



**FLAWED CORPORATE GOVERNANCE OF STATE-OWNED ENTITIES (SAA)  
IN SOUTH AFRICA: LESSONS FROM RWANDAIR AND ETHIOPIAN  
AIRLINES**

*Submitted by*

**KAGO MOGANANE (2739265)**

**UNIVERSITY *of the*  
Supervised by:  
WESTERN CAPE**

**Professor R. WANDRAG**

**A mini thesis submitted in partial fulfillment of the requirements of the LLM in  
the Faculty of Law**

## DECLARATION

I, KAGO MOGANANE, declare that *Flawed corporate governance of state-owned entities (SAA) in South Africa: Lessons from RwandAir and Ethiopian Airlines* is my work, that this work has not been submitted before for any degree or is currently being considered for a degree at any other institution, and that all the sources I have used or quoted have been duly acknowledged as complete references.

KAGO MOGANANE

Signed: 



Prof R Wandrag

## DEDICATION

*Now to Him who is able to do immeasurably more than all we ask or imagine, according to his power that is at work within us. Ephesians 3:20.* This mini-thesis is dedicated to my family.

## ACKNOWLEDGEMENTS

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This work is the result of numerous difficult sacrifices. How could I possibly repay, Mr. MS Ngetwa? Thank you for making sure that I have everything that I need and thank you for making this journey bearable; thank you for your counsel and your love. You have contributed significantly to the woman I have become, and I will be eternally grateful. To show my gratitude for all that you have done, I would like to recognise your consistent contribution to this project.

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## **KEYWORDS**

Corporate governance, state-owned entities, state-owned companies, South African Airways, RwandAir and Ethiopian Airlines

## **LIST OF ACRONYMS**

Department of Public Enterprises	DPE
Director General	DG
Ethiopian Civil Aviation Authority	ECAA
Institute of Directors of Southern Africa	IoDSA
International Air Transportation Association	IATA
Joint Stock Companies	JSC
Johannesburg Stock Exchange	JSE
Memorandum of Incorporation	MOI
National Assembly	NA
New Partnership of Corporate Governance	NEPAD
Organisation of Economic Co-operation & development	OECD
Public Finance Management Act	PFMA
Rwanda Civil Aviation Authority	RCAA
South African Airways	SAA
Special Investigative Unit	SIU
State-Owned Companies	SOC
State-Owned Entities	SOE
Transcontinental Western Airlines	TWA

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## **CHAPTER 1: INTRODUCTION**

### **1. Background to Study**

State-owned companies (SOEs) hold a distinct and contrasting position in the majority of governments worldwide. They function as commercial enterprises while also being obligated to promote the political interests of the state.<sup>1</sup> The term SOEs lacks a specific or widely agreed-upon definition. The Organisation for Economic Co-operation and Development (OECD) defines SOEs as enterprises where the state has considerable control through full majority or major minority ownership.<sup>2</sup> This definition encompasses SOEs that are owned by the central or federal government, as well as those owned by regional and local governments.<sup>3</sup> Another definition is that SOEs are:

entities in which the state owns more than 50% of voting shares of joint-stock companies (JSCs), or more than 50% of shares in the authorised capital of limited liability partnerships, including national managing holdings, national holdings, and national companies, in which the state is a participant or shareholder, as well as subsidiaries and affiliated organizations that are part of their corporate structure, except for non-residents.<sup>4</sup>

On the African continent, SOEs play an important role in many of the countries' economies.<sup>5</sup> They have a vital role in national development as they provide citizens with commodities such as water, health sanitation, electricity, and telecommunications.<sup>6</sup> In the Southern African economies, SOEs are fundamental drivers to remedy market failures and remove direct obstacles to development; hence,

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<sup>1</sup> Backer LC Systemic Constraints on the Human Rights Obligations of States and State-Owned Enterprises (SOEs). Available at

<https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1141&context=vjtl>

(accessed 04/06/2022)

<sup>2</sup> Guidelines on the Governance of State-Owned Enterprises for Southern Africa. Available at

<https://www.oecd.org/daf/ca/SOE-Guidelines-Southern-Africa.pdf>

(accessed 20/06/2022)

<sup>3</sup> Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices.

Available at <https://www.oecd.org/corporate/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices-2021.pdf>

(accessed 04/06/2022)

<sup>4</sup> Naqvi. K. and Ginting. E (2020). Reforms, opportunities, and challenges for state-owned enterprises. Asian Development Bank.

<sup>5</sup> Guidelines on the Governance of State-Owned Enterprises for Southern Africa. Available at

<https://www.oecd.org/daf/ca/SOE-Guidelines-Southern-Africa.pdf>

(accessed 20/06/2022)

<sup>6</sup> Guidelines on the Governance of State-Owned Enterprises for Southern Africa. Available at

<https://www.oecd.org/daf/ca/SOE-Guidelines-Southern-Africa.pdf>

accessed 20/06/2022)

SOEs are found in many of the countries' national development strategies.<sup>7</sup>

In South Africa, SOEs are critical as they are drivers of economic growth and significant vehicles for providing critical infrastructure services such as transportation, energy, and water, thereby enabling the economy to grow while ensuring equal access to quality services.<sup>8</sup> There are several major SOEs, including Denel, South African Airways (SAA), and Eskom. Some of South Africa's major SOEs are also referred to as state-owned companies (SOCs), as they are incorporated in terms of the Companies Act 71 of 2008; these SOCs play a vital role in the development and stability of the country's economy.<sup>9</sup> SAA, which is the focal point of this research, is a SOC owned by the government of South Africa, and the business of the company is to engage in passenger airline and cargo transport services.<sup>10</sup> It is important to highlight that this research was conducted before the Takatso Consortium partnership.

## 1.2 Problem Statement

The SOEs in South Africa are expected to have a crucial role in the economy, acting as a means for accomplishing enhanced economic growth and reducing poverty.<sup>11</sup> However, this is not so as many of them are said to be dysfunctional and failing to live up to their developmental mandates.<sup>12</sup> This has led to a dependency on the government in the form of bailouts.<sup>13</sup> SAA is a SOC (State-Owned Company) that has a turbulent past characterised by corruption, operational and structural issues, and

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<sup>7</sup> OECD (2014) 'Governance of SOEs in South Africa'

<https://www.oecd.org/daf/ca/SOE%20Network%20info%20sheet.pdf> (accessed 20/06/2022)

<sup>8</sup> Kikeri, S (2018). 'Corporate Governance in South Africa State-Owned Enterprise' available at <https://openknowledge.worldbank.org/handle/10986/30029> (Assessed 6 February 2022)

<sup>9</sup> Thabane T & E Snyman Van Deventer 'Pathological Corporate Governance Deficiencies in South Africa's State-Owned Companies: A critical reflection' (2018) vol. 21 *Potchefstroom Electronic Journal* 1. Available at [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1727-37812018000100002](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1727-37812018000100002) (accessed on 04/09/ 2022)

<sup>10</sup> Manual of South African Airways SOC limited. Available at <https://www.flysaa.com/documents/51855150/0/SAA+PAIA+Manual.pdf/68d83cbd-0a87-44a2-aff-4c1bedf48d8c> (accessed 04/09/ 2022)

<sup>11</sup> Hendricks N 'Significant Change On The Horizon For South African SOE's' Available at <https://www.oldmutualinvest.com/institutional/knowledge-room/insights/significant-change-on-the-horizon-for-south-african-soes/> (accessed 10 March 2024)

<sup>12</sup> G:enesi 'Charting a new course for failing state-owned enterprises' <https://www.genesis-analytics.com/projects/charting-a-new-course-for-failing-state-owned-enterprises> (accessed 20/06/ 2022).

<sup>13</sup> K Tleane State-Owned Enterprise Bailouts on Economic Growth: A Case on South African Airways available at [http://ulspace.ul.ac.za/bitstream/handle/10386/3273/tleane\\_state\\_2020.pdf?sequence=1&isAllowed=y](http://ulspace.ul.ac.za/bitstream/handle/10386/3273/tleane_state_2020.pdf?sequence=1&isAllowed=y) (accessed 20/06/2022)

political meddling.<sup>14</sup> Many of these problems can be traced back to a lack of efficient corporate governance, which includes inadequate decision-making and corruption, among other factors.<sup>15</sup> This mini-thesis seeks to examine the corporate governance deficiencies of SAA while contrasting them to Ethiopian Airlines and RwandAir to get valuable insights.

Rwanda and Ethiopia were chosen for this study because of their airlines' outstanding performance in meeting their developmental objectives and their adoption of similar strategic frameworks to South Africa. Similar to SAA, Ethiopia Airlines was selected given its status as a wholly-owned entity of the Ethiopian government.<sup>16</sup> Rwanda was chosen because its national airline, RwandAir, is partially controlled by the State. Recently, the State sold 49 percent of its holding to Qatar Airlines, a Middle Eastern Airline.<sup>17</sup> This mini-thesis will argue that a thorough restructuring of SAA's governance is essential. To do this task efficiently, it will be crucial to conduct a thorough assessment and evaluation of SAA's performance concerning other African countries by employing benchmarking techniques. Furthermore, this study aims to examine the legal framework that governs SAA to understand the underlying reasons for the numerous failures and offer recommendations.

### 1.3. Main Research Question

In what ways has the flawed corporate governance of SAA contributed to its failure in fulfilling its objectives, and how may studying the practices of RwandAir and Ethiopian Airlines offer insights for its revival?

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<sup>14</sup> Fourie DJ 'The Reconstructing of State-Owned Enterprises: South African Initiatives' (2001) vol. 23 *Asian Journal of Public Administration* 2. Available at <https://www.tandfonline.com/doi/epdf/10.1080/02598272.2001.10800388?needAccess=true> (accessed 22/06/ 2022)

<sup>15</sup> Kikeri S 'An Incomplete Transition: Overcoming The Legacy of Exclusion in South Africa' Available at <https://documents1.worldbank.org/curated/en/798071529303940965/pdf/127288-WP-P161945-PUBLIC-Corporate-Governance-in-South-African-SOEs.pdf> (accessed 13/07/2022)

<sup>16</sup> Tsegaw E 'The Legal Status of State-Owned Share Companies in Ethiopia' available at <https://www.scirp.org/journal/paperinformation.aspx?paperid=64072> (accessed 09/07/ 2022)

<sup>17</sup> Larsson L 'RwandAir: Pandemic offers new chance to gain market share' Available at <https://african.business/2022/03/finance-service/rwandair-pandemic-offers-new-chance-to-gain-market-share/> (accessed 20/07/ 2022)

### **1.3.1 Sub-Questions**

- What is the current legal framework for SOEs in South Africa, Rwanda, and Ethiopia?
- What has caused the demise of SAA, and what is its current status?
- What are the successes and failures of RwandAir and Ethiopian Airlines?
- What lessons can be drawn from both Rwanda and Ethiopia?

### **1.4 Significance of Study**

This study will contribute to the existing jurisprudence on how SOEs can be assisted in fulfilling their mandates using benchmarking with other countries. It will be beneficial not only to South Africa but other countries in the region and the African continent at large. This study notes that the government has developed several recommendations over the past years, but has failed to implement them; therefore, it suggests that we learn from other countries that have had experiences similar to South Africa's.

### **1.5. Methodology**

This research is a desktop study that makes use of primary sources of law, including the Constitution, legislation, and policy documents, to determine the legal framework of SOEs in South Africa, Rwanda, and Ethiopia. Case law will also be used where relevant. Secondary sources are included to augment the discussion, including journals, newspapers, and textbooks.

### **1.6. Chapter Outline**

Chapter 1 explains the background of the study, together with its aim and significance.

Chapter 2 undertakes a detailed analysis of the legal framework of SOEs in South Africa. The second part of this chapter considers the legal frameworks for SOEs in Rwanda and Ethiopia.

Chapter 3 examines the successes and failures of SAA as a SOC.

Chapter 4 examines RwandAir and Ethiopian Airlines as state-owned enterprises (SOEs). The final section of the chapter explores the insights that may be garnered from both case studies.

Chapter 5 concludes the study and provides recommendations.

## **CHAPTER 2: THE LEGAL FRAMEWORK OF STATE-OWNED ENTITIES IN SOUTH AFRICA, ETHIOPIA AND RWANDA**

### **2.1 Introduction**

The legal and regulatory frameworks of SOEs and SOCs are intended to establish distinct boundaries between the government as the shareholder and SOE boards and management. However, in South Africa, there is often a lack of clarity between the government's role as a shareholder and the responsibilities of the board of directors and management. This issue will be further explained in a later section of this chapter. This chapter is divided into four sections and will explore the general legal frameworks governing SOEs in South Africa, Ethiopia, and Rwanda. The first section will investigate the rationale for SOEs and SOCs. The second will examine corporate governance and how it can be used to effectively manage SOEs and SOCs. Thirdly, this chapter conducts a comprehensive analysis of the legal framework that governs SOEs and SOCs in South Africa. The final section discusses the overarching legal frameworks of SOEs in Rwanda and Ethiopia.

### **2.2 The Rationale for Establishing State-Owned Entities And State-Owned Companies**

In some countries, SOEs were considered a product of state intervention in the market.<sup>18</sup> These state interventions were due to financial crises, wars, or financial recessions, and state interventions were seen as an acceptable tool for repairing market failures.<sup>19</sup> This is frequently problematic, as many of these SOEs, particularly in South Africa, have become government liabilities rather than assets.<sup>20</sup> Furthermore, in government-controlled key sectors, there is a tendency towards the formation of monopolies and the abuse of power, since there is no competition from which to

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<sup>18</sup> Bouchez LC 'The OECD Guidelines on Corporate Governance of State Owned Enterprises- an introduction' available at <https://kvdI.com/uploads/documents/Louis-Bouchez-The-OECD-Guidelines-on-Corporate-Governance-of-State-Owned-Enterprise.pdf> (accessed 23 August 2023)

<sup>19</sup> Bouchez LC 'The OECD Guidelines on Corporate Governance of State Owned Enterprises- an introduction' available at <https://kvdI.com/uploads/documents/Louis-Bouchez-The-OECD-Guidelines-on-Corporate-Governance-of-State-Owned-Enterprise.pdf> (accessed 23 August 2023)

<sup>20</sup> Philip X 'Parastatal paralysis: South Africa's state-owned enterprises are death traps and urgent intervention is necessary' available at <https://www.dailymaverick.co.za/opinionista/2021-12-10-parastatal-paralysis-south-africas-state-owned-enterprises-are-debt-traps-and-urgent-intervention-is-Philip-X-Parastatal-paralysis-South-Africa-s-state-owned-enterprises-are-death-traps-and-urgent-intervention-is-necessary/> accessed 21 August 2022

learn.<sup>21</sup> The OECD has observed that in Southern Africa, SOEs are among the main sources of urban employment and are thus anchored in the national development strategies of these economies.<sup>22</sup> In addition, there is a tendency to rely on SOEs to correct market failures, and SOEs are also used as a tool to facilitate the removal of direct obstacles to development, such as in South Africa under apartheid, where the purpose of SOEs was to contribute to the socioeconomic development agenda.<sup>23</sup> However, owing to the sanctions South Africa was facing before democracy, the South African government used SOEs to protect itself from international boycotts, which led to the further demise of SOEs such as Eskom, which had problems with monopoly legislation and corruption before democracy.<sup>24</sup>

The legislative frameworks governing SOEs in Africa are designed to restructure these organisations to enhance their efficiency and effectiveness..<sup>25</sup> Balbuena argues that this was evident in the 2000s when economies were deregulating sectors in which SOEs operate and restructuring SOEs as part of broader structural reform policies.<sup>26</sup> Secondly, a consistent and coherent legal framework is necessary for ensuring the accountability of the government, as an owner, and of the SOE itself; it is also essential as it identifies the firm's objectives and the relevant division of responsibilities.<sup>27</sup>

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<sup>21</sup> Dhlamini M Eskom was doomed to fail, its core problem?its monopoly available at [www.news24.com/amp/citypress/business/eskom-was-doomed-to-fail-its-core-problem-its-monopoly-20190207](http://www.news24.com/amp/citypress/business/eskom-was-doomed-to-fail-its-core-problem-its-monopoly-20190207) (accessed 12 August 2022)

<sup>22</sup> Balbuena SS 'State owned Enterprises in Southern Africa: Stocktaking of Reforms and Challenges' available at <https://www.oecd-ilibrary.org/docserver/5jzb5zntk5r8-en.pdf?expires=1692252711&id=id&accname=quest&checksum=911518E1E19FB942544BDE1B2E36640D> (accessed 10 August 2022)

<sup>23</sup> Tleane K 'State-Owned Enterprise Bailouts on Economic Growth: A Case on South African Airways' available at [http://ulspace.ul.ac.za/bitstream/handle/10386/3273/tleane\\_state\\_2020.pdf?sequence=1&isAllowed=y](http://ulspace.ul.ac.za/bitstream/handle/10386/3273/tleane_state_2020.pdf?sequence=1&isAllowed=y) (accessed 04 September 2022)

<sup>24</sup> Dhlamini M Eskom was doomed to fail, its core problem?its monopoly available at [www.news24.com/amp/citypress/business/eskom-was-doomed-to-fail-its-core-problem-its-monopoly-20190207](http://www.news24.com/amp/citypress/business/eskom-was-doomed-to-fail-its-core-problem-its-monopoly-20190207)

Accessed 12 August 2022

<sup>25</sup> Balbuena SS 'State owned Enterprises in Southern Africa: Stocktaking of Reforms and Challenges' available at <https://www.oecd-ilibrary.org/docserver/5jzb5zntk5r8-en.pdf?expires=1692252711&id=id&accname=quest&checksum=911518E1E19FB942544BDE1B2E36640D>

(accessed 10 August 2022)

<sup>26</sup> Balbuena SS 'State owned Enterprises in Southern Africa: Stocktaking of Reforms and Challenges' available at <https://www.oecd-ilibrary.org/docserver/5jzb5zntk5r8-en.pdf?expires=1692252711&id=id&accname=quest&checksum=911518E1E19FB942544BDE1B2E36640D> (accessed 10 August 2022)

<sup>27</sup> Balbuena SS 'State owned Enterprises in Southern Africa: Stocktaking of Reforms and Challenges' available at <https://www.oecd-ilibrary.org/docserver/5jzb55zntk5r8->

Worldwide, countries use SOCs to provide public goods and limit private and foreign control of the domestic economy.<sup>28</sup> Thabane notes that in some countries, SOCs are used to limit private and foreign control of the domestic economy, generate public funds for the fiscus, increase service delivery, and encourage economic development and industrialisation. In a country like South Africa, SOCs are supposed to play a pivotal role in the growth of the economy.<sup>29</sup> According to the Auditor-General, this is not the case, however, as SOCs continue to lose money despite repeated efforts to turn their finances around, a situation due to poor decision-making and high levels of ineffective and wasteful spending.<sup>30</sup> This demonstrates that corporate governance is lacking. It is important to highlight that for any SOC and SOE to run efficiently, it requires good corporate governance, which is discussed further in the next section.

### 2.3 Corporate Governance

This section discusses corporate governance and how it is instrumental to the success of any corporate structure. The term 'corporate governance' does not have a universal definition.<sup>31</sup> In this study, we will adopt the definition provided by Du Plessis, which characterises corporate governance as the process of overseeing management and reconciling the concerns of internal stakeholders and other parties who may be impacted by the corporation's actions. Its purpose is to promote responsible conduct among corporations and enable them to attain optimal levels of efficiency and profitability.<sup>32</sup> The stipulations of corporate governance are embodied in this definition. In addition to pursuing maximum efficiency and profitability, corporations must conduct themselves in a way that does not negatively impact any stakeholders. Corporate governance is a pillar for any successful organisation. Its importance cannot be

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[en.pdf?expires=1660203323&id=id&accname=quest&checksum=1FA82E34E51947A614129CBD7211238](#) (accessed 10 August 2022)

<sup>28</sup> Snyman Van-Deventer E & Thabane T 'Pathological Corporate Governance Deficiencies in South Africa's State-Owned Companies: A Critical Reflection' (2018) vol. 21 *African Journal Online* 1 available at <https://perjournal.co.za/article/view/2345> (accessed 18 September 2022)

<sup>29</sup> Christiansen H & Kane K 'State Owned Enterprises: Good governance as a facilitator for development' available at [https://www.oecd.org/development/State-owned%20enterprises\\_CfD\\_Ebook.pdf](https://www.oecd.org/development/State-owned%20enterprises_CfD_Ebook.pdf) (accessed 12 September 2022)

<sup>30</sup> 'South Africa's list of failures-the state owned-companies that are in a financial crisis' available at <https://businesstech.co.za/news/government/545244/south-africas-list-of-failure-the-state-owned-companies-that-are-in-a-financial-crisis/> (accessed 22 September 2022)

<sup>31</sup> 'Corporate Governance Definition' available at <https://corporate.laws.com/corporate-governance-definition?amp> (accessed 4 August 2022)

<sup>32</sup> Du Plessis, Hargovan and Bagaric *Principles of Contemporary Corporate Governance* 2<sup>nd</sup> ed (2011) 6-7

understated, as it plays a fundamental role in promoting a culture of integrity, positive performance, and sustainability.

The next section will examine forums and organisations that exist, particularly on a worldwide scale, to aid governments in sharing experiences and finding solutions to shared challenges as well.

## **2.4 Organisation for Economic Cooperation and Development (OECD)**

To comprehend the legal framework that governs South Africa's SOEs and SOCs, it is essential to recognise the requirements of the OECD. The OECD is an overarching decision-making organisation that has produced a comprehensive framework upon which many countries base their corporate-governance development.<sup>33</sup> In 2015, it published a set of principles containing a wide-ranging definition of the term 'corporate governance'.<sup>34</sup> The definition states that corporate governance involves a set of relationships between a company's management, its board, its shareholders, and other stakeholders.<sup>35</sup> Corporate governance provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.<sup>36</sup> The OECD definition requires that there should be a structure in place that clearly defines the companies' intended objectives; furthermore, there must be a clear plan of action for how these objectives will be achieved, as well as a monitoring system that evaluates the performance of the relevant stakeholders involved in decision-making.<sup>37</sup>

The OECD principles are non-binding, but policymakers can use them as a guide when examining and developing their legal and regulatory frameworks for corporate governance.<sup>38</sup> The principles are evolutionary and must be viewed in the light of significant changes in global conditions. To remain competitive in a world that is

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<sup>33</sup> OECD PRINCIPLES OF CORPORATE GOVERNANCE available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2907/download> (accessed 13 August 2022)

<sup>34</sup> Du Plessis, Hargovan and Bagaric *Principles of Contemporary Corporate Governance* 2<sup>nd</sup> ed (2011) 6-7

<sup>35</sup> G20/OECD Principles of Corporate Governance 2015 at p 13

<sup>36</sup> G20/OECD Principles of Corporate Governance 2015 at p 13

<sup>37</sup> 'Recommendation of the Council on Principles of Corporate Governance' available at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0413> (accessed 12 August 2022)

<sup>38</sup> OECD PRINCIPLES OF CORPORATE GOVERNANCE available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2907/download> Accessed 13 August 2022

constantly evolving, corporations must adapt their corporate governance practices to meet these demands.<sup>39</sup> Governments should also play a role in developing regulatory frameworks that allow for flexibility, thereby enabling markets to function effectively.<sup>40</sup> The following is a brief discussion of these principles.

