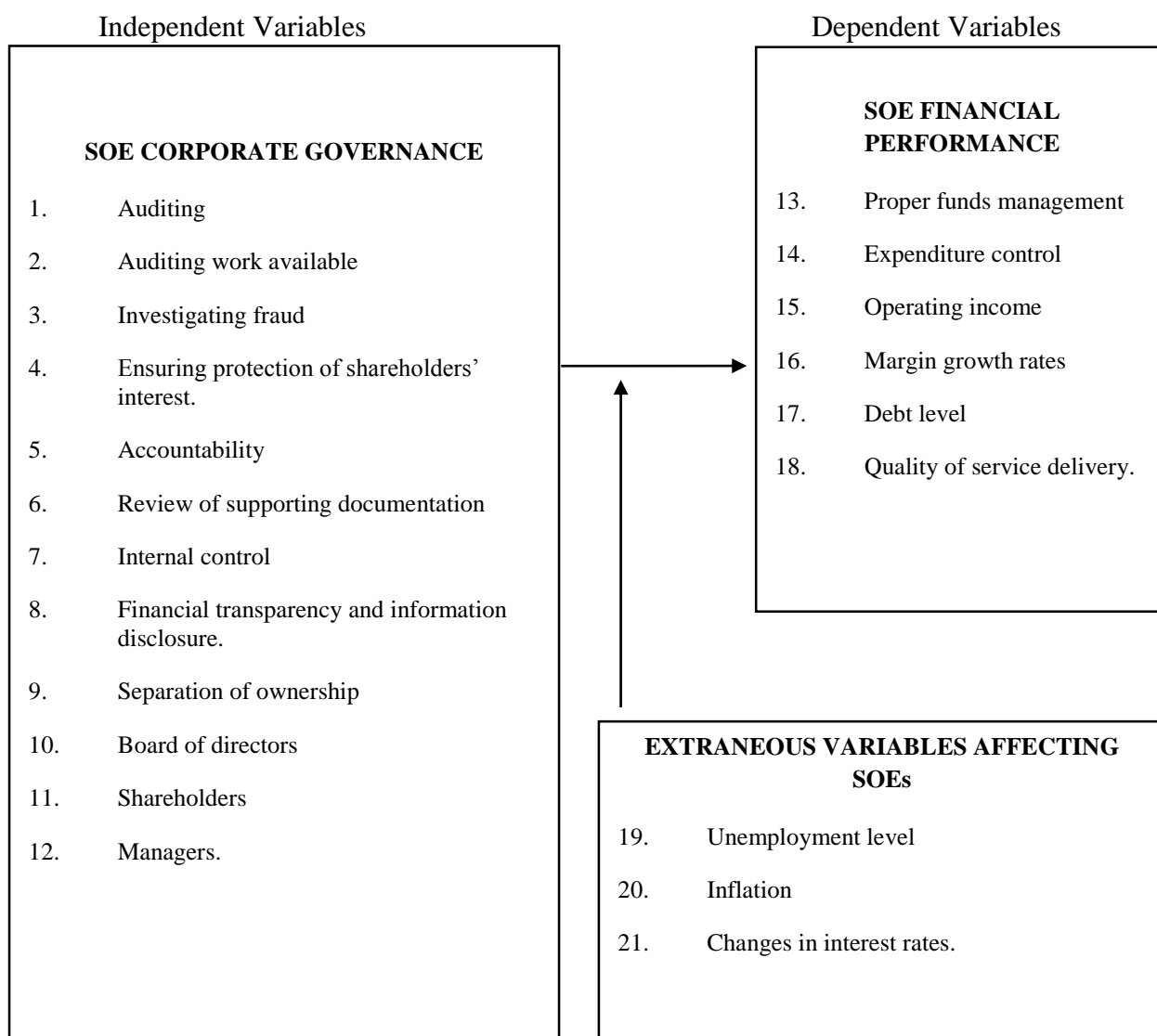
Two observations can be made on the OECD’s perception on the role of the corporation. First, it is assumed that the corporation serves purely as an agency for wealth maximisation for all concerned. The shareholders’ interests are assumed to be synonymous with those of the enterprise (objectives that are in the interests of the enterprise and shareholders) and the role and interests of stakeholders are narrowly defined in terms of economic activity (wealth, jobs, and the sustainability of financially sound enterprises). Second, stakeholders are carefully defined in close legal terms and only rights protected by law, whether through contract or by

statute, should be respected. Broader, non-statutory or non-contractual relationships are not considered in this framework.