## 2.5 G20/OECD Principles of Corporate Governance

The first principle of the OECD emphasises the need to provide a solid foundation for a highly efficient corporate governance structure. Corporate governance must prioritise the promotion of transparent and equitable markets, as well as the effective allocation of resources.<sup>41</sup> In addition, corporate governance must be consistent with the rule of law and facilitate effective supervision and enforcement; therefore, governments such as South Africa must establish broad principles when reviewing their corporate governance.<sup>42</sup>

The second principle advocates for fair and just treatment of shareholders. A robust corporate governance framework is necessary to safeguard and facilitate the exercise of shareholders' rights, while also ensuring equitable treatment of all shareholders, particularly foreign and minority shareholders. All shareholders should be granted access to efficient means of seeking redress if their rights are infringed upon.<sup>43</sup>

The third principle pertains to institutional investors, stock markets, and other intermediaries, and specifically focuses on these entities. The argument suggests that a corporate governance framework should establish effective incentives across the investment chain and enable stock markets to function in a way that encourages strong corporate governance.<sup>44</sup> The fourth principle aims to enhance the involvement of stakeholders in corporate governance and foster a corporate governance framework that acknowledges stakeholder rights as defined by law or mutual

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<sup>39</sup> OECD PRINCIPLES OF CORPORATE GOVERNANCE available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2907/download> Accessed 13 August 2022

<sup>40</sup> Bouchez L 'Principles of Corporate Governance: The OECD Perspective' (2007) vol. 4 *European Company law* 3

<sup>41</sup> G20/OECD Principles of Corporate Governance 2015 at p 13

<sup>42</sup> Bouchez L 'Principles of Corporate Governance: The OECD Perspective' (2007) vol. 4 *European Company law* 3

<sup>43</sup> G20/OECD Principles of Corporate Governance 2015 at p 20

<sup>44</sup> Bouchez L 'Principles of Corporate Governance: The OECD Perspective' (2007) vol. 4 *European Company law* 3

agreements. It also seeks to foster active collaboration between corporations and stakeholders in generating wealth, and employment opportunities, and ensuring the long-term sustainability of financially stable enterprises.<sup>45</sup>

The fifth principle is disclosure and transparency, which requires a corporate governance framework that guarantees the timely and correct publication of all significant facts about the organisation, including its financial condition, performance, ownership, and governance.<sup>46</sup> The final principle necessitates a conscientious board, which involves a corporate governance structure that guarantees the firm's strategic trajectory, the board's efficient supervision of management, and the board's responsibility to the company and its shareholders.<sup>47</sup>

Policymakers, standard-setters, and regulators could share real implementation experiences regarding these concepts. Bouchez emphasizes that the purpose of this discussion among service providers, investors, and enterprises is to be comprehensive to ensure the ongoing relevance and adoption of the concepts within the private sector.<sup>48</sup> These principles offer useful insights to SOEs and SOCs, especially those operating in nations with governance challenges like South Africa. The subsequent section will examine the importance of these concepts for SOEs and SOCs.

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<sup>45</sup> G20/OECD Principles of Corporate Governance 2015 at p 36

<sup>46</sup> OECD PRINCIPLES OF CORPORATE GOVERNANCE available at <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2907/download> (accessed 13 August 2022)

<sup>47</sup> G20/OECD Principles of Corporate Governance 2015 at p 47

<sup>48</sup> Bouchez L 'Principles of Corporate Governance: The OECD Perspective' (2007) vol. 4 *European Company law* 3

## 2.6 OECD Guidelines on SOEs and SOCs

OECD and non-OECD members should actively implement the principles through dialogue. Good corporate governance is essential for the growth and longevity of any company and organisation. This study argues that countries afflicted with governance challenges, such as South Africa, must adhere to these principles. These principles underscore the importance of maintaining robust public finances to bolster market confidence and promote developmental objectives.<sup>49</sup> Consequently, this necessitates the accountability of those entrusted with the organisation's expansion. Furthermore, these principles call for strong ownership policies, which are crucial for a country's economic development.<sup>50</sup> However, in the context of South Africa, these principles will be effective only if the government and its administrators work actively to build functional institutions. This includes diligently addressing the fragmented legal system that has plagued SOEs and SOCs. This legal framework will be examined in greater detail in the following section.

## 2.7. Legal Framework Governing SOEs and SOCs in South Africa

The legal framework governing SOEs in South Africa is created through the Constitution of South Africa of 1996, the Public Finance Management Act 1 of 1999, and the relevant SOE founding legislation. SOCs are also governed by the Companies Act 71 of 2008. SOEs and SOCs are guided too by soft laws such as the King Code Report and the Protocol on Corporate Governance in the Public Sector. These elements of the legal frameworks are intended to create a transparent and efficient SOE-SOC sector in which the state plays a dual role as market regulator and majority shareholder in SOCs.<sup>51</sup> In South Africa, the state is the sole or majority shareholder, which means that the minister appointed holds the shares on behalf of the State.<sup>52</sup> He or she oversees the appointment of the board of directors, which is instrumental in ensuring SOCs' optimal performance by implementing progressive corporate

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<sup>49</sup> Recommendation of the Council on Principles of Corporate Governance' available at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0413> (accessed 12 August 2022)

<sup>50</sup> Recommendation of the Council on Principles of Corporate Governance' available at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0413> (accessed 12 August 2022)

<sup>51</sup> Guidelines on the Governance of State-Owned-Enterprises for Southern Africa available at <https://www.oecd.org/daf/ca/SOE-Guidelines-Southern-Africa.pdf> (accessed 12 September 2022)

<sup>52</sup> de Visser J & Waterhouse S 'SOE Boards and Democracy' (2020). Available at <https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/soe-boards-and-democracy-final-pdf-version-12-feb-2020.pdf> (accessed 4 August 2022)

strategies.<sup>53</sup> The elements of the legal framework are discussed in detail below.

## 2.8 The Constitution of South Africa, 1996

The Constitution of the Republic of South Africa, 1996 is the overarching law in South Africa, meaning that it supersedes any other law.<sup>54</sup> Consequently, it is necessary to interpret legislation by the Bill of Rights, which requires that all legislative provisions be understood as nearly as possible by the Constitution.<sup>55</sup> However, the Constitution does not provide clear guidelines as to how SOEs should be governed. It does stipulate how the National Assembly is to hold accountable the minister who is the custodian of the shares on behalf of the state, as detailed in the following provisions:

Section 55(2) The National Assembly must establish mechanisms to ensure that (a) all executive organs of state in the national sphere of government are accountable to it; and (b) oversight of – (i) the exercise of national executive authority; and (ii) any state organ.<sup>56</sup>

According to Section 55(2), it is required that the National Assembly create procedures to ensure accountability. The National Assembly should have the power to create accountability mechanisms for other entities as it sees fit, as long as it is within the limits set by the Constitution.<sup>57</sup>

Legislative oversight is essential to ensure that the executive is answerable to the public through its elected representatives.<sup>58</sup> However, in South Africa this has been problematic. In *Certification of the Constitution of the Republic of South Africa, 1996* (cct 23/96) [1996]ZACC (Certification case), it is stated that the issue of legislative oversight and accountability is grounded in the connection between the executive and

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<sup>53</sup> de Visser J & Waterhouse S 'SOE Boards and Democracy' (2020). Available at <https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/soe-boards-and-democracy-final-pdf-version-12-feb-2020.pdf> (accessed 4 May 2022)

<sup>54</sup> The Constitution of the Republic of South Africa, 1996

<sup>55</sup> 'A Correct Approach To Statutory Interpretation' available at <https://www.tmj.co.za/News/Read/240196#:~:text=Simply%20put%2C%20all%20legislation%20must,in%20conformity%20with%20the%20Constitution> (accessed 12 September 2022)

<sup>56</sup> Section 55 (2) of the Constitution

<sup>57</sup> Corder H, Jagwanth S, Soltau F 'Report On Parliamentary Oversight And Accountability' available at [https://www.parliament.gov.za/storage/app/media/1\\_Stock/Events\\_Institutional/2021/28-04-2021\\_NCOP\\_Budget\\_and\\_Fiscal\\_Oversight\\_Workshop/general\\_resource\\_documents/Report\\_on\\_Parliamentary\\_Oversight\\_and\\_Accountability.pdf](https://www.parliament.gov.za/storage/app/media/1_Stock/Events_Institutional/2021/28-04-2021_NCOP_Budget_and_Fiscal_Oversight_Workshop/general_resource_documents/Report_on_Parliamentary_Oversight_and_Accountability.pdf) (accessed 18 September 2022)

<sup>58</sup> Maganoe S 'Legislative Oversight and Executive Accountability in South Africa' (2023) vol. 26 *Potchefstroom Electronic Law Journal (PEJL)* 1 available at [http://www.scielo.org.za/scielo.php?pid=S1727-37812023000100013&script=sci\\_arttext](http://www.scielo.org.za/scielo.php?pid=S1727-37812023000100013&script=sci_arttext) (accessed 22 July 2023)

the legislature.<sup>59</sup> This relationship facilitates the executive's influence over the legislature by granting cabinet members the dual role of being members of the legislature. As a result, they can exert power over legislative choices by their positions.<sup>60</sup> Consequently, the relationship between the legislative and the administration creates challenges in ensuring that the executive branch is held responsible. This places the burden of overseeing the government's actions on opposition parties, who lack the authority to effectively hold the executive accountable.<sup>61</sup>

Section 42(3) of the Constitution specifies that the National Assembly is elected to represent the people and to guarantee government by the people by the Constitution.<sup>62</sup> It accomplishes this by electing the President, providing a national forum for public consideration of issues, enacting laws, and scrutinising and overseeing executive action. The Constitution requires the National Assembly to hold the executive accountable and oversee the performance of its functions, which involves holding accountable the minister who is the state's custodian of the shares. In South Africa, however, as stated above, holding ministers accountable is frequently problematic because they are in most cases senior leaders of the ruling African National Congress (ANC) and part of the national executive committee.<sup>63</sup>

The Constitution does not explicitly outline the regulatory framework for SOEs, but it does mandate that the National Assembly is responsible for holding the minister in charge of SOEs accountable. Nevertheless, a formidable challenge arises from the concentrated authority of the governing party in Parliament. The legislature's ability to successfully hold the cabinet accountable is hindered by the power dynamics mentioned above. As a result, the responsibility for accountability falls on the

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<sup>59</sup> *Certification of the Constitution of the Republic of South Africa*, 1996 (cct 23/96) [1996] ZACC paragraph 106

<sup>60</sup> *Certification Case* para 107

<sup>61</sup> Maganoe S 'Legislative Oversight and Executive Accountability in South Africa' (2023) vol. 26 *Potchefstroom Electronic Law Journal (PEJL)* 1 available at [http://www.scielo.org.za/scielo.php?pid=S1727-37812023000100013&script=sci\\_arttext](http://www.scielo.org.za/scielo.php?pid=S1727-37812023000100013&script=sci_arttext) (accessed 22 July 2023)

<sup>62</sup> Section 42(3) of the Constitution

<sup>63</sup> Munzhendzi PH 'The Role of Separation of Powers in Ensuring Public Accountability in South Africa: Policy versus Practice' available at [http://ulspace.ul.ac.za/bitstream/handle/10386/1882/munzhendzi\\_role\\_2017.pdf?sequence=1](http://ulspace.ul.ac.za/bitstream/handle/10386/1882/munzhendzi_role_2017.pdf?sequence=1) (accessed 21 August 2022)

opposition, which is similarly ineffectual. Due to the existence of over 35 government departments and 700 SOEs, Wandrag asserts that the supervision responsibility entrusted to the National Assembly is enormous.<sup>64</sup>

## 2.9 Public Finance Management Act 1 of 1999

The Public Finance Management Act (PFMA) aims to ensure accountability and sound management of public sector institutions' revenue, expenditure, assets, and liabilities.<sup>65</sup> It identifies SOEs as public entities that are referred to as national government business enterprises and defined as juristic persons under the ownership control of the national executive.<sup>66</sup> In this context, the term 'national executive' denotes the minister who holds the responsibility for overseeing that specific department. According to the PFMA, the national executive has the authority to nominate and dismiss a majority of the board members of a business. This provision is outlined in section 49 of the PFMA.<sup>67</sup>

This problematic term, 'ownership control', assigns a tripartite responsibility to a single individual, the minister. Consequently, he has the authority to appoint and dismiss board members, including executive managers, of SOEs. In addition, the minister is responsible for providing oversight and drafting legislation for these SOEs. This has opened the door to political appointments and state capture, Wandrag argues, resulting in several governance issues in SOEs.<sup>68</sup>

The PFMA stipulates the fiduciary duties and general obligations of governing bodies, department heads, accounting officers, managers, and accounting authorities, and

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<sup>64</sup> Wandrag R 'Legal Framework SOE Boards' (2018) ). Available at [https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag\\_legal\\_framework\\_v4-1-3-for-electronic-use-1.pdf/view](https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag_legal_framework_v4-1-3-for-electronic-use-1.pdf/view) (accessed 10 September 2022)

<sup>65</sup> Kanyane & Sausi 'Reviewing state-owned entities 'governance landscape in South Africa' (2015) vol. 9 *African Journal of Business Ethics* 2 available at [https://www.researchgate.net/publication/309453546\\_Reviewing\\_State-Owned\\_Entities\\_Governance\\_Landscape\\_in\\_South\\_Africa](https://www.researchgate.net/publication/309453546_Reviewing_State-Owned_Entities_Governance_Landscape_in_South_Africa) (accessed 12 July 2022)

<sup>66</sup> Public Finance Management Act 1 of 1999

<sup>67</sup> Section 49 Public Finance Management Act 1 of 1999

<sup>68</sup> Wandrag R 'Legal Framework SOE Boards' (2018) ). Available at [https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag\\_legal\\_framework\\_v4-1-3-for-electronic-use-1.pdf/view](https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag_legal_framework_v4-1-3-for-electronic-use-1.pdf/view) (accessed 10 September 2022)

provides for personal liability in the event of a breach of statutory duties.<sup>69</sup> According to Kanyane and Sausi, accounting authorities typically refer to boards; however, in the absence of a board, the statutory governing body serves as an 'authority'.<sup>70</sup> In exceptional cases, the Treasury may approve or direct a different body to serve as the accounting authority for a public entity.<sup>71</sup>

According to Section 3(3) of the PFMA, if there is a dispute between the PFMA and other laws that control the regulation of SOEs, the PFMA must always be given precedent. This means that the PFMA is considered the primary legislation when it comes to governing SOEs and SOCs.<sup>72</sup> This situation produces a problematic position because South Africa's legislative structure is seen to be fragmented due to underlying discrepancies. According to Section 5(4) Companies Act of 2008, if there is an inconsistency, both laws should be applied simultaneously.<sup>73</sup> This demonstrates the absence of a standardised set of fundamental regulations that govern all SOEs and SOCs.

Provisions 46 and 86 of the PFMA are important in terms of financial and governance matters. These provisions mandate that every public organisation controlled by the PFMA must have an accounting authority.<sup>74</sup> Tleane emphasises the importance of accounting authority in maintaining precise and reliable books and records, as well as in preparing accurate financial statements and other required reports.<sup>75</sup> This responsibility is typically delegated to senior management, and the committee and

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<sup>69</sup> Kanyane & Sausi 'Reviewing state-owned entities 'governance landscape in South Africa' (2015) vol. 9 *African Journal of Business Ethics* 2 available at [https://www.researchgate.net/publication/309453546\\_Reviewing\\_State-Owned\\_Entities\\_Governance\\_Landscape\\_in\\_South\\_Africa](https://www.researchgate.net/publication/309453546_Reviewing_State-Owned_Entities_Governance_Landscape_in_South_Africa) (accessed 12 July 2022)

<sup>70</sup> Kanyane & Sausi 'Reviewing state-owned entities 'governance landscape in South Africa' (2015) vol. 9 *African Journal of Business Ethics* 2 available at [https://www.researchgate.net/publication/309453546\\_Reviewing\\_State-Owned\\_Entities\\_Governance\\_Landscape\\_in\\_South\\_Africa](https://www.researchgate.net/publication/309453546_Reviewing_State-Owned_Entities_Governance_Landscape_in_South_Africa) (accessed 12 July 2022)

<sup>71</sup> Kanyane & Sausi 'Reviewing state-owned entities 'governance landscape in South Africa' (2015) vol. 9 *African Journal of Business Ethics* 2 available at [https://www.researchgate.net/publication/309453546\\_Reviewing\\_State-Owned\\_Entities\\_Governance\\_Landscape\\_in\\_South\\_Africa](https://www.researchgate.net/publication/309453546_Reviewing_State-Owned_Entities_Governance_Landscape_in_South_Africa) (accessed 12 July 2022)

<sup>72</sup> Section 3 (3) of the Public Finance Management Act 1 of 1999.

<sup>73</sup> Section 5(4) of Companies Act of 2008

<sup>74</sup> Sections 46 and 86 of the PFMA

<sup>75</sup> Tleane K 'State-Owned Enterprise Bailouts on Economic Growth: A Case on South African Airways' available at [http://ulspace.ul.ac.za/bitstream/handle/10386/3273/tleane\\_state\\_2020.pdf?sequence=1&isAllowed=y](http://ulspace.ul.ac.za/bitstream/handle/10386/3273/tleane_state_2020.pdf?sequence=1&isAllowed=y) (accessed 20 June 2022)

board or authority monitor its progress and accuracy.<sup>76</sup> One of the aims of the accounting authority is to prevent irregular and wasteful spending.<sup>77</sup> However, wasteful and irregular spending by SOEs has worsened rather than improved over the years, and the Auditor-General, who has the authority to take action against those who waste taxpayers' money, has indicated that this is largely attributable to a lax attitude among those responsible for governance.<sup>78</sup>

Section 50 of the PFMA mandates the accounting authority to uphold fidelity, honesty, and integrity in the best interests of the public entity. Additionally, they are required to disclose all material facts, including those that can reasonably be discovered, to the Minister of Finance, which may influence the Minister's decisions or actions. Furthermore, they must take measures to prevent any harm to the state's financial interests.<sup>79</sup> Section 50 of the PFMA mandates the accounting authorities of SOEs to fulfill their fiduciary responsibilities in line with common law and to fulfill developmental obligations that are comparable to those in the private sector.<sup>80</sup>

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<sup>76</sup> Tleane K 'State-Owned Enterprise Bailouts on Economic Growth: A Case on South African Airways' available at [http://ulspace.ul.ac.za/bitstream/handle/10386/3273/tleane\\_state\\_2020.pdf?sequence=1&isAllowed=y](http://ulspace.ul.ac.za/bitstream/handle/10386/3273/tleane_state_2020.pdf?sequence=1&isAllowed=y) (accessed 20 June 2022)

<sup>77</sup> The Public Finance Management Act 1 of 1999

<sup>78</sup> 'PFMA audit results: overall deterioration again' available at <https://www.corruptionwatch.org.za/pfma-audit-results-overall-deterioration-nationally-and-provincially/amp> (accessed 25 July 2023)

<sup>79</sup> Section 50 of the PFMA

<sup>80</sup> Tleane K 'State-Owned Enterprise Bailouts on Economic Growth: A Case on South African Airways' available at [http://ulspace.ul.ac.za/bitstream/handle/10386/3273/tleane\\_state\\_2020.pdf?sequence=1&isAllowed=y](http://ulspace.ul.ac.za/bitstream/handle/10386/3273/tleane_state_2020.pdf?sequence=1&isAllowed=y) (accessed 20 June 2022)

The PFMA places a greater emphasis on financial management rather than the overall obligations of the accounting authority. The PFMA focuses great importance on the definition of ownership control, as it grants the minister the power to select and remove the board of directors and the CEOs or executives. This is problematic because it gives excessive power to a single individual and removes the ability of the board of directors to have the CEO and executives report to them. Furthermore, the PFMA gives the custodian minister the authority to appoint a board of directors, but it does not specify the criteria for the appointment or removal of SOCs' board members. Moreover, the PFMA is the general framework governing all SOEs and SOCs.<sup>81</sup>

The next section discusses the Companies Act, which is a guiding statute for legal entities that engage in commercial activities on behalf of the government.<sup>82</sup>

## **2.10 Companies Act 71 of 2008**

This Act applies only to SOCs registered by the Companies Act, which is not the case for all SOEs.<sup>83</sup> As stated previously, these entities are registered companies. The term 'SOC' is defined in the Companies Act section 1 as an organisation that is registered in terms of this Act as a company and classified in Schedule 2 or 3 of the PFMA as a public entity.<sup>84</sup> Section 8 classifies SOCs as profit-making corporations, whereas section 1 defines a profit corporation as a corporation whose purpose is to generate financial gain for its shareholders.<sup>85</sup>

Since SAA is a focal point of this study and it is a SOC, it is therefore imperative to discuss the Companies Act. The purpose of section 2 of the Act is to provide for the

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<sup>81</sup> de Visser J & Waterhouse S 'SOE Boards and Democracy' (2020). Available at <https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/soe-boards-and-democracy-final-pdf-version-12-feb-2020.pdf> (accessed 4 September 2022)

<sup>82</sup> 'SOC's IN THE DPE PORTFOLIO' available at <https://dpe.gov.za/state-owned-companies/> (accessed 14 July 2022)

<sup>83</sup> de Visser J & Waterhouse S 'SOE Boards and Democracy' (2020). Available at <https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/soe-boards-and-democracy-final-pdf-version-12-feb-2020.pdf> (accessed 4 September 2022)

<sup>84</sup> Section 1 of the Companies Act 71 of 2008

<sup>85</sup> Wandrag R 'Legal Framework SOE Boards' (2018) ) [https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag\\_legal\\_framework\\_v4-1-3-for-electronic-use-1.pdf/view](https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag_legal_framework_v4-1-3-for-electronic-use-1.pdf/view) (accessed 10 September 2022)

incorporation, registration, organisation, and management of companies, to define the relationships between companies and their respective shareholders, and to establish a financial rerouting standard council to guide financial record-keeping.<sup>86</sup> The following section will consider the governance of SOCs.

## 2.11 Governance of SOCs

In terms of SOC governance, the Companies Act acknowledges two key stakeholders: shareholders and the board of directors. According to Section 66 of the Companies Act, a company's operations and affairs must be overseen by its board, which has the authority to exercise all of the company's powers and fulfill all of its duties, unless restricted by the Companies Act or the Memorandum of Incorporation (MOI).<sup>87</sup> The board of directors oversees the management of the firm's business: it is responsible for making strategic and operational decisions and ensuring that the company satisfies its legal requirements.<sup>88</sup>

Section 76 of the Act outlines the criteria that directors must meet when carrying out their responsibilities.<sup>89</sup> These provisions include the fiduciary duties established by common law.<sup>90</sup> Shareholders have limited involvement in the day-to-day operations of a company, as their main job is focused on determining the company's long-term strategic direction. However, they do have the power to select or dismiss directors, which allows them to exert some influence.<sup>91</sup> Section 5 (4) of the Act stipulates that if there is a conflict between the Act and another national law, both laws apply concurrently to the degree possible.<sup>92</sup>

Section of the Companies Act gives a review of the criteria for conduct that the board

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<sup>86</sup> Section 2 of the Companies Act 71 of 2008

<sup>87</sup> Section 66 of the Companies Act 71 of 2008

<sup>88</sup> de Visser J & Waterhouse S 'SOE Boards and Democracy' (2020). Available at <https://dullahomarinstitute.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/soe-boards-and-democracy-final-pdf-version-12-feb-2020.pdf> (accessed September 2022)

<sup>89</sup> Section 76 of the Companies Act 71 of 2008

<sup>90</sup> Section 76 of the Companies Act 71 of 2008

<sup>91</sup> Understanding the fundamental Duties and Responsibilities of a Director of a Company. Available at <https://serr.co.za/understanding-the-fundamental-duties-and-responsibilities-of-a-director-of-a-company> (accessed 17 September 2022)

<sup>92</sup> Section 5(4) of the Companies Act 71 of 2008

of directors must adhere to. 76.<sup>93</sup> The Act provides the board with autonomy to make decisions with the guidance of the shareholders.<sup>94</sup> Furthermore, the Companies Act regulates the eligibility criteria for individuals to serve on a board of directors. This section will examine the initial legislation that established SAA.

## **2.12 South African Airways Act 5 of 2007**

The aforementioned statute serves as the foundational legislation for SAA. According to Wandrag, the discussion of founding legislation should not focus on its general applicability, as it is specific to the institution in question.<sup>95</sup> Furthermore, the founding laws vary, with certain laws including comprehensive financial provisions while others specify the hiring, duties, and dismissal of the board of directors.<sup>96</sup> The SAA Act primarily addresses the transfer of shares from Transnet Limited to the State of South African Airways (Proprietary) Limited. Its purpose is to facilitate the conversion of South African Airways (Proprietary) Limited into a public business.<sup>97</sup> The Act does not address matters related to corporate governance, such as the procedures for appointing and dismissing directors, and the responsibilities they have in ensuring effective management of SAA.

## **2.13 The King IV Code And Report On Corporate Governance**

In addition to the laws above, there are soft law instruments, protocols, and recommendations that are voluntary, but which have considerable influence.<sup>98</sup> This section examines these protocols and recommendations. The King IV Code and Report were published by the Institute of Directors of Southern Africa (IoDSA) in

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<sup>93</sup> Section 76 of the Companies Act 71 of 2008

<sup>94</sup> Section 66 of the Companies Act 71 of 2008

<sup>95</sup> Wandrag R 'Legal Framework SOE Boards' (2018) ) [https://dullahomarinstitute.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag\\_legal\\_framework\\_v4-1-3-for-electronic-use-1.pdf/view](https://dullahomarinstitute.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag_legal_framework_v4-1-3-for-electronic-use-1.pdf/view) (accessed 10 September 2022)

<sup>96</sup> Wandrag R 'Legal Framework SOE Boards' (2018) ) [https://dullahomarinstitute.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag\\_legal\\_framework\\_v4-1-3-for-electronic-use-1.pdf/view](https://dullahomarinstitute.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag_legal_framework_v4-1-3-for-electronic-use-1.pdf/view) (accessed 10 September 2022)

<sup>97</sup> South African Airways Act 5 of 2007

<sup>98</sup> de Visser J & Waterhouse S 'SOE Boards and Democracy' (2020). Available at <https://dullahomarinstitute.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/soe-boards-and-democracy-final-pdf-version-12-feb-2020.pdf> (accessed 4 September 2022)

2016.<sup>99</sup> According to Chauke and Motubase, the design of King IV recognises the need for SOEs to address South Africa's lack of a practical, principle-based approach to good corporate governance, which can be accomplished by taking a holistic, rather than a box-checking, approach to good corporate governance.<sup>100</sup> The King IV Report, which is the most recent addition, consists of 17 principles, some of which outline how board members should conduct themselves.<sup>101</sup> King IV applies to all entities, regardless of how they were established, but it is binding on all JSE-listed companies.<sup>102</sup> The section below examines a few principles that are consistent with good corporate governance and which could be advantageous in South Africa.

**Principle 1:** The first principle states that the governing body must exercise effective and ethical leadership.<sup>103</sup> According to the King IV Report, this necessitates that board members hold each other accountable for decision-making and demonstrate ethical conduct. This is necessary in the context of South Africa, where leadership typically lacks SOE expertise and is selected based on political affiliation.<sup>104</sup>

**Principle 9:** The governing body should ensure that the evaluation of its performance, as well as that of its committees, its chair, and individual members, contributes to its ongoing performance and effectiveness improvement.<sup>105</sup> This is intended to

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<sup>99</sup> Chauke KR & Motubase KN 'King IV State-Owned Enterprise Supplement: The impact on the SOE's approach to Governance in South Africa'. Available at [http://ulspace.ul.ac.za/bitstream/handle/10386/3216/chauke\\_king\\_2020.pdf?sequence=1&isAllowed=y](http://ulspace.ul.ac.za/bitstream/handle/10386/3216/chauke_king_2020.pdf?sequence=1&isAllowed=y) (accessed 10 September 2022)

<sup>100</sup> Chauke KR & Motubase KN 'King IV State-Owned Enterprise Supplement: The impact on the SOE's approach to Governance in South Africa'. Available at [http://ulspace.ul.ac.za/bitstream/handle/10386/3216/chauke\\_king\\_2020.pdf?sequence=1&isAllowed=y](http://ulspace.ul.ac.za/bitstream/handle/10386/3216/chauke_king_2020.pdf?sequence=1&isAllowed=y)

<sup>101</sup> King IV Report on Corporate Governance for South Africa. Available at [https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA\\_King\\_IV\\_Report\\_-\\_WebVersion.pdf](https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA_King_IV_Report_-_WebVersion.pdf) (accessed 9 September 2022)

<sup>102</sup> Wandrag R 'Legal Framework SOE Boards' (2018). Available at [https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag\\_legal\\_framework\\_v4-1-3-for-electronic-use-1.pdf/view](https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/wandrag_legal_framework_v4-1-3-for-electronic-use-1.pdf/view) (accessed 10 September 2022)

<sup>103</sup> King IV Report on Corporate Governance for South Africa. Available at [https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA\\_King\\_IV\\_Report\\_-\\_WebVersion.pdf](https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA_King_IV_Report_-_WebVersion.pdf) (accessed 9 September 2022)

<sup>104</sup> State-owned enterprises shouldn't be used as pawns in South African Politics available at <https://mq.co.za/article/2017-09-19-state-owned-enterprises-shouldnt-be-used-as-pawns-in-south-african-politics/> (accessed 12 August 2022)

<sup>105</sup> King IV Report on Corporate Governance for South Africa. Available at <https://cdn.ymaws.com/www.iodsa> (accessed 9 May 2022)

encourage boards of directors to devise quarterly or annual mechanisms for evaluating their own performance.<sup>106</sup>

**Principle 14:** The governing body should ensure that the organisation remunerates fairly, responsibly, and transparently to promote the achievement of short-, medium-, and long-term strategic objectives and positive outcomes. This is an important principle because it speaks to the crisis that has been occurring in SOEs and SOCs, where directors have been paid high salaries, bonuses, and incentive schemes despite the SOEs and SOCs underperforming for instance Eskom's highest-earning board member de Ruyter paid R7.04 Million in 2022.<sup>107</sup> This high compensation has not made boards of directors more effective, honest, or accountable; rather, it has contributed to the increasing national debt.<sup>108</sup>

The principles were chosen because they are consistent with good corporate governance and highlight the significance of transparency, leadership, accountability, sound decision-making, and an active stakeholder role as the center of corporate governance, which is lacking in South African SOEs. King IV principle 1 reaffirms that good corporate governance is a comprehensive and interdependent set of arrangements that must be understood and implemented in an integrated manner – good governance is not a checkbox or compliance exercise. This means that integrating good corporate governance into an organisation's daily activities should be part of its culture. King IV part 6.6 has emphasised that all SOCs, including SAA, should apply these principles.<sup>109</sup>

Despite the King IV being a requirement, boards of firms like SAA have failed to adhere to the principles and have not demonstrated the ethical and effective leadership

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<sup>106</sup> Lewis Group-King IV Report, Available at <https://lewisgroup.co.za> (accessed 9 September 2022)

<sup>107</sup> Here is how much Andre Reuter and top Eskom directors are paid. Available at <https://businesstech.co.za/news/energy/589344/heres-how-much-andre-de-ruyter-and-other-top-eskom-directors-are-paid/> (accessed 23 June 2022)

<sup>108</sup> Gumede W Capping executive pay is the key to stop money guzzling SOE's from ruining SA. Available at <https://www.wits.ac.za/news/latest-news/opinion/2020/2020-10/capping-executive-pay-is-the-key-to-stop-money-guzzling-soes-from-ruining-sa.html> (accessed 11 September 2022)

mandated by the King Code..<sup>110</sup> Pravin Gordhan, the Minister of Public Enterprises, stated that the government has taken several steps to revive SOEs to make them more efficient, competitive, and accountable.<sup>111</sup> Several strategies, including the introduction of the SOE supplement and the Shareholder Management Bill, have been proposed; these will be discussed in the following sections. But first, the King IV SOE Supplement will be discussed below.

## 2.14 King IV SOE Supplement

King IV implemented the sector supplements, which are distinct from previous versions and apply to all PFMA Schedule 2 and Schedule 3 organisations.<sup>112</sup> The purpose of the sector supplements is to instruct various types of organisations on how to apply the King Code to their context – the supplements should not be read in isolation but together with the remainder of the King Report.<sup>113</sup> Five sector supplements cover municipalities, non-profit organisations, retirement funds, small and medium-sized businesses, and finally, SOEs.

For this section, only SOEs will be examined. The King IV Code's recommended principles and practices are referenced in the SOE's supplement to illustrate how they could be utilised, while the sector supplement guides how the recommended practices in the code could be implemented to meet the situational specifics of the various sectors.<sup>114</sup> The following principles are selected to illustrate the preceding sentence.

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<sup>110</sup> Chuene R, Demarthe Z & Mokoena S 'Directors beware! The court declares Dudu Myeni (Former SAA chair ) a delinquent director' available at [https://africanlii.org/articles/2020-07-03/a-hrefusersfasken1069a/directors-beware-the-court-declares-dudu-myeni-former-saa-chair-a-delinquent-director#:~:text=Her%20actions%20demonstrated%20delinquent%20conduct,11\)%20and%20\(12\)](https://africanlii.org/articles/2020-07-03/a-hrefusersfasken1069a/directors-beware-the-court-declares-dudu-myeni-former-saa-chair-a-delinquent-director#:~:text=Her%20actions%20demonstrated%20delinquent%20conduct,11)%20and%20(12)) (accessed 15 July 2022)

<sup>111</sup> Kemp Y 'Cabinet approves draft bill to overhaul SOEs like Eskom available at <https://www.esi-africa.com/finance-and-policy/cabinet-approves-draft-bill-to-overhaul-soes-like-eskom/> (accessed 18 September 2023)

<sup>112</sup> PART 6:SECTOR SUPPLEMENTS FOR STATE OWNED ENTITIES available at [https://cdn.ymaws.com/www.iodsa.co.za/resource/resmgr/King\\_IV/sector\\_supplements/SOE\\_supplement.pdf](https://cdn.ymaws.com/www.iodsa.co.za/resource/resmgr/King_IV/sector_supplements/SOE_supplement.pdf) (accessed 12 October 2022)

<sup>113</sup> Chauke KR & Motubase KN 'King IV State Owned Enterprise Supplement: The Impact on the SOE's A Approach to Governance in South Africa' available at [http://ulspace.ul.ac.za/bitstream/handle/10386/3216/chauke\\_king\\_2020.pdf?sequence=1&isAllowed=y](http://ulspace.ul.ac.za/bitstream/handle/10386/3216/chauke_king_2020.pdf?sequence=1&isAllowed=y) accessed 19 September 2022

<sup>114</sup> KING IV REPORT ON CORPORATE GOVERNANCE FOR SOUTH AFRICA 2016 available at <https://www.adams.africa/wp-content/uploads/2016/11/King-IV-Report.pdf> (accessed 12 October 2022)

**Principle 1: The accounting authority should lead effectively.**

This requires ethical and effective leadership from the governing body. Effective leadership requires competent and knowledgeable directors who comprehend and value the SOE's complexities. Additionally, the governing body should set the tone for a culture that fosters and cultivates accountability for the proper execution of SOEs.<sup>115</sup>

**Principle 5: The accounting authority should ensure that that the reports issued by SOEs enable stakeholders to make informed assessment of the SOE's performance and its short, -medium- and long-term prospects.**

The governing body should practise disclosure that enables stakeholders to make an informed assessment on the performance of the SOE and its ability to create value sustainability.<sup>116</sup> Meaningful disclosure is a mechanism by which community members and other stakeholders can hold a governing body accountable.<sup>117</sup>

**Principle 6: The accounting authority should serve as a focal point and custodian of corporate governance in the SOE.**

Section 50 of the PFMA and section 75 of the Companies Act require directors of SOEs to uphold the principles of good corporate governance, which derive from their fiduciary responsibilities. When directors adhere to good corporate governance, accountability comes naturally.<sup>118</sup>

**Principle 7: The accounting authority should comprise the appropriate balance of knowledge, skills, experience, diversity, and independence for it to discharge its governance role and responsibilities objectively and effectively.**

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<sup>115</sup> Chauke KR & Motubase KN 'King IV State Owned Enterprise Supplement: The Impact on the SOE's Approach to Governance in South Africa' available at [http://ulspace.ul.ac.za/bitstream/handle/10386/3216/chauke\\_king\\_2020.pdf?sequence=1&isAllowed=y](http://ulspace.ul.ac.za/bitstream/handle/10386/3216/chauke_king_2020.pdf?sequence=1&isAllowed=y) (accessed 19 September 2022)

<sup>116</sup> KING IV REPORT ON CORPORATE GOVERNANCE FOR SOUTH AFRICA 2016 available at <https://www.adams.africa/wp-content/uploads/2016/11/King-IV-Report.pdf> (accessed 12 October 2022)

<sup>117</sup> THE KING REPORT ON CORPORATE GOVERNANCE available at <https://www.nhbr.org.za/wp-content/uploads/2016/11/King-IV-Summary-1-November-2016.pdf> (accessed 19 September 2022)

<sup>118</sup> THE KING REPORT ON CORPORATE GOVERNANCE available at <https://www.nhbr.org.za/wp-content/uploads/2016/11/King-IV-Summary-1-November-2016.pdf> (accessed 19 September 2022)

This principle aims to address one of the most significant issues plaguing SOEs in South Africa by requiring the governing body to possess the appropriate level of competence.<sup>119</sup> This means that in order to become a board member of an SOE, an individual must possess appropriate qualifications and skills; furthermore, principle 7 requires a board of directors that cannot be influenced.<sup>120</sup>

**Principle 16: In the execution of its governance and responsibilities, the accounting authority should adopt a stakeholder-inclusive approach that balances the needs, interests, and expectations of material stakeholders with the best interest of an SOE over time.**

Principle 16 seeks to encourage stakeholder engagement, which is important because it counterbalances the minister's triplicate roles as shareholder, as the office appointing and removing board members, and as the office enforcing laws and regulations.

This section will consider the principles. It is evident that SOEs play a significant role in the South African economy. The introduction of the sector supplement would be even more effective if it were mandatory for all SOEs; if this were so, it could reduce and eventually eradicate the numerous problems affecting SOEs by ensuring that there are individuals with expertise in specific SOEs and that they can be held accountable for the decisions they make. The principles are silent, however, on consequences and how the board of directors and chief executive managers should be held accountable for poor performance. Although principle 16 attempts to address the minister's triplicate roles by involving shareholders, the sector supplement does not engage with the issues of the minister's excessive power and of who exactly should appoint the board of directors. The sectoral supplement should have made room for

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<sup>119</sup> THE KING REPORT ON CORPORATE GOVERNANCE available at <https://www.nhbr.org.za/wp-content/uploads/2016/11/King-IV-Summary-1-November-2016.pdf> (accessed 19 September 2022)

<sup>120</sup> Chauke KR & Motubase KN 'King IV State Owned Enterprise Supplement: The Impact on the SOE's Approach to Governance in South Africa' available at [http://ulspace.ul.ac.za/bitstream/handle/10386/3216/chauke\\_king\\_2020.pdf?sequence=1&isAllowed=y](http://ulspace.ul.ac.za/bitstream/handle/10386/3216/chauke_king_2020.pdf?sequence=1&isAllowed=y) (accessed 19 September 2022)

additional governing structures to aid in the balancing of powers and other crucial procedures, without relieving the minister of accountability or responsibilities.

## **2.15 The National State Enterprises Bill**

This is a proposed piece of legislation that has been released for public review. The purpose of the bill is to establish a State Management SOC Ltd, which will be incorporated under the Companies Act and governed by the PFMA.<sup>121</sup> In addition, the bill in Schedule A seeks to ensure that SOEs are overseen by a holding company that acts through its established board. This holding company will make certain that its subsidiaries are governed in a uniform and consistent manner.<sup>122</sup> The holding company will be required to conduct an independent evaluation of the holding company's board performance every three years and to establish a framework for monitoring the financial and operational performance of its subsidiaries.<sup>123</sup> Minister Pravin Gordhan commented on the bill, stating that it will have the benefit of separating the state's ownership functions from its policy and regulatory functions, as well as reducing political meddling, increasing professionalism, and safeguarding stakeholder value.<sup>124</sup>

Examining the bill reveals an implicit reference to the replacement of the Department of Public Enterprises (DPE) with the State Management SOC Ltd. It is unclear in the bill who the shareholder will be, or whether the President will appoint a cabinet minister and if so, which minister. The bill makes clear, however, that the shareholder must exercise all the rights and responsibilities of a shareholder under the Companies Act and must appoint and remove the board of directors by sections 68 and 71 of the Companies Act.<sup>125</sup> This means that the shareholder retains sole authority to appoint and remove the holding company's board of directors and that the same cycle of political interference, which is a major problem, may continue to occur.

The one positive aspect of the bill is that it will mandate the long-term commercial

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<sup>121</sup> National Enterprises Bill, 2023 No. 3882

<sup>122</sup> National Enterprises Bill, 2023 No. 3882

<sup>123</sup> National Enterprises Bill, 2023 No. 3882

<sup>124</sup> Peton C 'Gordhan proposes biggest shake-up of state owned companies since the 1990s.

Available at <https://www.news24.com/fin24/economy/gordhan-proposes-biggest-shake-up-of-state-owned-companies-since-the-1990s-20230918#> (accessed 19 September 2023)

<sup>125</sup> National Enterprises Bill, 2023 No. 3882

viability of all SOEs. This means that SOEs will be required to generate a profit, which can be accomplished in part by attracting private investment.<sup>126</sup> Lastly, the Bill speaks of government performance indicators; however, these are not being introduced. President Ramaphosa has previously spoken about performance contracts for ministers, which are like performance indicators, but three years later, none of the ministers have been held accountable for their progress.<sup>127</sup> Another concern is that this bill will become a white elephant like other pieces of legislation.

## 2.16 Legal Framework For Public Enterprises In Ethiopia

This section of the chapter will examine the legal framework for SOEs in Ethiopia.<sup>128</sup> Ethiopia's state-owned businesses were created through nationalisation.<sup>129</sup> The history of the legal framework of Ethiopia's SOEs can be divided into three eras: the imperial era, the socialist era, and the post-1991 era. It is important to note that in Ethiopia, SOEs are regarded as public enterprises following the Public Enterprise Proclamation No. 25/1992 and are therefore governed by the same proclamation. The remaining public enterprises that do not meet the requirements of this proclamation are governed by The Commercial Code Proclamation No.1234/2021 hence forth the Commercial Code.<sup>130</sup> This section will cover only the years after 1991.<sup>131</sup> The following is a brief discussion of the elements of the legal framework governing public enterprises, with the elements examined in ascending order, beginning with the most important of them.

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<sup>126</sup> National Enterprises Bill, 2023 No. 3882

<sup>127</sup> Felix J Performance agreements: No minister has been made to answer for his or her progress. Available at <https://www.news24.com/news24/southafrica/news/performance-agreements-no-minister-has-been-made-to-answer-for-his-or-her-progress-da-20220324> (accessed 19 September 2023)

<sup>128</sup> T Meheret 'The concept and characteristics of public enterprises in Ethiopia: an overview' 8 (2) (2014) vol. 8 *Mizan Law Review* 2 available at <https://www.ajol.info/index.php/mlr/article/view/117544> (accessed 21 August 2022). Nationalisation is the process of transferring privately owned corporations and assets to government control.