In the Namibian context, the first observation above relating to the OECD's conception of corporate governance has a great deal of merit. Organisations do indeed exist to maximise economic efficiency. The use of agency theory and legalism in the OECD's principles to define a range of stakeholders also has advantages over the very specific agency approach adopted in the United Kingdom, for example. The UK approach privileges the shareholder's interest to a degree not justified in classical agency theory, in which an agency relationship is defined as a contract under which one or more persons (the principals[s]) engage another person (the agent) to perform some service on their behalf which involves delegating some decision-making authority to the agent (Jensen & Meckling, 1976; Jensen & Murphy, 1990:138-153).

7.3.5 SOEs ability to meet stakeholders' interests

Fox (2005:98) argues that “[s]ince corporate governance is instituted to protect shareholders and ensure shareholder value maximization, a direct relationship can be plotted in determining the impact of corporate governance to firm performance”. This has to be considered in the context of the variables as reflected in Table 7.1 below, which have many features similar to both the conceptual model applied in this study, as well as the proposed SOE performance framework.

Table 7.1: Diagrammatic representation of the independent and dependent variables

Source: Argyris (2002)

7.4 Summary of Conclusions

An analysis of the performance of SOEs in Namibia has revealed that ***SOEs do not necessarily underperform simply because they are state-owned but more importantly, their underperformance is linked to the way they are managed.*** Various attempts have been made to inject improved performance into SOEs via commercialisation. It should be noted however, several pertinent questions to the commercialisation policy in Namibia remain unanswered. This policy (commercialisation) was adopted by government on the

recommendation of WASCOM without due regard to the skills base, as well as the economic and social reality existing in the country. Questions regarding who will administer these entities, at what cost, and what governance model will be employed were either ignored or not given enough thought. These factors cannot be ignored as they will in one way or the other affect the implementation of the policy.

Currently, the implementing or assigned ministries of the commercialisation policy (those supervising SOEs) are being affected because of, for example, a lack of skills, limited information on SOEs' operations and political interference in SOEs. These challenges can be summarised into three main thematic areas/categories (as discussed in Chapter 6 above), namely governance, resources and regulatory oversight. Such realities, if not properly addressed, will undermine the envisaged and intended outcomes of the policy, hence the recommendations below.

7.5 General Mechanisms to Promote, Improve and Enhance the Performance of SOEs – Recommendations

In the final analysis, and based on both findings and the literature review, it can be concluded that SOEs are underperforming and the mechanisms below could be helpful to change their status quo.

7.5.1 Improving board roles in various ways

The previous chapters have indicated some interventions that government initiated in previous years in order to try and improve the performance of SOEs. These interventions are no stranger to corporate governance theory; thus their failures have found explanation in several research pieces. The way forward can be derived from various case studies, from across Africa and the world at large.

When studying the interventions or mechanisms that may be employed to improve SOE performance, it should be noted that two broadly defined theories coexist in the corporate governance literature. One stresses the discipline of the market, claiming that, the threat of

hostile takeovers and leveraged buyouts in firms was sufficient to ensure full efficiency. The other stresses that, where managers neglect to invest in those projects that add value to the firm and its shareholders but divert resources to their own benefit, the financial markets act to restore good governance.

A number of mechanisms have been suggested such as removing senior managers in poorly performing firms (Palepu, 1986; Morck, Shleifer & Vishney, 1988; 1989), demanding cash flow payments in the form of debt service (Jensen, 1986) and linking executive compensation to performance, including equity and options (Jensen, 1986). Matama (2005), in a study on corporate governance and financial performance of selected commercial banks, observed a positive relationship between corporate governance and financial performance.

Masibo (2005), in a research on board governance and firm performance of selected state-owned corporations and in listed organisations on the Uganda Securities Exchange, observed a positive direct and indirect link between board governance and firm performance through board effectiveness. Filatotchev, Lien, & Piesse, (2005) conducted empirical research on corporate governance and firm performance from an international perspective and obtained conflicting results on the link between corporate governance and firm performance.

Higgs (2003) suggests that the board as the central institution of governance defines the level and depth of enterprise corporate practices. Higgs (2003) further argues that how well the board performs its roles determines the state of corporate governance in the organisation (Higgs, 2003). Gavin and Geoffrey (2004:67) state that, “the relationship between corporate governance and enterprise performance cannot be limited to board roles, as corporate governance is broader than just board roles”.

From the above-mentioned literature, it would seem that the two authors' differing views are an extension of each other's arguments. Combining the two authors' positions (Higgs, 2003 and that of Gavin and Geoffrey, 2004) would suggest that, board roles have a positive impact on corporate governance but there are other variables that are internal and external to the organisation that may also have an impact on corporate governance. It is thus recommended to improve the roles of boards and increasing their independence. It is therefore suggested that, Government interference (or intervention) should remain on the oversight level only.

7.5.2 Ensuring adherence to king principles as embodied in the King Reports and the NamCode

Subject to any limitation in the enterprise's memorandum of incorporation, the board may establish committees to assist in the execution of its functions in specific areas. As a minimum, the Companies Act, 2008 requires an enterprise to have an audit committee appointed by enterprise shareholders. The audit committee is appointed to focus on financial issues that are vital to the enterprise, to assure the integrity of reporting, to ensure that management develops and maintains an appropriate system of internal controls and to monitor the effectiveness of those controls on an on-going basis.

In addition, the King III Report (2009) recommends that companies consider appointing a risk management committee (to assist the board with the risk management function for which it is responsible), a nomination committee (to ensure the appropriate constitution of the board, to oversee the board evaluation process and to plan succession) and a remuneration committee (to ensure that issues of remuneration are dealt with on a sufficiently arm's length, market-related basis and that the enterprise's ability to motivate and retain its key executives and directors is not compromised).

The King III Report (2009) further suggests that board committees should be formally constituted with written terms of reference and clearly agreed upon reporting lines to the board. On the other hand, the NamCode posits that:

By issuing integrated reports, a company increases the trust and confidence of its stakeholders and the legitimacy of its operations. It can increase the enterprise's business opportunities and improve its risk management. By issuing an integrated report internally, a company evaluates its ethics, fundamental values, and governance, and externally improves the trust and confidence which stakeholders have in it.

In the NamCode, as in King III, it recommends integrated sustainability performance and integrated reporting to enable stakeholders to make a more informed assessment of the economic value of an enterprise. The integrated report, which is used throughout the NamCode should have sufficient information to record how the enterprise has both positively and negatively impacted on the economic life of the community in which it operated during the year

under review, often categorised as environmental, social and governance issues (ESG). Further, it should report how the board believes it can improve the positive aspects and eradicate or ameliorate the negative aspects, in the coming year (Namibian Stock Exchange & First National Bank Holdings, 2016:11).

With the greatly increased accountability of board of directors under the Companies Act (2008) and the King III Report (2009), well-constituted board Committees (including additional skills where appropriate) could prove to be invaluable allies in the governance of the enterprise. According to the King III Report (2009), other committees may be constituted with defined powers delegated to them by the board, for instance to discharge specific mandates such as to investigate the enterprise's risk profile and human resource issues.