<sup>129</sup> T Meheret 'The concept and characteristics of public enterprises in Ethiopia: an overview' 8 (2) (2014) vol. 8 *Mizan Law Review* 2 available at <https://www.ajol.info/index.php/mlr/article/view/117544> (accessed 21 August 2022)

<sup>130</sup> The Commercial Code Proclamation No.1234/2021

<sup>131</sup> Ashagrey H & de Visser J 'The Regulation of Public Enterprises in Ethiopia:Lessons for South Africa available at <https://dullahomarinstitute.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/08082019-soes-in-ethiopia-final-word-version.pdf> (accessed 25 September 2022)

## **2.17 Constitution of The Federal Democratic Republic of Ethiopia**

Article 9(1) of the Constitution of the Federal Democratic Republic of Ethiopia, 1995, declares the Constitution supreme and stipulates that any law, customary practice, or decision of an organ of state or a public official that contravenes it shall be of no effect. Article 9(2) reiterates that all citizens, organs of state, political organisations, other associations as well as their officials must ensure observance of the Constitution and obey it.<sup>132</sup>

Various provisions in the Constitution refer indirectly to public enterprises; for instance, article 5 states that Ethiopia consists of a federal government and state members, with the federal government formulating and implementing the country's policies, strategies, and plans concerning overall economic development.<sup>133</sup> The federal government is also responsible for the regulation of air, rail, and waterways.<sup>134</sup> The Constitution does not specifically refer to public enterprises or how they are meant to be run, but it does specify which branch of the government is accountable for the country's overall economic growth, namely the federal government.

## **2.18 Proclamation of Public Enterprises and Ethiopian Airline**

As stated, the Ethiopian Constitution implicitly recognises public enterprises, but public enterprises must have specific legislation. This section will discuss only two proclamations: the Public Enterprises Proclamation No. 25/1992, which regulates public enterprises the most, and the Civil Aviation Proclamation, which is the founding law of Ethiopian Airlines – a crucial component of this study.

## **2.19 Public Enterprises Proclamation (NO 25 of 1992)**

The Public Enterprises Proclamation No. 25/1992 (*Negarit Gazeta*, 51<sup>st</sup> year, No. 21) (hereafter Public Enterprises Proclamation) defines 'public enterprises' as wholly state-owned. As stated in the preamble.<sup>135</sup>

## **2.20 Structure of Public Enterprises Under the Proclamation**

Article 10 of the Public Enterprises Proclamation requires every public enterprise to

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<sup>132</sup> Article 9(2) of the FDRE Constitution

<sup>133</sup> Article 5 of the FDRE Constitution

<sup>134</sup> Article 5 of the FDRE Constitution

<sup>135</sup> PUBLIC ENTERPRISES PROCLAMATION (NO 25 of 1992)

have a supervising authority and a management board, with the supervising authority having the authority to appoint and remove board members.<sup>136</sup> The next section examines this in depth.

### **2.20.1 The Management Board**

The management board is considered the highest decision-making body of the enterprise.<sup>137</sup> Article 8 of the Proclamation stipulates that the formation of a management board should ensure that no more than one-third of its members are elected by the workers' general assembly.<sup>138</sup> The remaining board members shall be appointed by the supervisory authority.<sup>139</sup> Article 12(4) stipulates that board members shall be appointed or elected based on their profession, experience, and expertise.<sup>140</sup>

Addressing its liability, article 15 states that the management board must carry out its responsibilities with care and is jointly and severally liable to the enterprise for any harm caused by its failure to do so.<sup>141</sup> To increase accountability, management liability should also be incorporated into Ethiopian law, which would be a positive development.

Concerning resignation and removal, the Proclamation in Article 10 stipulates that a vacancy resulting from resignation must be filled in the same manner as a resigning member was appointed to office, with the management board consulting with the supervisory authority.<sup>142</sup> Regarding removal from office, the Proclamation grants the supervising authority the sole authority to dismiss a member; if there are sufficient grounds to deem him or her unfit to continue serving, the authority may dismiss both elected and appointed members.<sup>143</sup>

The Proclamation does stipulate the organisational structure of public enterprises. It clearly states that they are governed by the federal government and are required to

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<sup>136</sup> Article 10 PUBLIC ENTERPRISES PROCLAMATION (NO 25 of 1992)

<sup>137</sup> Ashagrey H & de Visser J 'The Regulation of Public Enterprises in Ethiopia: Lessons for South Africa' available at <https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/08082019-soes-in-ethiopia-final-word-version.pdf> (accessed 25 September 2022)

<sup>138</sup> Article 8 of The Public Enterprises Proclamation No. 25/1992, Negarit Gazeta, 51 st year, No. 21

<sup>139</sup> Public Enterprises Proclamation No. 25/1992, Negarit Gazeta, 51 st year, No. 21

<sup>140</sup> Article 12(4) Public Enterprises Proclamation No. 25/1992, Negarit Gazeta, 51 st year, No. 21

<sup>141</sup> Public Enterprises Proclamation No. 25/1992, Negarit Gazeta, 51 st year, No. 21

<sup>142</sup> Article 12 (8) Public Enterprises Proclamation No. 25/1992, Negarit Gazeta, 51 st year, No. 21

<sup>143</sup> Article 10 PUBLIC ENTERPRISES PROCLAMATION (NO 25 of 1992)

have a supervisory authority responsible for selecting the management board, and are required to do so according to profession, experience, and expertise, as stated above. The Proclamation also lays out that the supervising authority oversees the dismissal of a board member. However, it is silent on the appointment and election procedures for board members. There is hence no legal standard for openness and participation in the appointment procedure. Ashagrey and de Visser believe that the appointment of one-third of the board members by enterprise employees demonstrates public participation.<sup>144</sup> Involving employees in the selection of board members, which gives employees a voice and, in turn, could help broaden stakeholder engagement, is an important practice that the authors believe is potentially applicable to the South African context.

This above is the general legislation governing SOEs; it is also imperative that the founding legislation of Ethiopian Airlines be discussed, as will be done below.

## **2.21 Civil Aviation Proclamation 616-2008**

The Civil Aviation Proclamation is the founding legislation of Ethiopian Airlines.<sup>145</sup> Its purpose is to modernise aviation laws to be in line with international standards.<sup>146</sup> It also stipulates the authority and responsibilities of the Ministry of Transport, which is responsible for all policy-related matters.<sup>147</sup> The Civil Aviation Proclamation empowers the Ethiopian Civil Aviation Authority (ECAA), which is accountable to the Ministry of Transport, with the task of ensuring the development of a safe, reliable, and modern air transport sector.<sup>148</sup> By law, the ECAA must audit and regulate the airline industry.<sup>149</sup> The proclamation stipulates that the ECAA must have a Director-General (DG) charged with employing and supervising Authority employees following government-approved directives.<sup>150</sup> The DG may delegate a portion of his or her powers and

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<sup>144</sup> Ashagrey H & de Visser J 'The Regulation of Public Enterprises in Ethiopia: Lessons for South Africa' available at <https://dullahomarinate.org.za/women-and-democracy/board-members-of-state-owned-enterprises-towards-transparent-appointments/reports/08082019-soes-in-ethiopia-final-word-version.pdf> (accessed 25 September 2022)

<sup>145</sup> 'Ethiopian Civil Aviation Authority' available at <http://www.ecaa.gov.et/Home/about-us/vision-mission-and-values/> (accessed 12 August 2022)

<sup>146</sup> 'Ethiopian Civil Aviation Authority' available at <http://www.ecaa.gov.et/Home/about-us/vision-mission-and-values/> (accessed 12 August 2022)

<sup>147</sup> Civil Aviation Proclamation 616-2008

<sup>148</sup> 'Ethiopian Civil Aviation Authority' available at <http://www.ecaa.gov.et/Home/about-us/vision-mission-and-values/> (accessed 12 August 2022)

<sup>149</sup> Civil Aviation Proclamation 616-2008

<sup>150</sup> Article 12 of the Civil Aviation Proclamation 616-2008

responsibilities to officials and other employees of the Authority to the extent necessary for the efficient management of the Authority's activities.<sup>151</sup> This is an important requirement because it places value in improving public enterprises by sharing responsibility, which stands to ensure their growth and sustainability, features which South African SOEs are lacking.

The proclamation is silent on the appointment and duties of the management board of Ethiopian Airlines, but it does outline the duties of the DG, who is also responsible for the employment of other officials; this, however, is too much power for one person. Since the aviation proclamation is silent on the appointment and duties of the management board, it is important to consider Ethiopia's general corporate governance regarding promoting accountable decision-making by the board.

## **2.22. Corporate Governance In Ethiopia**

In Ethiopia, the Code of Corporate Governance for Public Enterprises Directive No. 501-2020 (hereafter the Code) governs corporate governance, as its title makes clear. The Code begins by stating that modern corporate governance provides a fertile environment for implementing corporate governance within public enterprises to ensure that they are managed by individuals with the necessary skills, qualifications, expertise, integrity, and ethical conduct.<sup>152</sup> Providing a sound legal and regulatory framework for public enterprises, and establishing an appropriate structure for effective oversight by the ownership entity to increase the accountability of public enterprises, are among the objectives of the Code.<sup>153</sup>

The Code stipulates that the minister must select, appoint, induct, and develop its board members.<sup>154</sup> Transparency is required in the selection of board members to ensure the placement of competent leadership and professionalism.<sup>155</sup> In addition, the Authority must ensure that board members maintain a variety of experiences, and intangible qualities such as communication skills, leadership, and ethical integrity; the board must also include both public and private sector directors to ensure

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<sup>151</sup> Articles 12–13 of Civil Aviation Proclamation 616-2008

<sup>152</sup> The Code of Corporate governance for Public Enterprises Directive No. 501-2020

<sup>153</sup> The Code of Corporate governance for Public Enterprises Directive No. 501-2020

<sup>154</sup> The Code of Corporate governance for Public Enterprises Directive No. 501-2020

<sup>154</sup> The Code of Corporate governance for Public Enterprises Directive No. 501-2020

<sup>155</sup> The Code of Corporate governance for Public Enterprises Directive No. 501-2020

professionalism and a fresh perspective. <sup>156</sup> Moreover, the board members should guide enterprise management with leadership integrity and sound judgment to ensure the enterprise's continued growth and competitiveness.<sup>157</sup>

The preceding paragraph illustrates Ethiopia's commitment to adhering to international standards of corporate governance. The Code indicates that it necessitates a council, consisting of several individuals, to assume the responsibility of appointing board members who possess competence and represent diverse economic sectors. This is of utmost importance as it fosters economic growth and enhances competitiveness, a phenomenon that has not been witnessed in South Africa.

Rwanda is yet another country whose airline has been gaining attention. Its legal framework is discussed in the section below.

### **2.23. Legal Framework for SOEs in Rwanda**

This section examines the legal framework governing state-owned corporations in Rwanda. In Rwanda, it is said that rules and regulations are necessary to ensure a proper balance between self-interest and majority interests.<sup>158</sup> Elements of the Rwandan legal framework will be discussed in ascending order, beginning with the country's constitution.

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<sup>156</sup> The Code of Corporate governance for Public Enterprises Directive No. 501-2020

<sup>157</sup> The Code of Corporate governance for Public Enterprises Directive No. 501-2020

<sup>158</sup> Mwika J *Is it vital to have Corporate Governance Codes for Institutional Investors & Capital Markets? A Case Study of Rwanda* *Is it vital to have Corporate Governance Codes for Institutional Investors & Capital Markets? A Case Study of Rwanda* (Submitted as part of the requirement for completing an MSc in Accounting and Finance) (2012)

## 2.24 The Constitution of The Republic of Rwanda 2003 as Amended in 2015

The Constitution of the Republic of Rwanda, 2003 does not provide guidelines on how SOEs should be governed; however, it is article 37 states that the President, ministers, and secretaries of state are prohibited from using their positions to acquire or dispose of state property.<sup>159</sup> Furthermore, article 38 stipulates that these office-holders may be prosecuted or arrested for crimes or misdemeanours only if the National Assembly votes by secret ballot. This is essential because accountability is regarded as the fundamental relationship between the state and its citizens. To maintain the transparency and accountability of corporations, the Company Law Act sets out provisions with which SOEs must comply.

## 2.25 The Companies Law Act 7 of 2009

In Rwanda, the law governing companies was amended and enacted via law number 07/2009.<sup>160</sup> The Companies Law Act of 1988 had to be replaced by the Companies Act of 2009 due to its several shortcomings, such as inadequate provisions for corporate financial reporting, corporate structure, business start-up simplification, and protection of minority shareholders.<sup>161</sup>

The Companies Law specifies, among other things, the guidelines for company incorporation and the rights and obligations of shareholders.<sup>162</sup> Article 7 of Rwandan company law states that, unless stated otherwise in the application for incorporation, every company is a public company.<sup>163</sup> Other than that, there is no clear definition of what a public company is; however, SOEs may be considered public companies due

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<sup>159</sup> Article 37 of the Constitution of the Republic of Rwanda 2003

<sup>160</sup> Mwika J *Is it vital to have Corporate Governance Codes for Institutional Investors & Capital Markets? A Case Study of Rwanda* *Is it vital to have Corporate Governance Codes for Institutional Investors & Capital Markets? A Case Study of Rwanda* (Submitted as part of the requirement for completing an MSc in Accounting and Finance) (2012)

<sup>161</sup> Mwika J *Is it vital to have Corporate Governance Codes for Institutional Investors & Capital Markets? A Case Study of Rwanda* *Is it vital to have Corporate Governance Codes for Institutional Investors & Capital Markets? A Case Study of Rwanda* (Submitted as part of the requirement for completing an MSc in Accounting and Finance) (2012)

<sup>162</sup> Mutabingwa A *Legal framework governing corporatized State-owned Enterprises (SoE) in Rwanda* (Thesis submitted in partial fulfilment of academic requirements for the award of the Master 's Degree in Business Law (2015)

<sup>163</sup> Mutabingwa A *Legal framework governing corporatized State-owned Enterprises (SoE) in Rwanda* (Thesis submitted in partial fulfilment of academic requirements for the award of the Master 's Degree in Business Law (2015)

to their reliance on public resources for capital.<sup>164</sup> Therefore, it could be argued that all public companies, including both listed and unlisted SOEs, should be subject to a uniform set of corporate governance and disclosure standards.<sup>165</sup> The selection of a board of directors is the initial step in enforcing corporate governance rules; this will be discussed in the following section.

### **2.25.1 Requirements for Appointment and Removal of Directors**

The Rwandan Companies Law requires companies to have a board of directors and provides guidelines for the appointment and removal of directors. Article 156 specifies the prerequisites for appointing a director, which include his or her being at least 16 years old and free of mental illness.<sup>166</sup> It also states that a public company's chairman of the board of directors and chief executive officer cannot be the same individual.<sup>167</sup> In addition, the Act specifies that a public company's board of directors must establish an audit committee composed of three independent non-executive directors whose responsibility it is to review the company's financial practices, the integrity of its financial controls and financial statements, and its compliance with legal requirements.<sup>168</sup> These responsibilities include appointing an independent auditor and supervising and monitoring that auditor.<sup>169</sup>

Article 160 stipulates that a company may remove one or more directors through a resolution passed at a general meeting of shareholders.<sup>170</sup> The Companies Law specifies who can be appointed to the board of directors and that an audit committee (along with its composition) is also required because it is charged with financial oversight. This level of precision is non-existent in South Africa's legal framework.

### **2.25.2 Non-Executive Directors**

The Act, in Article 158, states that in a public company, most directors must be non-

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<sup>164</sup> Mutabingwa A *Legal framework governing corporatized State-owned Enterprises (SoE) in Rwanda* (Thesis submitted in partial fulfilment of academic requirements for the award of the Master 's Degree in Business Law (2015)

<sup>165</sup> Mutabingwa A *Legal framework governing corporatized State-owned Enterprises (SoE) in Rwanda* (Thesis submitted in partial fulfilment of academic requirements for the award of the Master 's Degree in Business Law (2015)

<sup>166</sup> Article 156 of Companies Law Act 7 of 2009

<sup>167</sup> Article 156 of Companies Law Act 7 of 2009

<sup>168</sup> Article 156 of Companies Law Act 7 of 2009

<sup>169</sup> Article 156 of Companies Law Act 7 of 2009

<sup>170</sup> Article 160 of Companies Law Act 7 of 2009

executive directors and at least one-third must be independent directors.<sup>171</sup> In terms of the Act, a non-executive director is a person who does not form part of the management team of the company and is not an employee of the company, while an independent director is a person who does not have a pecuniary relationship with the company.<sup>172</sup> The Companies Law provides an analysis of the appointment and removal of corporate boards of directors. Even though the Companies Law provides a foundation for all businesses, it is important to discuss RwandAir's founding legislation, which we turn in the next section.

## **2.26 Rwanda Civil Aviation Regulation NO. 18 of 30/04/2018**

Article 2 stipulates that the Rwanda Civil Aviation Regulations (Civil Aviation Regulation) No.18 of 30/04/2018 governs civil aviation in Rwanda.<sup>173</sup> The minister of transport is vested with general regulatory authority and charged with ensuring that civil aviation regulations comply with those established by the Convention on International Civil Aviation.<sup>174</sup> Rwanda is making a deliberate effort to bring its laws in line with international civil aviation norms. This is significant and demonstrates their deliberate focus on the performance of their airline, which, in comparison, is smaller than SAA.

## **2.27 Corporate Governance in Rwanda**

Rwanda has implemented significant regulatory reforms to improve corporate governance.<sup>175</sup> Evaluations have enabled policymakers to assess the effectiveness of corporate governance reforms and measures.<sup>176</sup> As regards external reviews under the auspices of the African Union, Rwanda adopted the Africa Peer Review Mechanism in 2005 and the Report on the Observance of Standards and Codes (ROSC) in 2008.<sup>177</sup> As for internal reviews, the Rwanda Governance Board conducts

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<sup>171</sup> Article 158 of Companies Law Act 7 of 2009

<sup>172</sup> Article 158 of Companies Law Act 7 of 2009

<sup>173</sup> Article 2 of Rwanda Civil Aviation Regulations No. 18 of 30/04/2018

<sup>174</sup> Article 10 of Rwanda Civil Aviation Regulations No. 18 of 30/04/2018

<sup>175</sup> Walabyeki J 'Corporate Governance in Rwanda: Opportunities and Challenges' available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2953960](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2953960) (accessed 24 September 2022)

<sup>176</sup> Walabyeki J 'Corporate Governance in Rwanda: Opportunities and Challenges' available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2953960](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2953960) (accessed 24 September 2022)

<sup>177</sup> Walabyeki J 'Corporate Governance in Rwanda: Opportunities and Challenges' available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2953960](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2953960) (accessed 24 September 2022)

an annual review or audit of governance, including corporate governance.<sup>178</sup> The National Leadership Retreat (Umwiherero) is an annual leadership retreat that brings together senior government officials of the Government of Rwanda.<sup>179</sup> Moreover, Rwanda has improved its corporate governance through legislation and codes through the Capital Market Corporate Governance Code (2012).<sup>180</sup>

Rwanda's stance against corruption has fostered an environment conducive to high standards of business ethics.<sup>181</sup> The National Public Prosecution Authority, the Rwanda National Police, the Office of the Auditor General of State Finances, the Rwanda Public Procurement Authority, the Parliamentary Public Accounts Committee, and the Courts are involved in the fight against corruption.<sup>182</sup>

It is evident, then, that Rwanda is actively working to improve its corporate governance. Consequently, it is anticipated that investors will perceive it as a progressively attractive investment destination.<sup>183</sup> The evolution of corporate governance in Rwanda has been substantially influenced by both public and private Rwandan actors, as well as Rwanda's development partners, which include other countries and international organisations.

## 2.28. Conclusion

This chapter examined the legal framework that governs SOEs and SOCs in South Africa and found that while the Constitution is silent on the issue of governance of SOEs and SOCs, the National Assembly mandates the cabinet to hold the custodian minister accountable. The PFMA stipulates that the minister has the authority to appoint and dismiss both the board of directors and the chief executive officer; this is problematic because usually, the minister appoints political appointees, who in most

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<sup>178</sup> Walabyeki J 'Corporate Governance in Rwanda: Opportunities and Challenges' available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2953960](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2953960) (accessed 24 September 2022)

<sup>179</sup> Rwanda: 17<sup>th</sup> National Leadership Retreat to chart Rwanda's Journey Towards Vision 2050 available at <https://allafrica.com/stories/202002170379.html> (accessed 4 October 2022)

<sup>180</sup> Capital Market Corporate Governance Code (2012).

<sup>181</sup> Walabyeki J 'Corporate Governance in Rwanda: Opportunities and Challenges' available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2953960](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2953960) (accessed 24 September 2022)

<sup>182</sup> Rwanda Anti-Corruption Policy available at <https://www.ombudsman.gov.rw/index.php?eID=dumpFile&t=f&f=30702&token=adb4fb7dde310a9010741bdedd60735547c6c3b2> (accessed 4 October 2022)

<sup>183</sup> Walabyeki J 'Corporate Governance in Rwanda: Opportunities and Challenges' available at <https://papers.ssrn.com/sol3/papers.cfm? id=2953960> (accessed 24 September 2022)

cases lack the requisite qualifications. This demonstrates the minister's excessive authority to appoint and dismiss the board of directors and CEOs. Furthermore, the PFMA does not specify the criteria for appointment.

This illustrates the fragmented nature of the legal framework, as there are no SOE- and SOC-specific rules. It has been observed that the absence of SOE and SOC rules has resulted in political interference in the appointment process, leading to the appointment of unqualified and incompetent board members.

The new National State Enterprise Bill, which is still undergoing public comment, is supposed to be a game-changer and overhaul the governance of strategic state entities. If the bill is enacted, several visible changes will occur, including the formation of a holding company and the elimination of the Department of Public Enterprises. Even though the bill is well-intentioned, it has several flaws, the most significant of which is that there is no real protection from political interference and corruption because the state will remain the sole shareholder, which contributes significantly to the poor governance of SOEs and SOCs.

Ethiopia, on the other hand, has taken deliberate steps to ensure that the laws governing public enterprises include a regulatory body. The relevant proclamation also specifies who is responsible for electing and dismissing the board of directors. As regards Ethiopia's corporate governance, the board of directors should be competent and possess the appropriate set of skills.

The laws of Rwanda also govern the selection and removal of board members. When it comes to the appointment and removal of board members, Rwanda's laws, like Ethiopia's, do not vest this authority in a single individual. Furthermore, they specify how directors and board members who perform poorly should be disciplined. In addition, Rwanda, like Ethiopia, emphasises the importance of highly competent and skilled board members.

The next chapter examines SAA's successes and failures as a SOC.