The King III Report (2009) further suggests that, in terms of corporate governance and financial performance of locally listed companies, board Committees should, as a rule, preferably be made up of a majority of, and chaired by, independent non-executive directors with executive directors and functional managers as invitees without voting rights. The concern of corporate governance has been with both accountability of the board of directors and the effectiveness of the board (Cadbury, 2002). These notions give rise to the idea of listing on the NSE. The listing may not be the panacea. The preceding chapters have unravelled information that shows that in order to ensure the effectiveness of the board, there should be an inclusion of a sufficient number of non-executive directors who could bring objectivity to the board's judgment. Thus, non-executive directors should be in the majority (Cadbury, 2000; Cadbury, 2002).

According to Masawi (2001), private and public companies in Namibia are yet to make significant improvements in corporate governance and find consensus between management and board of directors, amidst growing calls for improved governance. Such improvements will depend on whether SOEs are listed or not and whether NamCode becomes the gold standard of corporate governance in Namibia or not. This is the position as it can be noted that political appointments dominate SOEs, a situation that is compromising efficiency.

The worst institutions in terms of adopting sound and well-crafted corporate governance policies in Namibia are the state-owned enterprises (SOEs). "[...] [T]hey lack clear demarcation between the duties of the appointing officer, the management and the board" (Masawi, 2001:2).

It is clear from the preceding chapters that most companies from both the private and public sectors have adopted the King Code III as the benchmark for implementing good corporate governance policies and also aligned themselves with the international monitoring trends. King Code III is the latest corporate governance policy promoted by PricewaterhouseCoopers (PWC) in a bid to enhance management and operational structures for both public and private companies in the country and has been taken up by about 60% of the companies operating in the country (Cadbury, 2002).

Thus, it can be concluded that in Namibia there is a need for the extensive education of board members and senior managers of companies to align their operations with good corporate governance policies (Cadbury, 2002). Furthermore, government must strengthen its oversight function. This study has showed that, it is not enough for government to design laws and policies, appoint board members etc. Instead, the government should ensure that these laws and policies are implemented through government's regulatory oversight function. Hence an independent regulator for SOEs is suggested. Such a body should have the necessary capacity in terms of skills and the necessary credentials to manage SOEs.

7.5.3 Applying best practice principles to Namibian SOEs

Namibia established the State-Owned Enterprise Governance Council, previously known as the Corporate Governance Agency, which came into existence after the enactment of the enabling act, i.e. the State-Owned Enterprises Governance Act of 2006. The Act provides for the efficient governance of SOEs and the monitoring of their performances to make provision for the restructuring of SOEs, to establish the State-Owned Enterprises Governance Council and define its powers, duties and functions, and to make provision for incidental matters.

Namibia uses legitimate accounting and auditing principles that are internationally practised in the public and private sectors (Oertel, 2004). Efficient and effective institutions are indeed understood to be essential prerequisites for establishing and entrenching a culture of accountability and transparency in the management of national affairs. As Chapter 4 shows, at the level of each enterprise, directors are required, in terms of the enabling legislation or the Act creating such an enterprise, to produce financial reports in compliance with the time frame required by such an act. For example, the Roads Authority Act (No. 17 of 1999) enjoins the

board of directors to maintain adequate accounting records. Directors are also responsible for the content and integrity of the annual financial statements and related financial information included therein. Furthermore, it is their responsibility to ensure that the annual financial statements fairly present the state of affairs of the RA at the end of the financial year and the results of its operations and cash flow for the period then ended, in conformity with international financial reporting standards.

Chapter 5 shows that in all five SOEs in the transport sector (covered in this study), there is an internal audit department. In general, external auditors are engaged to express an independent opinion on the annual financial statements that could have been overlooked by internal auditors for one or the other reason (especially that they might be familiar with the environment and begins to overlook things – hence the importance oversight functions of external auditors).

The annual financial statements are prepared in accordance with international financial reporting standards and they are based on appropriate accounting policies consistently applied and supported by reasonable and prudent judgments and estimates. Directors have to state their final responsibility for ensuring this, as per their corporate governance duties. However, they do not take absolute responsibility as they note that there is always a margin of error in all human endeavours. The Roads Authority board of directors accordingly states:

The directors acknowledge that they are ultimately responsible for the system of internal financial control established by the Roads Authority and place considerable importance on maintaining a strong control environment. To enable the directors to meet these responsibilities, the board of directors sets standards for internal control aimed at reducing the risk of error or loss in a cost-effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the Roads Authority and all employees are required to maintain the highest ethical standards in ensuring the Roads Authority's business is conducted in a manner that in all reasonable circumstances is above reproach.