## **CHAPTER 3: THE SUCCESS AND FAILURES OF SAA AS A SOC**

### **3.1 Introduction**

SAA was formerly one of the leading airlines in Africa, serving 20 destinations across the continent and major destinations within South Africa from its hub in Johannesburg.<sup>184</sup> According to flySAA, it identified its mission as ‘delivering commercially sustainable world-class air passenger and aviation services in South Africa, the African continent and to our tourism and trading partners’.<sup>185</sup> However, over the years SAA has struggled with numerous problems that have placed it in a precarious position.<sup>186</sup>

Part of Chapter 2 examined the fragmented legal framework for SOEs and SOCs. The analysis determined that the minister, who is the custodian of shares on behalf of the government, had an excessive amount of authority, as outlined in the PFMA. This concentration of power has resulted in the downfall of numerous SOCs. This chapter aims to evaluate the successes and failures of SAA as a SOC. It has three sections. The first section will discuss the history of the SAA, the second, its achievements, and the third, its failures. These three sections help to build the case that SAA is in dire need of restructuring and that this systemic change can be aided by drawing lessons from other airlines, which will be discussed in the following chapter.

### **3.2 Contextual background on SAA**

This section will examine the history of the SAA, beginning with its inception and continuation during the apartheid era. On 1 February 1934, SAA began operations as a government-backed airline managed by the country's Railway and Harbour Administration.<sup>187</sup> SAA then became a subsidiary of the South African Railways, which

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<sup>184</sup> ‘SAA Flight News in 2022 & Comprehensive History’ available at <https://www.southafrica.to/transport/Airlines/SAA-flights/SAA-news-offers.php#appointments> (accessed 20 October 2022).

<sup>185</sup> ‘SAA Flight News in 2022 & Comprehensive History’ available at <https://www.southafrica.to/transport/Airlines/SAA-flights/SAA-news-offers.php#appointments> (accessed 20 October 2022).

<sup>186</sup> Wasserman H ‘EXPLAINER: How SAA landed in such a mess available at <https://www.news24.com/news24/bi-archive/what-happened-at-saa-2020-1> (accessed 12 October 2022)

<sup>187</sup> ‘History of South African Airways’ available at <https://www.seatmaestro.com/airlines-seating-maps/south-african-airways/history/> (accessed 24 October 2022).

was responsible for the development of South Africa's transportation infrastructure.<sup>188</sup> The South African Railways was mandated to implement government policies, and its corporate purpose was not profit but rather to meet the nation's rapidly expanding transit demands.<sup>189</sup> Through the Air Service Act of 1949, the government protected SAA from competition and uneconomical duplication of services.<sup>190</sup> The Air Services Act 51 of 1949 governed domestic airlines in South Africa during the apartheid era. It is essential to note that SAA was shielded by financial support and subsidies.<sup>191</sup> This is intriguing because it demonstrates that from its inception, SAA was not a true business concern for the nation, and its need to generate a profit was secondary. The section that follows will discuss SAA during the apartheid era.

### 3.2.1 Apartheid Era

The apartheid era was chosen as it is an important historical era in SA and also how this part of history shaped and affected SAA's growth. Furthermore, it sets out to explore how the government's efforts to circumvent apartheid bans had lasting negative effects on SAA. During the apartheid era of the 1980s, the South African government utilised state corporations for a variety of purposes, including providing employment for the minority, producing weapons, countering international boycotts, and creating import substitute industries in response to international pressure and sanctions.<sup>192</sup> Clark argues that the government's protective tariffs and discriminatory wages led to the success of state corporations and gave the government the ability to withstand international boycotts and unrest.<sup>193</sup> This mini-thesis disagrees with the aforementioned statement that the government was able to withstand international boycotts because there was an enormous loss of private capital and revenues generated by such investments.<sup>194</sup>

According to Griffiths, the aviation industry was not immune to the increasing political

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<sup>188</sup> Mhlanga O & Steyn JN 'The aviation industry in South Africa: A historical overview' (2016) Vol. 5 (4) *African Journal of Hospitality, Tourism and Leisure* 3.

<sup>189</sup> Mhlanga O & Steyn JN (2016) 3.

<sup>190</sup> Mhlanga O & Steyn JN (2016) 3.

<sup>191</sup> Mhlanga O & Steyn JN (2016) 3.

<sup>192</sup> Clark N 'Structured Inequality: Historical Realities of the post-Apartheid Economy.' (2014) vol. 38 *Ufahamu: A Journal of African Studies* 1.

<sup>193</sup> Clark N 'Structured Inequality: Historical Realities of the post-Apartheid Economy.' (2014) vol. 38 *Ufahamu: A Journal of African Studies* 1.

<sup>194</sup> The Effects of Apartheid on South African Economy. Available at: <https://www.eddusaver.com/the-effects-of-apartheid-on-south-africa-economy/> (accessed 17 August 2022)

pressure due to the numerous local and international anti-apartheid demonstrations.<sup>195</sup> SAA was dealt a severe blow when many African states denied the airline permission to fly over their territories.<sup>196</sup> In the 1980s, the United States and Australia revoked SAA's landing rights, joining African states in preventing the airline from landing in their territories.<sup>197</sup> In addition, foreign nations prohibited their airlines from flying to South Africa; for example, Air Canada closed its representative office in South Africa during this time.<sup>198</sup>

Griffiths identifies some basic airways sanctions imposed on South Africa during apartheid that had an impact on SAA.<sup>199</sup> These sanctions included the denial of over-flying rights to any South African-based aircraft, which was initiated by United Nations Resolution 1761 of 1962, in terms of which member countries were encouraged to deny landing and passage facilities to South African aircraft and companies registered under South African law.<sup>200</sup> This resulted in a decline in flight schedules in 1988 when the number of weekly flights decreased from 61 to 51.<sup>201</sup>

In the United States, the boycott was through Congress passing the Comprehensive Anti-Apartheid Act, which denied landing privileges to all South African-based aircraft and was also later implemented by Australia..<sup>202</sup> Griffiths argues that European sanctions had the greatest impact because they prevented South African Airways from flying to and from Europe, resulting in revenue loss and a decline in tourism.<sup>203</sup> While the bans imposed by other African states had a lesser effect on SAA, the sanctions imposed by African states prevented SAA from flying internationally, as its aircraft were unable to fly nonstop and had to refuel in African states.<sup>204</sup> On the other hand, due to their dependence on South Africa for goods and services, numerous southern African nations feared imposing sanctions on the country.<sup>205</sup>

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<sup>195</sup> Griffiths ILI 'Airways Sanctions against South Africa' (1989) vol. 21 *Royal Geographical Society* 3.

<sup>196</sup> Griffiths ILI (1989) 250.

<sup>197</sup> Griffiths ILI (1989) 250.

<sup>198</sup> Griffiths ILI (1989) 250.

<sup>199</sup> Griffiths ILI (1989) 250.

<sup>200</sup> Griffiths ILI (1989) 250.

<sup>201</sup> Griffiths ILI (1989) 252.

<sup>202</sup> Griffiths ILI (1989) 251.

<sup>203</sup> Griffiths ILI (1989) 3.

<sup>204</sup> Griffiths ILI 'Airways Sanctions against South Africa' (1989) vol. 21 *Royal Geographical Society* 3

<sup>205</sup> Griffiths ILI (1989) 258.

The apartheid era demonstrates that this was the beginning of SAA's struggles, and that the new government inherited an airline that had endured numerous storms. The following is a discussion of SAA after apartheid.

### 3.2.2 Post-Apartheid Era

The end of apartheid in the early 1990s resulted in the lifting of sanctions, allowing SAA to resume international flights.<sup>206</sup> However, the effects of sanctions presented several obstacles, as SAA re-entered a global environment in which new carriers had entered the market, and international aviation was revolutionised because of global economic and political pressure.<sup>207</sup> This compelled SAA to adapt, and one of the ways it did so was by increasing the number of routes and destinations; by 1991, SAA served 11 African cities and four Indian Ocean islands, according to Pirie.<sup>208</sup> SAA was also competing with other African airlines, such as Air Zaire, EgyptAir, and Kenya Airways, flying to South Africa.<sup>209</sup> On the international stage, SAA was permitted to resume its trans-Atlantic route between the United States and Australia.<sup>210</sup>

The year 1990 marked a turning point for SAA when it became a subsidiary of Transnet Ltd.<sup>211</sup> This occurred when South African Transport Services changed from a government-run enterprise to a profit-seeking public company called Transnet Ltd.<sup>212</sup> SAA, following in the footsteps of Transnet make profit, entered into partnerships with private airlines. For instance, in 1991, SAA partnered with SA Express as a ten percent shareholder, with the agreement that SA Express operates SAA's low-density

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<sup>206</sup> Pirie GH 'Aviation, Apartheid and Sanctions: Air Transport to and from South Africa, 1945-1989' (1990) vol. 22 *GeoJournal* 3.

<sup>207</sup> Pirie GH 'Aviation, Apartheid and Sanctions: Air Transport to and from South Africa, 1945-1989' (1990) vol. 22 *GeoJournal* 3.

<sup>208</sup> Pirie GH 'Aviation, Apartheid and Sanctions: Air Transport to and from South Africa, 1945-1989' (1990) vol. 22 *GeoJournal* 3.

<sup>209</sup> Pirie GH 'Aviation, Apartheid and Sanctions: Air Transport to and from South Africa, 1945-1989' (1990) vol. 22 *GeoJournal* 3.

<sup>210</sup> Pirie GH 'Aviation, Apartheid and Sanctions: Air Transport to and from South Africa, 1945-1989' (1990) vol. 22 *GeoJournal* 3.

<sup>211</sup> 'TRANSNET LTD-Company Profile Information, Business Description, History, Background information on TRANSNET LTD' Available at : <https://www.referenceforbusiness.com/history2/26/TRANSNET-LTD.html> (accessed 29 October 2022)

<sup>212</sup> TRANSNET LTD-Company Profile Information, Business Description, History, Background information on TRANSNET LTD' Available at : <https://www.referenceforbusiness.com/history2/26/TRANSNET-LTD.html> (accessed 29 October 2022)

domestic routes.<sup>213</sup> In addition, SAA formed a strategic alliance with SA Express and SA Link in 1997, which was governed by a franchise agreement.<sup>214</sup> It was in the same year that SAA introduced a new corporate identity that reflected the colours of the country's new national flag: red, blue, gold, black, and green.<sup>215</sup>

Post-apartheid SAA had to navigate and find its footing in an environment that had become more competitive. Moreover, after transitioning from a government-run enterprise that shielded it from unnecessary economic competition to a for-profit enterprise, it was forced to build relationships with other airlines. This was not an easy transition; however, there were positive outcomes, and the following section will discuss SAA's accomplishments.

### 3.3 Successes of SAA

This section will focus on the achievements of the SAA as a SOC during apartheid, the transition to democracy, and the era since then. Before the imposition of sanctions, SAA needed to capitalise on its international relationships with countries such as the United Kingdom and the United States. In 1960, it introduced the new and faster Boeing 707 (B707) to achieve faster turnaround travel times; the same flight (B707) was introduced in the United States in 1969.<sup>216</sup> In Australia, SAA was successful in introducing a three-class service for an Australian flight: Blue Diamond First class, Gold class for business passengers, and Silver class for economy class passengers.<sup>217</sup> The partnership with these countries allowed SAA to flourish and diversify its portfolio by including Lisbon, Rome, and other cities.<sup>218</sup>

In the South African market, SAA created a business strategy that included discounted

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<sup>213</sup> History of South African Airways. Available at: <https://www.seatmaestro.com/airlines-seating-maps/south-african-airways/history/#> (accessed 12 November 2022)

<sup>214</sup> History of South African Airways. Available at: <https://www.seatmaestro.com/airlines-seating-maps/south-african-airways/history/#> (accessed 12 November 2022)

<sup>215</sup> Loh C Back 'From the Brink: The Story of South African Airways' available at <https://simpleflying.com/south-african-airways-history/> (accessed 3 January 2023).

<sup>216</sup> History of South African Airways. Available at: <https://www.seatmaestro.com/airlines-seating-maps/south-african-airways/history/#> (accessed 12 November 2022)

<sup>217</sup> History of South African Airways. Available at: <https://www.seatmaestro.com/airlines-seating-maps/south-african-airways/history/#> (accessed 12 November 2022)

<sup>218</sup> 'Brief History'. Available at <https://www.flysaa.com/about-us/leading-carrier/about-saa/brief-history> (accessed 23 November 2022)

fares to increase its market share in areas with no competition.<sup>219</sup> These discounts included the flexi-fare, which provided a 40 percent discount to passengers who booked a flight for a specific day but allowed the airline to change the flight within 48 hours of departure.<sup>220</sup> Secondly, as a result of the 'see South Africa' fare, which allowed 4, 000 kilometres of air travel for only R360, the airlines' timetables were reorganised, reducing the number of unprofitable and underutilised flights.<sup>221</sup> The number of late-night and early-morning flights increased as these flights proved to be a new travel market niche.<sup>222</sup> Business class was also introduced after extensive research revealed that a portion of the market was willing to pay more for services superior to those offered in economy class.<sup>223</sup> Within the first year of implementing the aforementioned incentives, the 1984/1985 fiscal year saw a 14 percent increase in passenger numbers compared to the 1983/1984 fiscal year, and a 16.5 percent increase in passenger revenues.<sup>224</sup> The targeted revenue was achieved, and the airline made a profit of R2.2 million.<sup>225</sup>

In the early 2000s, SAA made strides in securing profits by acquiring domestic and continental airline shares; for instance in 2003, as a result of the privatisation of Air Tanzania, SAA was able to acquire a minority stake of 49 percent.<sup>226</sup> In 2006, SAA made additional significant moves by, first, severing ties with Transnet, its parent company, and, secondly, forming an important partnership with Star Alliance to protect itself from increased competition from major international airlines such as Emirates and Ethiopian Airlines within the African region.<sup>227</sup>

In October 2006, as part of its multi-brand strategy, SAA launched Mango Airlines, a

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<sup>219</sup> Mhlanga O, *The Aviation Industry in South Africa: A historical overview* (2016) vol. 5 *African Journal of Hospitality, Tourism and Leisure* 4.

<sup>220</sup> Mhlanga O (2016) 4.

<sup>221</sup> Loh C Back 'From the Brink: The Story of South African Airways' available at <https://simpleflying.com/south-african-airways-history/> (accessed 03 January 2023).

<sup>222</sup> Mhlanga O (2016) 4.

<sup>223</sup> Mango Airline available at <https://kingshakainternational.co.za/mango-flights/> (accessed 14 March 2023)

<sup>224</sup> Mhlanga O (2016) 5.

<sup>225</sup> Mhlanga O (2016) 5.

<sup>226</sup> Mhlanga O (2016) 9.

<sup>227</sup> Loh C Back 'From the Brink: The Story of South African Airways' available at <https://simpleflying.com/south-african-airways-history/> (accessed 3 January 2023).

low-cost airline affiliated with SAA, and this contributed to a growth boost for SAA.<sup>228</sup> As a subsidiary of SAA, its goal was ‘to be recognised as the South African airline with the cheapest domestic fares and the best customer service compared to all other domestic airlines in South Africa’.<sup>229</sup> It also sought to leverage its position in the domestic market, which had strengthened significantly over the years, particularly in 2012 after the collapse of Kulula and 1time Airlines.<sup>230</sup> This positioned Mango well to fend off any new competition and gain more global recognition as a successful example of a full-service airline group's budget subsidiary.<sup>231</sup> Mango Airlines was able to sustain its growth by offering products such as lounge access, fee-free flight changes, and vouchers for onboard food and beverages. Additionally, it developed a travel management system for one of its airlines to deliver inventory to corporate customers.<sup>232</sup> According to early June 2013 traffic statistics, this resulted in a year-over-year increase in passenger levels.<sup>233</sup>

Before sanctions under apartheid, it is evident from the history of SAA that the airline was a well-oiled machine that was able to survive and grow. In addition, it had to navigate a highly competitive environment after sanctions were lifted. Secondly, it had to now operate as a profitable business, and under a new government it was able to reach the top spot on the continent. SAA was able to generate a profit as recently as 2011, but its financial performance has since deteriorated.<sup>234</sup> The next section of the study will focus on the demise of SAA.

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<sup>228</sup> Mango Airline available at <https://kingshakainternational.co.za/mango-flights/> (accessed 14 March 2023).

<sup>229</sup> Mango Airline available at <https://kingshakainternational.co.za/mango-flights/> (accessed 14 March 2023).

<sup>230</sup> South Africa's Mango, the often-forgotten budget airline subsidiary, starts to pursue faster growth' available at <https://centreforaviation.com/analysis/reports/south-africas-mango-the-often-forgotten-budget-airline-subsiidiary-starts-to-pursue-faster-growth-117288> (accessed 14 March 2023).

<sup>231</sup> 'South Africa's Mango, the often-forgotten budget airline subsidiary, starts to pursue faster growth' available at <https://centreforaviation.com/analysis/reports/south-africas-mango-the-often-forgotten-budget-airline-subsiidiary-starts-to-pursue-faster-growth-117288> (accessed 14 March 2023).

<sup>232</sup> South Africa's Mango, the often-forgotten budget airline subsidiary, starts to pursue faster growth' available at <https://centreforaviation.com/analysis/reports/south-africas-mango-the-often-forgotten-budget-airline-subsiidiary-starts-to-pursue-faster-growth-117288> (accessed 14 March 2023).

<sup>233</sup> South Africa's Mango, the often-forgotten budget airline subsidiary, starts to pursue faster growth' available at <https://centreforaviation.com/analysis/reports/south-africas-mango-the-often-forgotten-budget-airline-subsiidiary-starts-to-pursue-faster-growth-117288> (accessed 14 March 2023).

<sup>234</sup> Wasserman H 'EXPLAINER: How SAA landed in such a mess ' available at <https://www.news24.com/news24/bi-archive/what-happened-at-saa-2020-1> (accessed 12 March 2023)

### 3.4 Failures of SAA

The Judicial Commission of Inquiry into State Capture reported an overall decline in the quality and effectiveness of SAA governance from 2012 onwards.<sup>235</sup> This section will examine the underlying factors that generated the crisis at SAA. This section will be categorised into the following subheadings. The first is the deregulation of domestic airlines and the loss of African and international routes; the second is political interference; the third is leadership chaos, including the chaotic appointment of board members and executives; and the fourth is corruption allegations. According to reports, the unravelling of SAA accelerated in the early 1990s, coinciding with the end of apartheid and the beginning of the democratic regime.<sup>236</sup> Therefore, it is essential to begin with the deregulation of airlines that commenced in the early 1990s.

#### 3.4.1 Deregulation of domestic airlines and loss of international routes

The government deregulated the domestic airline industry in 1991, allowing anyone to enter the market and operate on any route, subject to financial requirements, safety, and insurance.<sup>237</sup> Deregulation is the process of removing restrictions and regulations from an industry to increase competition within that industry.<sup>238</sup> Before deregulation, 95 percent of the local market was dominated by SAA.<sup>239</sup> However, as new airlines entered the market, competition from Comair, which operated Kulula and British Airways in South Africa, and FlySafair began to erode SAA's market share to about 50 percent.<sup>240</sup> This demonstrates that the deregulation was the beginning of SAA's demise, as it was no longer able to use its monopoly status, as airlines were free to

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<sup>235</sup> Judicial Commission of Inquiry into State Capture Report: Part I vol. 1 South African Airways and its Associated Companies. Available at [https://www.gov.za/sites/default/files/gcis\\_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf](https://www.gov.za/sites/default/files/gcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf) (accessed 12 March 2023)

<sup>236</sup> Wasserman H 'EXPLAINER: How SAA landed in such a mess available at <https://www.news24.com/news24/bi-archive/what-happened-at-saa-2020-1> (accessed 12 March 2023),

<sup>237</sup> Markman T 'FREEDOM IN THE SKIES: AIR TRANSPORT IN SOUTH AFRICA. Available at <https://www.freemarketfoundation.com/article-view/freedom-in-the-skies-air-transport-in-south-africa> (accessed 12 March 2023)

<sup>238</sup> Mhlanga O Impacts of deregulation on the airline industry in South Africa: A review of the literature (2017) vol. 6 *African Journal of Hospitality and Tourism* 3

<sup>239</sup> Markman T 'FREEDOM IN THE SKIES: AIR TRANSPORT IN SOUTH AFRICA. Available at <https://www.freemarketfoundation.com/article-view/freedom-in-the-skies-air-transport-in-south-africa> (accessed 12 March 2023)

<sup>240</sup> Markman T 'FREEDOM IN THE SKIES: AIR TRANSPORT IN SOUTH AFRICA. Available at <https://www.freemarketfoundation.com/article-view/freedom-in-the-skies-air-transport-in-south-africa> (accessed 12 March 2023)

enter the market, and this competition caused prices to fall as there was a greater selection of flights. SAA lacked the robust strategies and frameworks required for a competitive market. Consequently, rather than seizing the opportunity to grow competitively, it began to decline.

Furthermore, SAA's status as the principal link between Africa and the rest of the world began to decline, which contributed to its demise.<sup>241</sup> This was because previously SAA had fewer competitors, as air traffic to African destinations and the rest of the world was connected via Johannesburg, with SAA having exclusive rights on African routes.<sup>242</sup> However, as the years passed, new competitors, such as Ethiopian Airlines, emerged as they created other stopover hubs on the African continent, thus eroding SAA's position.<sup>243</sup> SAA's international routes were also seriously impacted, as the airline was unable to demonstrate that it had the necessary personnel, facilities, and equipment to service the routes.<sup>244</sup> In addition, it has been reported that none of SAA's international routes were profitable.<sup>245</sup> Buthelezi has pointed out that the worst money-draining route was between Johannesburg and Beijing, where the losses were R309 million a year and the route with the smallest loss still suffered to the tune of R60 million a year.<sup>246</sup>

The discussion above demonstrates that when the government deregulated the airline industry, it exposed SAA's inability to compete with other airlines, that is, its framework was inadequate, and it could no longer position itself as the best carrier. Secondly, the establishment of other hubs in Africa contributed to SAA's loss of its position as the

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<sup>241</sup> Wasserman H 'EXPLAINER: How SAA landed in such a mess available at <https://www.news24.com/news24/bi-archive/what-happened-at-saa-2020-1> (accessed 12 March 2023).

<sup>242</sup> Wasserman H 'EXPLAINER: How SAA landed in such a mess available at <https://www.news24.com/news24/bi-archive/what-happened-at-saa-2020-1> (accessed 12 March 2023).

<sup>243</sup> Wasserman H 'EXPLAINER: How SAA landed in such a mess available at <https://www.news24.com/news24/bi-archive/what-happened-at-saa-2020-1> (accessed 12 March 2023).

<sup>244</sup> 'More trouble for 'New' SAA as it loses licenses to important routes: report.' available at <https://businesstech.co.za/news/business/629602/more-trouble-for-new-saa-as-it-loses-licences-to-important-routes-report/amp/> (accessed 13 March 2023).

<sup>245</sup> Buthelezi L 'SAA shows loss on all international routes' available at <https://www.oil.co.za/business-report/companies/saa-shows-loss-on-all-international-routes-1649787> (Accessed on 22 March 2023).

<sup>246</sup> Buthelezi L 'SAA shows loss on all international routes' available at <https://www.oil.co.za/business-report/companies/saa-shows-loss-on-all-international-routes-1649787> (accessed 22 March 2023).

leading airline connecting Africa to the rest of the world. Although these are important characteristics, the following discussions appear to have topped the list of the causes of SAA's demise.

### 3.4.2 Political interference

The Chief Justice of South Africa, Raymond Zondo, detailed in the state capture report that political interference in SOEs is the reason for their parlous state.<sup>247</sup> One of the most controversial instances of political interference involved the reappointment of Dudu Myeni as chairperson of SAA after she had demonstrated that she could not lead the airline.<sup>248</sup> According to reports, she was reappointed because she was a close ally of former president Jacob Zuma; her reappointment led to the collapse of a lucrative code-sharing agreement between SAA and Emirates.<sup>249</sup>

In another instance, one of SAA's lucrative routes was between Mumbai and Johannesburg, but in 2015, the Gupta family, who are at the center of allegations of state capture, persuaded SAA to abandon this route in favour of the Indian airline, Jet Airlines.<sup>250</sup> Former Minister of Public Enterprises Barbara Hogan stated that the Indian airline engaged in heavy lobbying to take over the lucrative SAA route to Mumbai and that the deal was finalised when Malusi Gigaba became Minister of Public Enterprises following Hogan's dismissal.<sup>251</sup> This would appear to suggest that Gigaba and Myeni had conspired to serve the Guptas' interests at the expense of taxpaying South African citizens. This would appear to suggest that Gigaba and Myeni had conspired to serve

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<sup>247</sup> 'The Zondo Commission bite -sized summary' available at <https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf> (accessed 21 March 2023).

<sup>248</sup> Zondo report-SAA under Dudu Myeni was 'the antithesis of accountability' available at <https://www.corruptionwatch.org.za/zondo-report-saa-under-dudu-myeni-was-the-antithesis-of-accountability/> (accessed 27 March 2023)

<sup>249</sup> Ramapale P Myeni: Zuma had no role in my appointment at SAA available at <https://www.news24.com/fin24/companies/industrial/myeni-zuma-had-no-role-in-my-appointment-at-saa-20200220> (accessed 23 March 2023)

<sup>250</sup> Wasserman H 'EXPLAINER: How SAA landed in such a mess available at <https://www.news24.com/news24/bi-archive/what-happened-at-saa-2020-1> (accessed 12 March 2023).

<sup>251</sup> Umraw A Zondo inquiry: How SAA lost lucrative Mumbai Route. Available at <https://www.timeslive.co.za/news/south-africa/2018-11-14-how-saa-lost-lucrative-mumbai-route/> (accessed 12 April 2022)

the Guptas' interests at the expense of taxpaying South African citizens.<sup>252</sup>

The PFMA states that the minister is the custodian of shares, but the discussion above demonstrates that this is an excessive amount of power for one individual to hold. Even when ministers are required to seek the opinion of the board of directors and fail to do so, it becomes problematic because the board cannot go back to them and demand that the ministers be accountable. This could be attributed to the fact that SAA has a history of controversial board appointments, which will be discussed in the following section.

### 3.4.3 Controversial appointments and leadership chaos

Controversy has surrounded the appointment of SAA board members, primarily because the DPE is the sole shareholder of SAA and claims to follow the required criteria in terms of appointment.<sup>253</sup> It insists that the first principle it adheres to is merit-based, meaning that appointments are based on skills, expertise, experience, and qualifications and that the appointment process is transparent.<sup>254</sup> The DPE also maintains that board members are appointed to reflect the demographics of South Africa and that this principle is applied consistently.<sup>255</sup> Lastly, it expects its appointed board members to carry out their duties to the best of their abilities and with integrity.<sup>256</sup>

Yet this has not been the case when it comes to SAA. Part one of the State Capture Report provides evidence that during the tenure of the then-appointed chairperson of the board from as far back as 2009, Cheryl Carolus, a number of her colleagues resigned *en masse*, after which she resigned in 2012, due to an irretrievable

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<sup>252</sup> Nyatumba K Is government part of the solution to SAA's woes, or it is part of the problem? Available at <https://www.dailymaverick.co.za/article/2021-03-02-is-government-part-of-the-solution-to-saas-woes-or-is-it-part-of-the-problem/> (accessed 13 March 2023)

<sup>253</sup> Mahlaka R Sixth board in 11 years appointed at troubled SAA available at <https://www.dailymaverick.co.za/article/2020-12-10-sixth-board-in-11-years-appointed-at-troubled-saa/> (accessed 12 April 2023).

<sup>254</sup> Judicial Commission of Inquiry into State Capture Report: Part 1 :Vol.1 available at [https://www.gov.za/sites/default/files/qcis\\_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf](https://www.gov.za/sites/default/files/qcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf) (accessed 7 March 2023).

<sup>255</sup> Mahlaka R Sixth board in 11 years appointed at troubled SAA available at <https://www.dailymaverick.co.za/article/2020-12-10-sixth-board-in-11-years-appointed-at-troubled-saa/> (accessed 12 April 2023).

<sup>256</sup> Judicial Commission of Inquiry into State Capture Report: Part 1 :Vol.1 available at [https://www.gov.za/sites/default/files/qcis\\_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf](https://www.gov.za/sites/default/files/qcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf) (accessed 7 March 2023).

breakdown in the relationship between her and the then DPE minister, Malusi Gigaba.<sup>257</sup> In October 2012, Ms. Myeni was appointed acting chairperson of the board and there were allegations of fraud and corruption.<sup>258</sup> It was also alleged that she lied about her academic credentials, as she had not graduated from the University of KwaZulu-Natal.<sup>259</sup>

The controversial former teacher Dudu Myeni led the airline to the brink of bankruptcy, which was reiterated by Chief Justice Zondo when he characterised Myeni as an underperforming board member who was negligent, incompetent, and corrupt, with the intent to dismantle governance procedures at SAA.<sup>260</sup> Zondo also found that Myeni had created a climate of fear and intimidation at SAA and made a series of operational decisions that led to the airline's deterioration into a disorganised state.<sup>261</sup> Zondo elaborated that Myeni and other members of the SAA board, including Ms. Kwinana, caused long-term harm to the airline by operating it under a cloud of fear, intimidation, secrecy, and paranoia, which violates the principles of transparency and accountability to the South African taxpayers who fund its operation.<sup>262</sup>

Even before the establishment of the Zondo Commission, the SAA Pilots Association (SAAPA) stated that Myeni was unfit to lead the board of a national carrier experiencing financial turmoil, but their pleas went unheeded.<sup>263</sup> In addition, not only was the board of directors controversial, but SAA also had poor leadership, as will be

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<sup>257</sup> We didn't want to harm the organization by speaking out: Carolus <https://www.sabcnews.com/sabcnews/we-didnt-want-to-harm-the-organisation-by-speaking-out-carolus/> available at (accessed 23 March 2023).

<sup>258</sup> Judicial Commission of Inquiry into State Capture Report: Part 1 :Vol.1 available at [https://www.gov.za/sites/default/files/qcis\\_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf](https://www.gov.za/sites/default/files/qcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf) (accessed 7 March 2023).

<sup>259</sup> Ndlovu R 'All About Dudu Myeni Qualification Issues and The Zondo Commission Trial' available at <https://buzzsouthafrica.com/all-about-dudu-myeni-qualification-issues-and-the-zondo-commission-scandal/> (accessed 30 March 2023)

<sup>260</sup> Judicial Commission of Inquiry into State Capture Report: Part 1 :Vol.1 available at [https://www.gov.za/sites/default/files/qcis\\_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf](https://www.gov.za/sites/default/files/qcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf) (accessed 7 March 2023).

<sup>261</sup> Judicial Commission of Inquiry into State Capture Report: Part 1 :Vol.1 available at [https://www.gov.za/sites/default/files/qcis\\_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf](https://www.gov.za/sites/default/files/qcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf) (accessed 7 March 2023).

<sup>262</sup> Judicial Commission of Inquiry into State Capture Report: Part 1 :Vol.1 available at [https://www.gov.za/sites/default/files/qcis\\_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf](https://www.gov.za/sites/default/files/qcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf) (accessed 7 March 2023).

<sup>263</sup> Whittles G SAA pilots aren't convinced Dudu Myeni is the 'best person' for the job chair available at <https://mg.co.za/article/2016-09-12-saa-pilots-arent-convinced-dudu-myeni-is-the-best-person-for-the-job-of-chair/> (accessed 5 March 2023)

explained below. In the Zondo report, the commission declared Myeni to be a criminal, which essentially means that the commission found Myeni to have contributed to the demise of SAA. In addition, Ms. Kwinana has been declared a delinquent, as a result of which she can no longer practice as a chartered accountant.<sup>264</sup>

### 3.4.3.1 Leadership chaos

SAA has endured a protracted leadership crisis. In 2009, CEO Khaya Ngqula was fired after being accused of authorising massive bonuses without board approval and signing deals without board endorsement; he was also accused of a conflict of interest.<sup>265</sup> His successor, the first female CEO, Siza Mzimela, resigned in 2012 following a dispute with the government.<sup>266</sup> In 2013, the acting CEO, Vuyisile Kona, was suspended due to allegations of violating the PFMA; he was also removed as a director of the board and fired a month later.<sup>267</sup> In November 2014, Nico Bezuidenhout, former CEO of Mango Airlines, was appointed acting CEO of SAA after Kona's dismissal; Monwabisi Kalawe was later appointed CEO but was suspended after a sexual harassment claim and resigned as CEO and director of SAA after reaching an out-of-court settlement with the airline and receiving a pay-out of R2.7 million.<sup>268</sup>

Nico Bezuidenhout resumed his role as acting CEO following Kalawe's resignation, but after a conflict with Mango Airlines' chairperson, he resigned and resumed his position as CEO at Mango Airlines.<sup>269</sup> Vuyani Jarani was appointed permanent CEO, but resigned in 2019, citing insufficient government support.<sup>270</sup> In his resignation letter, Jarana noted that lines of accountability were becoming increasingly blurred, creating uncertainty about which operational decisions fell under his purview and which fell

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<sup>264</sup> Cotterell G 'Ex SAA Board Member Yakhe 'Fat Cakes' Kwinana fined R6.1 Million booted as Chartered Accountant member' Available at <https://www.citizen.co.za/news/south-africa/ex-saa-board-member-yakhe-kwinana-saica-april-2023/> (accessed 14/07/2023)

<sup>265</sup> Makone PL 'The Challenges of Acting CEOs in State Owned Enterprises: The case of South African Airways' (2015) vol. 11 *Journal Corporate Board* 3.

<sup>266</sup> Wasserman H 'EXPLAINER: How SAA landed in such a mess available at <https://www.news24.com/news24/bi-archive/what-happened-at-saa-2020-1> (accessed 12 March 2023).

<sup>267</sup> Makone PL (2015) 7.

<sup>268</sup> Makone PL (2015) 7.

<sup>269</sup> Makone PL (2015) 7.

<sup>270</sup> Wasserman H 'EXPLAINER: How SAA landed in such a mess available at <https://www.news24.com/news24/bi-archive/what-happened-at-saa-2020-1> (accessed 12 March 2023).

under the purview of the board.<sup>271</sup> He also noted that the minister frequently appointed senior executives directly, creating a lack of clarity in terms of reporting lines and making it difficult for boards and managers to function effectively.<sup>272</sup> As if this were not enough, Thabane adds that there have been reported instances of in-fighting within SAA leadership, which further demonstrates a lack of internal governance.<sup>273</sup>

The preceding paragraphs demonstrate how the government (shareholder) is frequently overly involved in the strategic, operational, and accountability structures of SAA. This is illustrated when, for instance, the board decides how to achieve key objectives and who will be held accountable for these processes, and this is then undermined by shareholder representatives with divergent objectives. The board should be left alone to carry out its fiduciary duties. The number of CEOs appointed over the past few years demonstrates that SAA's management is similarly incapable of performing its duties due to the inability of the board to do its job. This is extremely worrisome because these fired CEOs frequently leave the company with large golden handshakes, which increases the company's debt. The following section will examine the instances of corruption that have engulfed SAA.

#### **3.4.4 SAA corruption cases**

In this section, several prominent corruption cases will be discussed to shed light on SAA's current state. The first to be considered is the *Organisation Undoing Tax Abuse and Another v Myeni and Others*, wherein the Organisation Undoing Tax Abuse (OUTA) and the South African Airways Pilot Association (SAAPA) (collectively referred to as the 'plaintiffs') sought an order against Dudu Myeni to declare her a delinquent director in terms of section 162(5) of the Companies Act.<sup>274</sup> The plaintiffs argued that Myeni's alleged conduct and failures during her tenure as a director and chairperson of SAA's board constituted a wilful and grossly negligent breach of her fiduciary duties

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<sup>271</sup> Brown J & Malope L 'Politics killed our SOE bosses: 'Too much interference 'as SAA, Eskom CEOs quit. ' available at <https://www.new24.com/amp/citypress/business/politics-killed-our-soe-bosses-too-much-interference-as-saa-eskom-ceo-quit-20190611> (accessed 12 February 2023).

<sup>272</sup> Brown J & Malope L 'Politics killed our SOE bosses: 'Too much interference 'as SAA, Eskom CEOs quit. ' available at <https://www.new24.com/amp/citypress/business/politics-killed-our-soe-bosses-too-much-interference-as-saa-eskom-ceo-quit-20190611> (accessed 12 February 2023).

<sup>273</sup> Thabane T & Snyman Van-Deventer E 'Pathological Corporate Governance Deficiencies in South Africa's State-Owned Companies: A Critical Reflection' (2018) vol. 21 *African Journal Online* 1 available at <https://perjournal.co.za/article/view/2345> (accessed 18 September 2022)

<sup>274</sup> *Organisation Undoing Tax Abuse and Another v Myeni and Others* (15996/2017) [2020] ZAGPPHC 169.

in terms of sections 76, read with section 162(5)(c) of the Companies Act, as well as sections 50, 51, and 55 of the PFMA.<sup>275</sup>

The case centred on two transactions in which Myeni allegedly breached her fiduciary duties the 'Emirates deal' and the 'Airbus Swap transaction'. In the Emirates deal, the court ruled that Myeni acted dishonestly by stating untruthful facts to support her position, thereby breaching her fiduciary duty to act in good faith and the best interests of SAA.<sup>276</sup> With the Airbus Swap transaction, it was found that the behaviour of Myeni leading to the implementation of the transaction fell short of the conduct expected of a director and chairperson of the Board of SAA.<sup>277</sup> The court further held that her actions demonstrated delinquent conduct in terms of section 162(5)(c) of the Companies Act, and made an order declaring Myeni a delinquent director in terms of section 165(5), which is to subsist for the remainder of her lifetime, subject to section 162(11) and (12).<sup>278</sup>

In addition, it is estimated that the Special Investigative Unit (SIU) is investigating 84 contracts with SAA, including 44 leases involving millions of dollars.<sup>279</sup> In its investigation, the SIU has uncovered contractual irregularities such as inflated pricing, fronting, SAA staff conflicts of interest, fictitious vendors, work orders, and bank accounts, as well as overpayments, non-delivery, and non-performance.<sup>280</sup>

One of the 12 priority cases involves the recovery of ZAR 78 million (USD 5.5 million) related to irregular processes in the appointment of service providers for the implementation of SAA's turnaround plan; investigations into payments made to SAA vendors between 2016 and March 2018; and a review of SAA's procurement practices

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<sup>275</sup> *Organisation Undoing Tax Abuse and Another v Myeni and Others* (15996/2017) [2020] ZAGPPHC 169.

<sup>276</sup> *Organisation Undoing Tax Abuse and Another v Myeni and Others* (15996/2017) [2020] ZAGPPHC 169.

<sup>277</sup> *Organisation Undoing Tax Abuse and Another v Myeni and Others* (15996/2017) [2020] ZAGPPHC 169.

<sup>278</sup> *Organisation Undoing Tax Abuse and Another v Myeni and Others* (15996/2017) [2020] ZAGPPHC 169.

<sup>279</sup> Corruption and mismanagement at SAA under the spotlight available at <https://www.ch-aviation.com/portal/news/103643-corruption-and-mismanagement-saa-under-the-spotlight> (accessed 12 April 2023).

<sup>280</sup> Corruption and mismanagement at SAA under the spotlight available at <https://www.ch-aviation.com/portal/news/103643-corruption-and-mismanagement-saa-under-the-spotlight> (accessed 12 April 2023).

(99 invoices exceeded the approved purchase order amount).<sup>281</sup> Also in the spotlight were the misuse of ZAR 600 million (USD 42.4 million) in travel rebate benefits in 2018/19; irregular aircraft tyre and paint contracts; and the questionable sale of ground power units.<sup>282</sup> In addition, the suspension of a senior legal official as a result of an investigation into procurement processes for legal services, and the implementation of a black empowerment supplier initiative for the supply and delivery of jet fuel, were deemed to be significant developments.<sup>283</sup>

In a separate case involving SAA Express, a subsidiary of SAA, four suspects and three companies are charged with fraud and corruption in relation to a ZAR 400 million contract between the Northwest government and SA Express.<sup>284</sup> In this instance, procurement irregularities were identified, and it was determined that money was paid for services not performed.<sup>285</sup>

These cases demonstrate that corruption at SAA has left the airline in trouble. Given that it continues to cost taxpayers billions of rands even in its current state, it is certain that when SAA enters a new partnership with Takatso Consortium, the entire company will require a complete reorganisation.<sup>286</sup> The following section will describe how the government has repeatedly attempted to rescue SAA from its difficulties.

### **3.4.5 Government bailouts**

In a presentation, the Asset and Liability Division of the National Treasury stated that

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<sup>281</sup> Corruption and mismanagement at SAA under the spotlight available at <https://www.ch-aviation.com/portal/news/103643-corruption-and-mismanagement-saa-under-the-spotlight> (accessed 12 April 2023).

<sup>282</sup> Corruption and mismanagement at SAA under the spotlight available at <https://www.ch-aviation.com/portal/news/103643-corruption-and-mismanagement-saa-under-the-spotlight> (accessed 12 April 2023).

<sup>283</sup> Corruption and mismanagement at SAA under the spotlight available at <https://www.ch-aviation.com/portal/news/103643-corruption-and-mismanagement-saa-under-the-spotlight> (accessed 12 April 2023).

<sup>284</sup> Mamothame H SA Express: Suspects in court for R400m tender corruption-NPA available at <https://www.politicsweb.co.za/politics/sa-express-suspects-in-court-for-r400-million-tend> (accessed 01 April 2023).

<sup>285</sup> Mamothame H SA Express: Suspects in court for R400m tender corruption-NPA available at <https://www.politicsweb.co.za/politics/sa-express-suspects-in-court-for-r400-million-tend> (accessed 01 April 2023).

<sup>286</sup> The SAA Business Rescue Process: A steep learning curve-lessons for SOE's available at <https://www.werkmans.com/legal-updates-and-opinions/the-saa-business-rescue-process-a-steep-learning-curve-lessons-for-soes/> (accessed 23 March 2023).

SAA received ZAR 50.7 billion in government funding between 2007 and 2022.<sup>287</sup> The Treasury broke down how the funds were spent, and revealed that, in terms of direct recapitalisation, SAA received USD 22.8 billion between 2007 and 2019 when it was placed in business rescue.<sup>288</sup> The business rescue did not halt government spending on the airline: it was revealed that the government allocated a further ZAR16.4 million over the 2020 Medium Term Expenditure Framework (MTEF).<sup>289</sup> A further 10.5 billion has been spent on implementing the business rescue plan. The additional USD 1 billion allocated by the Minister of Finance in the 2023 budget speech will be used to settle outstanding business rescue obligations.<sup>290</sup>

### 3.5 Recent Developments in SAA Privatisation

The Competition Tribunal approved a merger between Takatso Aviation and SAA in 2023, bringing an interesting turn to SAA's year.<sup>291</sup> The merger will allow Takatso to become a majority shareholder (51 percent). With the new partnership, it is hoped that SAA will make a turnaround after years of the government having poured money into an airline that was draining government funds without producing positive results.

### 3.6 Conclusion

This chapter sought to examine the achievements and failures of SAA from its inception to the present. SAA was once one of the continent's leading airlines, competing with Africa's other leading airlines. Its domestically based subsidiaries were also among the most successful airlines in the country. It is important to discuss the apartheid era to have a complete understanding of the demise of SAA. This is because the apartheid era played a significant role in the airline's demise, as major countries

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<sup>287</sup> 'SAA received R50.7billion in bailouts-but remained bankrupt, available at <https://dailyinvestor.com/south-africa/17485/saa-received-r50-7-billion-in-bailouts-but-remained-bankrupt/> (accessed 12 March 2023)

<sup>288</sup> SAA received R50.7billion in bailouts-but remained bankrupt, available at <https://dailyinvestor.com/south-africa/17485/saa-received-r50-7-billion-in-bailouts-but-remained-bankrupt/> (accessed 12 March 2023)

<sup>289</sup> SAA received R50.7billion in bailouts-but remained bankrupt, available at <https://dailyinvestor.com/south-africa/17485/saa-received-r50-7-billion-in-bailouts-but-remained-bankrupt/> (accessed 12 March 2023)

<sup>290</sup> Magakoe P Mboweni agrees to SAA's R10.5 billion bailout, no funds for SABC, Post Office and Denel available at <https://www.news24.com/fin24/companies/mboweni-agrees-to-saas-r105-billion-bailout-no-funds-for-sabc-post-office-and-denel-20201028> (accessed 14 April 2023)

<sup>291</sup> Goodall K 'The Competition Tribunal has conditionally approved a merger between Takatso Aviation and South African Airways.' <https://www.capetalk.co.za/articles/479984/saa-to-be-partly-privatised-with-takatso-aviation-to-acquire-51> (accessed 23 March 2023)

banned SAA from landing in their countries as part of their resistance to apartheid, while the deregulation of the aviation industry ended SAA's monopoly. In addition, Transnet, of which SAA is a subsidiary, became a profit-making company, thereby increasing the pressure on SAA. After the advent of democracy, SAA was able to establish a foothold on the African continent, but this status was short-lived as problems began to plague the airline, from political interference to corruption and controversial appointments to cases of incompetent leadership.