(Namibia Roads Authority, 2013:55)

Similar views are found in the annual reports of the Namibia Ports Authority (2013, 2014). Generally, in the transport sector, like elsewhere, an international best practice is the focus on risk management for identifying, assessing, managing and monitoring all known forms of risk across an enterprise. While operating risk cannot be fully eliminated, SOEs should always endeavour to minimise this by ensuring that appropriate infrastructure, controls, systems and ethical behaviour are applied and managed within predetermined procedures and constraints. It seems (at least from this study) that an SOE such as Air Namibia has not applied these principles well.

7.5.4 SOEs bailouts to be an exception rather than a norm

In the final analysis, ***if the status quo (poor performance) does not improve, the study recommends that SOEs should be allowed to close down (collapse) like any other business that fails to perform.*** Bailouts should be an exception rather than the norm. It is not acceptable that, while government (and the private sector) has largely succeeded in generating positive economic growth since independence, such gains be squandered by SOEs. With limited resources at government disposal, it will not be possible nor sustainable to continue satisfying SOEs demands without demanding performance and analysing the return on such investment (ROI) made in SOEs.

While it is not the intention of this study to dictate on what choice the government needs to make regarding these SOEs, it is clear that tough choices will have to be made if ever the government wants to benefit from the gains for which these SOEs were created. It's not disputed that SOEs should play their part toward attaining Vision 2030 and other developmental goals. Financial assistance should, however, only be considered in exceptional cases, especially if it beyond the SOEs control, i.e. economic shocks and externalities. The study further recommends for a criteria or principle to be developed in this regard to avoid selective application of financial assistance.

7.6 Suggestions for Future Research

This research was focused on and limited to what was outlined in Chapter 1 and attempted to answer the outlined research questions. There are, however, a number of areas that may require further research to give more answers to the ever-increasing number of questions.

These areas relate to the following:

- Wider research into the performance of each sector's SOEs and specific reasons for poor performance and recommendations to address them;
- Some comparative analysis of Namibian SOEs in the transport sector and those in the SADC region and/or beyond;
- Critical analyses of the (potential) impact of privatisation and or commercialisation of SOEs with specific predictions for Namibia; and
- Research on data collection and data management of Namibian SOEs, especially financial sustainability and cost drivers

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ANNEXURES

Annexure 1

List of Interviewees						
No	Name	Organisation	Rank	Contact	Target	Actual
Political						
1	Hon. Leon Jooste	Ministry of Public Enterprises	Minister	+264 61 2023600		
2	Hon. James Sankwasa	Ministry of Works and Transport	Deputy Minister	+264 61 2023600		
Total					2	2
		Central Government				
3	Ms E. Simana	Ministry of Works and Transport	Director (Aviation)	+264 81 1242735		
4	Mr. C. Dziva	Ministry of Works and Transport	Acting Director (infrastructure)	+264 81 1407770		
5	Mr. Nchube	Ministry of Works and Transport	Director (Railways)	+264 81 1410749		

6	Mr. P Auena	Ministry of Works and Transport	Director (Maritime)	+264 81 6649188		
Total					4	4
		SOEs				
7	Adv. M Samson	Air Namibia	CEO	+264 81 1427203		
8	Mr. Masule	Air Namibia	General Manager	+264 81 1226029		
Total					3	2
9	Mr. P. Smith	TransNamib	Board Chairman	+264 61 2855700		
10	Mr. Mukungu	TransNamib	Executive (Manager)	+264 61 2855700		
					3	2
11	Mr. Uirab	Namport	CEO	+264 811002036		
12	Mr Gelderbloem	Namport	Port Engineer	+264 811291980		
					3	2
13	Ms R. Hango	Roads Authority	Executive (Manager)	+264 811297979		
14	Ms E Zaire	Roads Authority	Legal Adviser	+264 811273880		
					3	