This discussion has highlighted that the minister who is the sole custodian of shares cannot be given the sole responsibility for the appointment of board members and executives as stipulated by the PFMA, as SAA has demonstrated how such a duty can be lead to a weakened corporate governance, resulting in financial difficulties and losses.

The government has repeatedly attempted to rescue SAA, and even while under business rescue, SAA continued to use taxpayer funds.

With Takatso Consortium's recent acquisition of a 51 percent stake in SAA, a significant step has been taken to introduce private sector players, one which will serve as a test case for privatisation. Furthermore, this will be an opportunity to learn from other airlines. Accordingly, the next chapter is a discussion of the lessons SAA can learn from Ethiopian Airlines and RwandAir.

## **Chapter 4: An Analysis of Ethiopian Airlines and RwandAir as SOEs and the Lessons SAA Could Learn from Them**

### **4.1. Introduction**

Warren Buffet famously described the airline industry as a bottomless pit and the worst sort of business – one that grows rapidly, requires significant capital to engender growth and then earns little to no money.<sup>292</sup> However, it is indisputable that airlines play a crucial role in facilitating rapid connections between locations for the advantage of customers, and airlines facilitate the economic flow of commodities, investments, people, and ideas, all of which are drivers of economic growth.<sup>293</sup> Adding corporate governance to an airline is a challenging endeavour: unlike other industries, airlines are prone to rapid change as a result of customer expectations, competitor actions, supplier innovations, government laws, and staff dynamics.<sup>294</sup>

In Africa, Ethiopian Airlines and RwandAir are two airlines that have generated solid profits despite the industry's infamous reputation for sapping the savings of well-meaning investors.<sup>295</sup> This chapter will focus on both Ethiopian Airlines and RwandAir: while Chapter 3 examines the problems that have engulfed SAA's governance, this chapter offers lessons to which SAA could pay heed in the future. The chapter has three sections, with the first focusing on Ethiopian Airlines as a wholly owned state-owned enterprise. The second section will examine RwandAir, of which the Rwandan government controls 51 percent, and the final section will identify the lessons that South African Airways could learn from these two airlines.

The next section discusses the history of Ethiopian Airlines, how it has progressed over the years, and the ingredients that have helped its upward trajectory.

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<sup>292</sup> Warren Buffet on the airline industry, available at <https://som.yale.edu/sites/default/files/2021-12/Module8-Reading.pdf> (accessed 13 April 2023). Warren Buffet is a successful American businessman as well as investor and philanthropist. He is the chairman and CEO of Berkshire Hathaway.

<sup>293</sup> The Importance of Air Transport to South Africa available at [https://www.iata.org/contentassets/a1f674a2687144d9ad5298d2d4e3f7bf/iata\\_south-africa\\_report.pdf](https://www.iata.org/contentassets/a1f674a2687144d9ad5298d2d4e3f7bf/iata_south-africa_report.pdf) Accessed 02 May 2023

<sup>294</sup> Yifru A *Determinants of Airline Business in Aviation Improvement case study on Ethiopian Airlines* (published Masters thesis in Business Administration, Addis Ababa University, 2017)

<sup>295</sup> Warren Buffet on the Airline Industry available at <https://som.yale.edu/sites/default/files/2021-12/Module8-Reading.pdf> (accessed 13 April 2023).

#### 4..1.1 Contextual Background to Ethiopian Airlines

Ethiopian Airlines is the national airline of Ethiopia. It was founded by Emperor Haile Selassie in 1945 and began operations on 8 April 1946, little more than a year after World War II.<sup>296</sup> At the time, Ethiopia was an undeveloped African state dependent on subsistence agriculture, with an illiteracy rate exceeding 95 percent and no tertiary education institutions.<sup>297</sup> Crucially, it was never colonised, and thus its resources were never exploited by a foreign power.<sup>298</sup>

This meant that the establishment of the airline was greeted with skepticism, with skeptics doubting the viability of transferring contemporary technologies and managerial culture to a nation that could not govern and utilise them to its comparative advantage.<sup>299</sup> This skepticism arose from the fact that it was funded and partnered with America's Transcontinental Western Airlines (TWA), which was a minority shareholder and held a few board seats.<sup>300</sup>

Ethiopian Airlines' expansion has been consistent, from maintaining a small fleet of planes that served the local market in the 1940s and 1950s to expansion and modernization in the 1960s and 1970s. Ethiopian Airlines has evolved progressively through the procurement of jets, with the airline switching from employing American pilots and workers to employing Ethiopian personnel managed by Ethiopians.<sup>301</sup>

The Ethiopian government nationalised the airline in 1975, making it a state-owned corporation to boost the airline's function as a national carrier and enhance its strategic

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<sup>296</sup> Company profile and history available at [https://www.ide.go.jp/English/Data/Africa\\_file/Company/ethiopia01.html](https://www.ide.go.jp/English/Data/Africa_file/Company/ethiopia01.html) (accessed 4 May 2023)

<sup>297</sup> Oqubay A & Tesfachew T 'The Journey of Ethiopian Airlines: Technological Learning and Catch up in Aviation' edited by Oqubay & Ohno *How Nations Learn: Technological Learning, Industrial Policy and Catch up* (2019) page 235

<sup>298</sup> 'Ethiopia country Profile' available at <https://www.bbc.com/news/world-africa-13349398.amp> (accessed 23 June 2023)

<sup>299</sup> Oqubay A & Tesfachew T 'The Journey of Ethiopian Airlines: Technological Learning and Catch up in Aviation' edited by Oqubay & Ohno *How Nations Learn: Technological Learning, Industrial Policy and Catch up* (2019) page 235

<sup>300</sup> Ethiopian Airlines-Company Profile, Information, Business Description, History, Background information on Ethiopian Airlines available at <https://www.referenceforbusiness.com/history2/39/Ethiopian-Airlines.html> (accessed 10 May 2023)

<sup>301</sup> Company Profile and History available at [https://www.ide.go.jp/English/Data/Africa\\_file/Company/ethiopia01.html](https://www.ide.go.jp/English/Data/Africa_file/Company/ethiopia01.html) (accessed 4 May 2023)

significance to the country.<sup>302</sup> Ethiopian Airlines expanded its network to worldwide destinations from the 1980s to the 2000s and transformed into a fully integrated, technologically advanced, internationally competitive, and highly profitable 21<sup>st</sup>-century airline.<sup>303</sup>

In 2011, the company joined Star Alliance to close the gap between itself and other industry participants and attain international best practices.<sup>304</sup> Oqubay and Tesfachew note that, by 2019, Ethiopian Airlines was using cutting-edge modern organisational and management techniques coupled with the most advanced technology, including innovative services and systems to enhance the passenger experience, such as online booking and self-checking in and the introduction of the Ethiopian Airlines mobile app.<sup>305</sup> Such innovation has enabled the company to serve more than 120 destinations worldwide, including more African cities than any other airline.<sup>306</sup>

SAA and Ethiopian Airlines have distinct historical backgrounds that have influenced their success or otherwise. As stated in the preceding chapter, SAA had a history of apartheid and mismanagement of resources for the benefit of a few, so the intentions of those who managed the airlines were not identical. The following section of the chapter will examine how Ethiopia achieved success.

## 4.2 Elements contributing to the success of Ethiopian Airlines

To appreciate Ethiopian Airway's rise, one must understand how it was transformed from a modest domestic carrier into a global player. The following question should be asked: how has Ethiopian Airways achieved greater success than any other African airline?<sup>307</sup> Moreover, what lessons could SAA learn from it to improve its status?

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<sup>302</sup> Ethiopian Airlines history available at

<https://corporate.ethiopianairlines.com/AboutEthiopian/History> (accessed 3 May 2023)

<sup>303</sup> Oqubay A & Tesfachew T 'The Journey of Ethiopian Airlines: Technological Learning and Catch up in Aviation' edited by Oqubay & Ohno *How Nations Learn: Technological Learning, Industrial Policy and Catch up* (2019) page 235

<sup>304</sup> Star Alliance-The Way the Earth Connects

<https://corporate.ethiopianairlines.com/company/partners-alliance/star-alliance> (accessed 12 May 2023). Star Alliance is a global airline network established by five airlines: Air Canada, Lufthansa, Scandinavian Airlines, THAI and United States.

<sup>305</sup> Oqubay & Tesfachew pg. 235

<sup>306</sup> Oqubay & Tesfachew pg. 235

<sup>307</sup> Browell GA *American Aviation in the Middle East* (1947) vol. 1 *Middle Eastern journal* 4

Ethiopian Airlines was funded and partnered with TWA, and TWA provided Ethiopian Airlines with five aircraft and funding at the outset of the contract.<sup>308</sup> Ethiopian Airlines signed five additional agreements with TWA that were crucial to its current success; these will be discussed below.

#### **4.2.1 Agreement 1: The government of Ethiopia grants TWA complete authority**

TWA was responsible for acquiring all aircraft and equipment required to establish an aviation sector.<sup>309</sup> Since Ethiopian Airlines did not have any experience TWA was tasked with establishing the airline this entailed providing all American personnel to work in the airline, including CEOs, executives, pilots, and cabin staff; in addition, it facilitated Ethiopian Airlines' credit borrowing with American banks, for which Ethiopian Airlines paid a management fee to TWA.<sup>310</sup> The provision of funds was essential because it facilitated the hiring of personnel and the expansion of routes to Europe.<sup>311</sup>

#### **4.2.2 Agreement 2: Ethiopianisation policy**

This policy was founded on two factors. The first was that the Ethiopian government would not interfere with TWA decisions; the second was that the Ethiopian government would use this program to transfer TWA technology to Ethiopian personnel.<sup>312</sup> The agreement for the Ethiopianisation method was that Ethiopian Airlines would acquire knowledge from TWA and establish local competence so that Ethiopians would incrementally assume positions held primarily by American workers.<sup>313</sup> It took more than 30 years to formalise this policy, initiated in 1953, due to obstacles such as building a pool of Ethiopian recruits despite their lack of formal education, and the widespread hostility among Americans towards Ethiopians.<sup>314</sup> This compelled

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<sup>308</sup> Hayward J 'The Impressive Rise of Ethiopian Airlines' available at <https://simpleflying.com/rise-of-ethiopian-airlines/> (accessed 24 June 2023)

<sup>309</sup> Oqubay & Tesfachew pg. 239

<sup>310</sup> Browell GA American Aviation in the Middle East (1947) vol. 1 *Middle Eastern journal* 4

<sup>311</sup> Hayward J 'The Impressive Rise of Ethiopian Airlines' available at <https://simpleflying.com/rise-of-ethiopian-airlines/> (accessed 24 June 2023)

<sup>312</sup> Taffere T 'Catching Up Through Technological Learning, Productive Capacity Building and Structural Transformation: The Case Of Ethiopian Airlines' available at [https://unctad.org/system/files/non-official-document/aldc\\_2022\\_pdsd\\_eth\\_pdw\\_3-4\\_mar\\_ppt\\_tesfachew\\_taffere\\_eng\\_%283%29.pdf](https://unctad.org/system/files/non-official-document/aldc_2022_pdsd_eth_pdw_3-4_mar_ppt_tesfachew_taffere_eng_%283%29.pdf) (accessed 12 June 2023)

<sup>313</sup> Oqubay & Tesfachew pg. 240

<sup>314</sup> Oqubay & Tesfachew 'The Journey of Ethiopian Airlines' (2019) vol. 2 *African Development Bank Group* issue1

Ethiopian trainees to demonstrate outstanding abilities before they could replace American workers, particularly pilots.<sup>315</sup> It was not a wise decision on the part of the Ethiopian government that there was no timeline for the implementation of this policy and that it took 30 years. It should have established timelines and planned for the recruitment of qualified Ethiopian personnel. SAA can learn from this, as it embarks on a partnership with Takatso Consortium, that if there is an agreement, there must be clear and precise deadlines.

#### **4.2.3 Agreement 3: Reinforcing the urgency of the Ethiopianisation agenda**

As stated before, one of the core agreements between the Ethiopian government and TWA was that eventually personnel would be localised; however, this was taking too long, and structures had to be put in place. For instance, an aviation school, together with an Ethiopian Civil Aviation Authority, had to be established with the assistance of TWA.<sup>316</sup>

#### **4.2.4 Agreement 4: Transfer of management from TWA to Ethiopian personnel**

The first Ethiopian Chief Operating Officer (COO), appointed in the 1980s, was Captain Mohammed Ahmed.<sup>317</sup> before he was appointed COO, Ahmed worked for the airline as an engineer and air force officer.<sup>318</sup> He was hired at a time when Ethiopian Airlines was experiencing a difficult period characterised by a decline in service quality and a bloated workforce, primarily due to wasteful business practices, entrenched government interference, and declining profits.<sup>319</sup> He was tasked with turning around the airline, and one of his most important steps was to dismiss 400 employees and begin operating the airline on a strictly commercial basis.<sup>320</sup>

In this era, Ethiopia was experiencing political instability due to a regime change, and

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<sup>315</sup> Oqubay & Tesfachew pg. 241

<sup>316</sup> Oqubay & Tesfachew How they did it: Getting Granular in solving policy issues (2019) vol. 2 *African Development Bank Group* issue1 pg. 3

<sup>317</sup> Browell GA American Aviation in the Middle East (1947) vol. 1 *Middle Eastern journal* 4

<sup>318</sup> May CD Ethiopia's Capitalist Airline available at <https://www.nytimes.com/1985/08/19/business/ethiopia-s-capitalist-airline.html> (accessed 12 May 2023)

<sup>319</sup> May CD Ethiopia's Capitalist Airline available at <https://www.nytimes.com/1985/08/19/business/ethiopia-s-capitalist-airline.html> (accessed 12 May 2023)

<sup>320</sup> May CD Ethiopia's Capitalist Airline available at <https://www.nytimes.com/1985/08/19/business/ethiopia-capitalist-airline.html> (accessed 12 May 2023)

the airline was experiencing modest growth and operational challenges, which necessitated a reduction in personnel.<sup>321</sup> In addition, he oversaw the airline's renewed commitment to expand its network and its continued emphasis on connecting Africa to the rest of the world.<sup>322</sup> This is an important lesson that SAA can learn, namely that staff reductions are necessary, particularly because of allegations that SAA is operated by unqualified personnel and in some instances has 30 percent too many employees.<sup>323</sup>

#### **4.2.5 Agreement 5: TWA's role shifts from managerial to advisory**

Between 1972 and 1975, the final transition to Ethiopian executives and personnel occurred. It was during this period that the Ethiopian Airlines-TWA partnership was terminated, but it was clear that Ethiopian Airlines had developed resilience and a strong corporate culture learned from TWA, as evidenced by the collective management's response to governmental interference.<sup>324</sup> This robust corporate culture will be discussed in greater detail in the following section.

### **4.3 History of corporate governance in Ethiopian Airlines**

This section provides a brief history of corporate governance in Ethiopian Airlines, as well as an account of the leadership of the airline and the factors that enabled Ethiopian Airlines to remain an industry leader.

As regards corporate governance during the TWA partnership era, a board comprised of two TWA representatives and two Ethiopian government representatives was presided over by the Ethiopian transport minister, who served as the president and board chair.<sup>325</sup> This meant that the transport minister had the final say on strategic decisions and that the government was disciplined in observing its non-interference

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<sup>321</sup> Ayar Mangad *Bringing Africa Together: The Story of Ethiopian Airlines* (1988) 15

<sup>322</sup> Ethiopian Airlines available at <https://www.encyclopedia.com/books/politics-and-business-magazines/ethiopian-airlines> (accessed 10 May 2023)

<sup>323</sup> 'SACAA to Verify SAA personnel are qualified to operate aircraft' available at <https://www.sabcnews.com/sabcnews/sacaa-to-verify-if-saa-personnel-are-qualified-to-operate-aircraft/> (accessed 30 June 2023)

<sup>324</sup> Taffere T 'Catching Up Through Technological Learning, Productive Capacity Building and Structural Transformation: The Case Of Ethiopian Airlines' available at [https://unctad.org/system/files/non-official-document/aldc\\_2022\\_pdsd\\_eth\\_pdw\\_3-4\\_mar\\_ppt\\_tesfachew\\_taffere\\_eng\\_%283%29.pdf](https://unctad.org/system/files/non-official-document/aldc_2022_pdsd_eth_pdw_3-4_mar_ppt_tesfachew_taffere_eng_%283%29.pdf) (accessed 12 June 2023)

<sup>325</sup> Oqubay & Tesfachew pg. 242

role, as well as having clear long-term objectives.<sup>326</sup> Several authors have considered the Government of Ethiopia's policy of non-interference. One author stated that Ethiopian Airlines can operate as a business because the government does not interfere with the airline's management.<sup>327</sup> How does this not constitute government interference, given that the government of Ethiopia is responsible for appointing the board members?<sup>328</sup>

TWA also encouraged Ethiopian Airlines to have a culture of corporate independence that included a thirst for knowledge and a strategic marketing approach; this made Ethiopian Airlines aggressive in securing its position in domestic and international markets.<sup>329</sup> In the 1960s, this resulted in an annual passenger turnover of approximately 260,000.<sup>330</sup> This eagerness to learn and expand airline markets has continued in recent years. The government-appointed board of directors is now responsible for the airline's governance and for ensuring that Ethiopian Airlines complies with the law and the highest business standards.<sup>331</sup> In their capacity as owners' representatives, the board of directors is also tasked with hiring professional management personnel.<sup>332</sup> This will be discussed further below.

#### 4.3.1 The board of management

When reviewing the annual reports of Ethiopian Airlines, it is evident that 75 percent of the members of the board of directors have remained in their positions for more

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<sup>326</sup> Taffere T 'Catching Up Through Technological Learning, Productive Capacity Building and Structural Transformation: The Case Of Ethiopian Airlines' available at

[https://unctad.org/system/files/non-official-document/aldc\\_2022\\_pdsd\\_eth\\_pdw\\_3-4\\_mar\\_ppt\\_tesfachew\\_taffere\\_eng\\_%283%29.pdf](https://unctad.org/system/files/non-official-document/aldc_2022_pdsd_eth_pdw_3-4_mar_ppt_tesfachew_taffere_eng_%283%29.pdf) (accessed 12 June 2023)

<sup>327</sup> Philander ZR The Secret to Ethiopian Airlines Success? Investing in People. Available at <http://www.702.co.za/articles/308684/the-secret-to-ethiopian-airlines-success> (accessed 24 September 2023)

<sup>328</sup> Lt Gen Yilma Merdassa Appointed Ethiopian Airlines Mgmt. Board Chairman. Available at <https://ethiopianmonitor.com/2023/06/12/lt-gen-yilma-merdassa-appointed-as-ethiopian-airlines-mgmt-board-chairman/> (accessed 24 September 2023)

<sup>329</sup> Oqubay & Tesfachew The Journey of Ethiopian Airlines (2019) vol. 2 *African Development Bank Group* issue1

<sup>330</sup> Oqubay & Tesfachew pg. 265

<sup>331</sup> Barlow A Ethiopian Airlines: How A State-Owned Enterprise Can Succeed. Available at <https://hsf.org.za/publications/hsf-briefs/ethiopian-airways-2013-how-a-state-owned-enterprise-can-succeed#:~:text=Firstly%2C%20the%20Ethiopian%20government%2C%20in,motivated%20by%20patronage%20and%20cronyism> (accessed 24 September 2023)

<sup>332</sup> Barlow A Ethiopian Airlines: How A State-Owned Enterprise Can Succeed. Available at <https://hsf.org.za/publications/hsf-briefs/ethiopian-airways-2013-how-a-state-owned-enterprise-can-succeed#:~:text=Firstly%2C%20the%20Ethiopian%20government%2C%20in,motivated%20by%20patronage%20and%20cronyism> (accessed 24 September 2023)

than a decade: stability in management is essential for the effective operation of a global organisation.<sup>333</sup> Andoh and Gabrimariam support this notion by stating that the longer board members remain together, the more trust develops between them, thereby producing the necessary social capital.<sup>334</sup> Girma Wake, known as the godfather of aviation, was the board chairman until he resigned after 30 years. The new chairperson is Lieutenant General Yilma Merdassa, who served as a management board member before assuming his new role.<sup>335</sup>

Be that as it may, however much one may agree with the authors' conclusion that board members become more effective the longer they remain on the same team, one cannot say that the same would work at SAA, because of the different agendas that board members seem to have. It might be effective in a culture where corruption is uncommon, but in South Africa, and particularly at SAA, it is unlikely to be successful, as some board members have been accused of receiving corrupt payments.<sup>336</sup>

The Ethiopian Airlines board's responsibility is to receive information and perform its tasks in a precise, timely, and understandable manner so that it can direct and maintain complete and effective control over strategic, financial, operational, and compliance matters.<sup>337</sup> The other responsibility of the board is to establish overall internal control of financial, and operational compliance issues and to implement strategies for the long-term success of the airline, which is accomplished by holding quarterly and ad hoc meetings.<sup>338</sup>

The board of management's success, as already noted, has been attributed to its

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<sup>333</sup> Ethiopian Airlines Annual Report 2019-2020 available at [https://corporate.ethiopianairlines.com/docs/default-source/annual-performance-reports/ethiopian-annual-report-2019-20.pdf?sfvrsn=95a767d2\\_2](https://corporate.ethiopianairlines.com/docs/default-source/annual-performance-reports/ethiopian-annual-report-2019-20.pdf?sfvrsn=95a767d2_2) (accessed 12 May 2023)

<sup>334</sup> Andoh SK, Gebremariam Y, Thorson J, Bodo P Performance of State-Owned Enterprises: A Comparative Analysis of Ethiopian Airlines and Ghana Airways (2019) vol. 19 *American Journal of Management* 1

<sup>335</sup> Mangesha S 'Ethiopian Airline Board Chairman leaves company, reasons remain unknown' available at <https://www.thereporterethiopia.com/34675/> (accessed 7 July 2023)

<sup>336</sup> SAA progress update & SIU investigations, with Minister available at <https://pmg.org.za/committee-meeting/37099> (accessed 21 June 2023)

<sup>337</sup> The Annual Report 2012/2013 available at [https://corporate.ethiopianairlines.com/docs/default-source/annual-performance-reports/et\\_annual\\_report\\_12-13-new.pdf?](https://corporate.ethiopianairlines.com/docs/default-source/annual-performance-reports/et_annual_report_12-13-new.pdf?) (accessed 15 May 2023)