15	Mr. T. EL-Kallawi	NAC	CEO	+26481143 4011		
16	Ms T. Sem	NAC	Strategic Executive	+26481124 6888		
Total					2	2
					20	16
	Response rate = 77.8 %					

Annexure 2

RESEARCH INSTRUMENT/QUESTIONNAIRE

Introduction

My name is Cedric Limbo, a PHD student at the University of Stellenbosch, School of Public Leadership. My PHD Dissertation is entitled “**An Analysis of the Performance of State-owned Enterprises in Namibia: Case Studies of SOEs in the Transport Sector**”

Instructions/Information

1. Results of this instruments will not be used for any other purpose except for this study,
2. Be assured that your response will not be shared with any other person except the researcher,
3. You are free to participate in this study or withdraw at anytime if you feel uncomfortable,
4. The instrument is divided into four (4) sections, namely; Section A (Biographic Data), Section B (Performance of SOEs) and Section C (Challenges Encountered to Address their Mandates) and Section D (Mechanisms To Improve Performance).

Kindly indicate (x) the institution you are working for

Institution	Airports Company	Air Namibia	RCC	RA	TransNami b	Nampor t	Others
Subject or	Aviation		Road		Rail	Maritim e	

Section A: Biographic Data

1. Gender

Male		Female	
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2. What is your position level?

Below Management	
Management	
Others ¹⁷	

3. Experience - How long (years) have you been working in the (transport) sector?

0-5 years	
6-15	
Above 15	

4. Qualification – Your highest academic Qualification/Professional?

Below Grade12/STD10	
Grade 12/STD10	
Diploma	
Degree	

¹⁷ Board Member, Politician, Academic, Sector Expert.

Masters	
PHD and Above	

Section B: Performance of SOEs

5. How is the general/overall performance of SOEs in this country?

Please Check as appropriate	Classification
	Excellent
	Good
	Average/Fair
	Poor

Justify your answer

.....

.....

.....

.....

6. How is the performance of your SOE in relation to others in the transport sector?

Please Check as appropriate	Classification
	Excellent
	Good
	Average/Fair
	Poor

Explain your answer.

.....

.....

.....

.....

7. How is the current performance of your organisation, in terms of;

7.2 Assigned mandate

Please Check as appropriate	Classification
	Excellent
	Good
	Average/Fair
	Poor

Justify your answer

.....

.....

.....

.....

7.3 Efficiency

Please Check as appropriate	Classification
	Excellent
	Good
	Average/Fair
	Poor

Justify your answer

.....

.....

.....

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7.4 Financial management

Please Check as appropriate	Classification
	Excellent
	Good
	Average/Fair
	Poor

Justify your answer

.....

.....

.....

.....

7.5 Service (Customer)

Please Check as appropriate	Classification
	Excellent
	Good
	Average/Fair
	Poor

Justify your answer

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Section C: Challenges Encountered to Address their Mandates

8. What are the general challenges SOEs are faced with in achieving their mandates they were established for?

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.....

9. What are the challenges faced by your organisation in achieving its mandates, in terms of;

9.1. Accountability

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9.2 Governance

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9.3. Organisational

.....
.....
.....

9.4. Performance Indicators

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.....

9.5. Resources

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.....
.....

10. How, (in your opinion) can the above challenge (s) be addressed?

.....
.....
.....
.....

Section D: Mechanisms to Improve Performance

11. How do you think the performance in your organisation can be improved – in light of the challenges you have just shared with the researcher (please explain)

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.....
.....

12. Are you aware of the existing performance tool?

.....
.....
.....

13. If yes, what does it entail?

.....
.....
.....

14. Does the current performance tool, in your opinion needs improvement?

.....
.....
.....

15. Are there any other ways that your organisation could improve its performance?

.....
.....
.....

16. Any other comments (that haven't been discussed above) that, in your opinion needs to be addressed to improve performance of SOEs?

.....
.....
.....