<sup>338</sup> The Annual Report 2012/2013 available at [https://corporate.ethiopianairlines.com/docs/default-source/annual-performance-reports/et\\_annual\\_report\\_12-13-new.pdf?](https://corporate.ethiopianairlines.com/docs/default-source/annual-performance-reports/et_annual_report_12-13-new.pdf?) (accessed 15 May 2023)

independence from the government in its day-to-day operations.<sup>339</sup> Employees of Ethiopian Airlines who were surveyed to determine the government's role within the airline affirmed this limited level of interference. According to the results, the employees concur that the government allows management autonomy and has left the airline in the hands of company experts.<sup>340</sup>

The government's other responsibility to Ethiopian Airlines is to facilitate its acquisition of loans for its capital and major financing.<sup>341</sup> In addition, the government assists it by exempting it from taxes and allowing it to reinvest its tax revenue for its expansion.<sup>342</sup> This allowed the airline to achieve its Vision 2025 objectives in 2018, and it is currently working on its Vision 2035 objectives.<sup>343</sup> Vision 2025 objectives included operating approximately 120 aircraft, flying to 90 international destinations, and transporting approximately 18 million passengers annually.<sup>344</sup> Additionally, the board has been able to operate Ethiopian Airlines as a commercial entity supported by competent leadership and a well-trained staff of aviation professionals; this has made the operations of this SOE as business-like as those of any private corporation.<sup>345</sup>

#### 4.3.2 Ethiopia's network and code-sharing

The airline has an advantage in terms of pricing flexibility as a result of its strict adherence to cost leadership, which entails providing the lowest unit cost in terms of ticket sales while meeting global standards for service and product.<sup>346</sup> Also, according to the International Air Transport Association, Ethiopian Airlines is ranked number one in Africa in terms of revenue and profit; to ensure that it stays globally competitive and

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<sup>339</sup> Company Profile and History Available at [https://www.ide.go.jp/English/Data/Africa\\_file/Company/ethiopia01.html](https://www.ide.go.jp/English/Data/Africa_file/Company/ethiopia01.html) (accessed 24 September 2023)

<sup>340</sup> Yifru A *Determinants of Airline Business in Aviation Improvement case study on Ethiopian Airlines* (published Master's thesis in Business Administration, Addis Ababa University, 2017)

<sup>341</sup> Yifru A *Determinants of Airline Business in Aviation Improvement case study on Ethiopian Airlines* (published Master's thesis in Business Administration, Addis Ababa University, 2017)

<sup>342</sup> Yifru A *Determinants of Airline Business in Aviation Improvement case study on Ethiopian Airlines* (published Master's thesis in Business Administration, Addis Ababa University, 2017)

<sup>343</sup> How did Ethiopian Airlines make it happen? Available at <https://internationalfinance.com/how-did-ethiopian-airlines-make-it-happen/> (accessed 20 May 2023)

<sup>344</sup> Ethiopian Airlines: A glass half full available at <https://airlines.iata.org/2013/05/31/ethiopian-airlines-glass-half-full> (accessed 23 May 2023)

<sup>345</sup> How did Ethiopian Airlines make it happen? Available at <https://internationalfinance.com/how-did-ethiopian-airlines-make-it-happen/> (accessed 20 May 2023)

<sup>346</sup> Ethiopian Airlines: A glass half full available at <https://airlines.iata.org/2013/05/31/ethiopian-airlines-glass-half-full> (accessed 23 May 2023)

profitable, it has devised several initiatives, among them the Ethiopian International Passenger Service, Ethiopian Regional Service, Ethiopian Academy, and Ethiopian Cargo.<sup>347</sup> Additionally, Ethiopian Airlines is a strong brand in Africa and has earned the respect of African nations.<sup>348</sup>

### 4.3.3 Lack of suitable competition in Africa

SAA used to be the leading international carrier in Africa.<sup>349</sup> But because of the difficulties it has faced, this has created an opening for other airlines, most notably Ethiopian Airlines, which is rapidly expanding and establishing more international connections.<sup>350</sup> Moreover, 2019 data indicate that Ethiopian Airlines transported 13.3 million passengers in that year, an increase of 11.6 percent compared to the same period in the previous year.<sup>351</sup> The data also indicate that it carried 4.4 million more passengers than its closest competitor, EgyptAir.<sup>352</sup> Hayward notes that in 2021, Ethiopian Airlines was not only the largest airline in Africa, but had also survived the recession better than its few competitors.<sup>353</sup> It began in a solid financial position and demonstrated agility and adaptability.<sup>354</sup> This ability to adapt was demonstrated during the Covid-19 pandemic, when the majority of airlines including Ethiopian Airlines were affected, yet Ethiopian Airlines was able to weather the pandemic without any bailouts.<sup>355</sup> Esayas WoldeMariam, chief operating officer (COO), affirmed that the airline's agility allowed it to remain profitable during the pandemic.<sup>356</sup> In addition,

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<sup>347</sup> Andoh SK, Gebremariam Y, Thorson J, Bodo P Performance of State-Owned Enterprises: A Comparative Analysis of Ethiopian Airlines and Ghana Airways (2019) vol. 19 *American Journal of Management* 1

<sup>348</sup> Ethiopian Airlines: A glass half full available at <https://airlines.iata.org/2013/05/31/ethiopian-airlines-glass-half-full> (accessed 23 May 2023)

<sup>349</sup> Hayward J The African Battleground: Ethiopian Airlines vs Kenya Airways vs SAA available at <https://simpleflying.com/ethiopian-airlines-vs-kenya-airways-vs-saa> (accessed 12 May 2023)

<sup>350</sup> Hayward J The African Battleground: Ethiopian Airlines vs Kenya Airways vs SAA available at <https://simpleflying.com/ethiopian-airlines-vs-kenya-airways-vs-saa> (accessed 12 May 2023)

<sup>351</sup> David Casey These are the top ten largest African Carriers available at <https://aviationweek.com/air-transport/airports-networks/these-are-top-ten-largest-african-carriers> (accessed 22 May 2023)

<sup>352</sup> David Casey These are the top ten largest African Carriers available at <https://aviationweek.com/air-transport/airports-networks/these-are-top-ten-largest-african-carriers> (accessed 22 May 2023)

<sup>353</sup> Hayward J The African Battleground: Ethiopian Airlines vs Kenya Airways vs SAA available at <https://simpleflying.com/ethiopian-airlines-vs-kenya-airways-vs-saa> (accessed 12 May 2023)

<sup>354</sup> Hayward J The African Battleground: Ethiopian Airlines vs Kenya Airways vs SAA available at <https://simpleflying.com/ethiopian-airlines-vs-kenya-airways-vs-saa> (accessed 12 May 2023)

<sup>355</sup> Bailey J How Ethiopian Airlines' Agility Saw it through COVID with no Bailout available at <https://simpleflying.com/ethiopian-no-covid-bailout/> (accessed 27 May 2023)

<sup>356</sup> Bailey J How Ethiopian Airlines' Agility Saw it through COVID with no Bailout available at <https://simpleflying.com/ethiopian-no-covid-bailout/> (accessed 27 May 2023)

Ethiopian Airlines is a holistic airline with multiple business units and a comprehensive international passenger network, allowing it to diversify when one line of business fails.<sup>357</sup>

Other factors that have contributed to the success of the airline include Ethiopia's geographical location, as it has established itself as an aviation hub connecting Africa to the Middle East, Asia, and Europe.<sup>358</sup> In recent years, there has been an influx of passengers, which in 2014 rose to seven million; this number has been steadily increasing by 18 percent each year.<sup>359</sup> Furthermore, Ethiopian Airlines has invested approximately USD 5 billion to develop a port that could become Africa's busiest, one capable of handling more passengers than Johannesburg, the continent's current busiest hub.<sup>360</sup>

Ethiopian Airlines has demonstrated that several factors must be in place for an airline to be a well-oiled machine and that good corporate governance, with minimal government interference, coupled with government efforts such as tax exemptions, ensures success. RwandAir is another airline making progress, and it will be discussed in the following section.

#### 4.4 Background to RwandAir

This section of the chapter will describe RwandAir's evolution over the years. It will also discuss the measures it has taken to weather difficult times. RwandAir is a relatively young airline: it was founded in 2002 and is Rwanda's national carrier.<sup>361</sup> The government played a central role in aviation-related entity ownership and

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<sup>357</sup> Bailey J How Ethiopian Airlines' Agility Saw it through COVID with no Bailout available at <https://simplelying.com/ethiopian-no-covid-bailout> (accessed 27 May 2023)

<sup>358</sup> Barlow A ETHIOPIAN AIRLINES HOW A STATE-OWNED ENTERPRISE CAN SUCCEED. Available at <https://hsf.org.za/publications/hsf-briefs/ethiopian-airways-2013-how-a-state-owned-enterprise-can-succeed#:~:text=Firstly%2C%20the%20Ethiopian%20government%2C%20in,motivated%20by%20patronage%20and%20cronyism> (accessed 24 September 2023)

<sup>359</sup> How did Ethiopian Airlines make it happen? Available at <https://internationalfinance.com/how-did-ethiopian-airlines-make-it-happen/> (accessed 20 May 2023)

<sup>360</sup> How did Ethiopian Airlines make it happen? Available at <https://internationalfinance.com/how-did-ethiopian-airlines-make-it-happen/> (accessed 20 May 2023)

<sup>361</sup> The Resilience of RwandAir: How a young Airline Defied the Odds and became a leader in African Aviation. Available at <https://avecdotes.com/history/airlines/the-resilience-of-rwandair-how-a-young-airline-defied-the-odds-and-became-a-leader-in-african-aviation.php> (accessed 31 May 2023)

decision-making.<sup>362</sup> Its predominance shifted, however, when RwandAir was established, as this was a joint venture between the Rwandan government and SAA.<sup>363</sup> Prior to rebranding itself as RwandAir, Rwanda Express operated a small fleet of leased regional jets under the name Rwanda Express.<sup>364</sup> Initially, RwandAir operated a fleet of three aircraft, two Boeings and one Airbus.<sup>365</sup> Rwanda's aviation industry has expanded significantly despite its proximity to larger markets, such as Kenya Airlines.<sup>366</sup> This did not prevent it from claiming a share of the market in its early years. RwandAir established itself by becoming a pan-African international airline serving Accra, Cape Town, Harare, and Zanzibar.<sup>367</sup>

As previously stated, RwandAir was established as a joint venture between SAA and the Rwandan government. In recent years, this relationship expanded to include code-sharing, an aviation business arrangement in which two or more airlines share the same flight.<sup>368</sup> This means that SAA gave RwandAir a monopoly on all flights between Kigali and Johannesburg, and SAA profits from marketing the route.<sup>369</sup>

Yet even though RwandAir has made significant progress, the journey has not been smooth. In 2016, a RwandAir plane was involved in an accident at Entebbe International Airport in Uganda; there were no fatalities, but the plane was irreparably damaged.<sup>370</sup> In 2019, RwandAir was the subject of a federal investigation by the

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<sup>362</sup> Twenty three years of transforming Rwanda's aviation industry available at <https://www.newtimes.co.rw/article/142600/Advertorial/twenty-three-years-of-transforming-rwandaas-aviation-industry> (accessed 2 June 2023)

<sup>363</sup> The Resilience of RwandAir: How a young Airline Defied the Odds and Became a Leader in African Aviation available at <https://avecdotes.com/history/airlines/the-resilience-of-rwandair-how-a-young-airline-defied-the-odds-and-became-a-leader-in-african-aviation.php> (accessed 28 May 2023)

<sup>364</sup> Cummins N RwandAir: The Singapore Airlines of Africa available at <https://www.eways-aviation.com/blog/rwandair-the-singapore-airlines-of-africa> (accessed 3 June 2023)

<sup>365</sup> The Resilience of RwandAir: How a young Airline Defied the Odds and Became a Leader in African Aviation available at <https://avecdotes.com/history/airlines/the-resilience-of-rwandair-how-a-young-airline-defied-the-odds-and-became-a-leader-in-african-aviation.php> (accessed 28 May 2023)

<sup>366</sup> Cummins N RwandAir: The Singapore Airlines of Africa available at <https://www.eways-aviation.com/blog/rwandair-the-singapore-airlines-of-africa> (accessed 3 June 2023)

<sup>367</sup> Cummins N RwandAir: The Singapore Airlines of Africa available at <https://www.eways-aviation.com/blog/rwandair-the-singapore-airlines-of-africa> (accessed 3 June 2023)

<sup>368</sup> Rwanda increases Joburg Flights. Available at <https://www.theeastafrican.co.ke/tea/rwanda-today/rwandair-increases-jo-burg-flights--1320552> (accessed 25 September 2023)

<sup>369</sup> Rwanda increases Joburg Flights. Available at <https://www.theeastafrican.co.ke/tea/rwanda-today/rwandair-increases-jo-burg-flights--1320552> (accessed 25 September 2023)

<sup>370</sup> Russell M Entebbe's Main Runway Closed After RwandAir CRJ <https://simpleflying.com/rwandair-crj-incident-entebbe-uganda/#:~:text=Flight%20WB464%20skidded%20off%20the,visibility%20caused%20by%20heavy%20rain.&text=A%20formal%20investigation%20is%20underway,Entebbe%20International%20Airport%20on%20Wednesday> (accessed 7 June 2023)

United States Department of Transportation following reports of mistreatment of passengers onboard its aircraft. The investigations were later dropped, and no sanctions were imposed.<sup>371</sup>

During the COVID-19 pandemic, the Rwandan government offered the carrier USD 153 million as a stimulus to help it retain its employees and advance its network expansion goals.<sup>372</sup> RwandAir was banned from operating in the Democratic Republic of the Congo (DRC) in 2022 due to diplomatic tensions between the two governments, with the DRC accusing Rwanda of supporting M23 rebels, who have resumed operations in the eastern DRC.<sup>373</sup>

As a means of compensating for the loss of passenger revenue, the airline began operating cargo flights from Asia to the Middle East.<sup>374</sup> During the pandemic, it established cargo repatriation flights from Heathrow as a way to assist customers flying into London from other UK cities.<sup>375</sup> Furthermore, the Rwandan government has sold 49 percent of its stake to the Middle Eastern airline, Qatar Airways.<sup>376</sup> Customers of both airlines will benefit from 65 global code-sharing destinations.<sup>377</sup> Additionally, both airlines now offer frequent-flyer reciprocity, allowing passengers to earn and redeem miles on any of their airlines.<sup>378</sup> If predictions are accurate, this partnership will position RwandAir to accelerate the airline's emergence as a major African player

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<sup>371</sup> The Resilience of RwandAir: How a young Airline Defied the Odds and Became a Leader in African Aviation available at <https://avecdotes.com/history/airlines/the-resilience-of-rwandair-how-a-young-airline-defied-the-odds-and-became-a-leader-in-african-aviation.php> (accessed 28 May 2023)

<sup>372</sup> Kagire E RWANDAIR, KEY BUSINESSES WILL BE BAILED OUT-PRESIDENT KAGAME available at <https://www.ktpress.rw/2020/04/rwandair-key-businesses-will-be-bailed-out-president-kagame/> (accessed 9 June 2023)

<sup>373</sup> Ndebele L Why RwandAir has been banned from operating in DRC airspace available at <https://www.news24.com/news24/Africa/News/why-rwandair-has-been-banned-from-operating-in-drc-airspace-20220528> (accessed 7 June 2023)

<sup>374</sup> RWANDAIR LAUNCHES DIRECT FLIGHTS BETWEEN LONDON AND KIGALI Available at <https://www.rwandair.com/media-centre/news-press-releases/rwandair-launches-direct-flights-between-london-and-Kigali> (accessed 5 June 2023)

<sup>375</sup> RWANDAIR LAUNCHES DIRECT FLIGHTS BETWEEN LONDON AND KIGALI' Available at <https://www.rwandair.com/media-centre/news-press-releases/rwandair-launches-direct-flights-between-london-and-Kigali> (accessed 5 June 2023)

<sup>376</sup> RWANDAIR LAUNCHES DIRECT FLIGHTS BETWEEN LONDON AND KIGALI' Available at <https://www.rwandair.com/media-centre/news-press-releases/rwandair-launches-direct-flights-between-london-and-Kigali> (accessed 5 June 2023)

<sup>377</sup> Pande P 'Qatar Airways Details its Partnership with RwandAir' available at <https://simpleflying.com/qatar-airways-rwandair-partnership/> (accessed 12 May 2023)

<sup>378</sup> Pande P 'Qatar Airways Details its Partnership with RwandAir ' available at <https://simpleflying.com/qatar-airways-rwandair-partnership/> (accessed 12 May 2023)

soon.

## 4.5 Corporate governance at RwandAir

This section will briefly examine the history of RwandAir's corporate governance and the composition of its leadership, as well as how the company ensures its success through financial oversight, regulatory compliance, and stakeholder engagement. RwandAir's corporate governance structure has undergone numerous alterations throughout its history.<sup>379</sup> In the early years, it was relatively straightforward, with the board of directors overseeing strategic decision-making and being responsible for ensuring that the airline adhered to an appropriate corporate governance framework.<sup>380</sup> Over the years, RwandAir has developed several objectives to increase its market share. The first is to provide safe and dependable air transportation that connects Rwanda with the rest of the world.<sup>381</sup> The second is to ensure that its aircraft and other equipment adhere to international standards; the third is to increase shareholder value via profitability and capital growth.<sup>382</sup>

### 4.5.1 The Board of Directors

RwandAir began its restructuring in 2010 to improve its efficiency and increase its competitiveness; one of the ways it did so was by appointing a board of directors comprising industry professionals with relevant expertise, who were instrumental in introducing innovative systems.<sup>383</sup> The board of directors, including the chairman and vice chairman, are appointed by the cabinet and approved by President Paul Kagame.<sup>384</sup> The board of directors is selected based on its expertise and experience, and it must include 30 percent women.<sup>385</sup> They are responsible for making major decisions, establishing policies, and ensuring compliance with applicable laws and

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<sup>379</sup> 'RwandAir' available at <https://www.bus-ex.com/article/rwandair> (accessed 29 May 2023)

<sup>380</sup> 'RwandAir' available at <https://ealawsociety.org/rwanda-air> (accessed 29 May 2023)

<sup>381</sup> 'RwandAir' available at <https://ealawsociety.org/rwanda-air> (accessed 29 May 2023)

<sup>382</sup> 'Who are we' available at <https://rwandair.com/about-us/who-we-are-n/> (accessed 29 May 2023)

<sup>383</sup> 'RwandAir chooses world-class airport management system to enhance passenger check in and processing' available at <https://www.rwandair.com/fr/media-center/news-press-releases/rwandair> (accessed 7 June 2023)

<sup>384</sup> Performance Audit on the Effectiveness of Boards of Directors for the Period 01 July 2011-31 December 2013. Available at [https://oag.gov.rw/fileadmin/user\\_upload/Performance\\_Reports/Effectiveness\\_of\\_Boards\\_of\\_Director\\_s.pdf](https://oag.gov.rw/fileadmin/user_upload/Performance_Reports/Effectiveness_of_Boards_of_Director_s.pdf) (accessed 29 September 2023)

<sup>385</sup> Performance Audit on the Effectiveness of Boards of Directors for the Period 01 July 2011-31 December 2013. Available at [https://oag.gov.rw/fileadmin/user\\_upload/Performance\\_Reports/Effectiveness\\_of\\_Boards\\_of\\_Director\\_s.pdf](https://oag.gov.rw/fileadmin/user_upload/Performance_Reports/Effectiveness_of_Boards_of_Director_s.pdf) (accessed 29 September 2023)

regulations.<sup>386</sup> The board is responsible to the respective line minister for ensuring that objectives and plans are consistent with the government's policy agenda.<sup>387</sup> Girma Wake, the former chairman of Ethiopian Airlines, is the chairman of the board of RwandAir. As stated previously, board members report to the line minister, which in this case is the Minister of Tourism, together with the Rwanda Development Board's Head of Tourism, Rica Rwigamba.<sup>388</sup>

As stated in the previous chapter, SAA has many power issues within the board of directors, and it can learn from the board composition of RwandAir, which can outsource the best in the industry to grow and achieve its goals, as demonstrated by Girma Wake. In addition, the roles of board members are clear, and SAA can learn from this.

#### 4.5.2 Executive Management

The cabinet appoints the executive management, which is then approved by President Kagame.<sup>389</sup> The management is responsible for the day-to-day operations of RwandAir, and the current leadership team has extensive experience in a variety of industries.<sup>390</sup> This team is currently led by Yvonne Makolo Manzi Andrew (CEO), who reports to the board of directors; she is also the first woman to be appointed chairperson of IATA.<sup>391</sup> Under her leadership, RwandAir has accomplished some things, including the expansion of routes to Lubumbashi and the signing of lucrative contracts with prestigious airlines during the pandemic, when others saw only

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<sup>386</sup> 'Who are we' available at <https://rwandair.com/about-us/who-we-are-n/>  
Acc Performance Audit on the Effectiveness of Boards of Directors for the Period 01 July 2011-31 December 2013. Available at [https://oag.gov.rw/fileadmin/user\\_upload/Performance\\_Reports/Effectiveness\\_of\\_Boards\\_of\\_Director\\_s.pdf](https://oag.gov.rw/fileadmin/user_upload/Performance_Reports/Effectiveness_of_Boards_of_Director_s.pdf) (accessed 29 September 2023)

<sup>387</sup> RwandAir gets new Board of Directors' available at <https://www.rwandair.com/media-centre/news-press-release/rwandair-gets-new-board-of-directors/> (accessed 25 June 2023)

<sup>388</sup> 'RwandAir gets new Board of Directors' available at <https://www.rwandair.com/media-centre/news-press-release/rwandair-gets-new-board-of-directors/> (accessed 25 June 2023)

<sup>389</sup> Shaban AKA Yvonne Makolo: Kagame appoints female CEO for national carrier: RwandAir. Available at <https://www.africanews.com/2018/04/08/yvonne-makolo-kagame-appoints-female-ceo-for-national-carrier-rwandair/> (accessed 29 September 2023)

<sup>390</sup> 'Leadership Team' available at <https://theorg.com/org/rwandair-ltd/teams/leadership-team> (accessed 4 May 2023)

<sup>391</sup> Afema R 'The Driving Female Force Behind Rwanda's Aviation Success' available at <https://simpleflying.com/yvonne-makolo-rwandair-profile/> (accessed 12 June 2023)

disaster.<sup>392</sup> A lesson that can be learned from the leadership of RwandAir is that it is essential to hire professionals, not politicians, who can run a company according to sound business principles.

#### 4.5.3 Regulatory Compliance

RwandAir is committed to ensuring the safety of its passengers and has achieved the (IATA) Operational Safety Audit (IOSA), making it a safe airline and a full member of IATA.<sup>393</sup> RwandAir is dedicated to upholding industry best practices, which includes striving to remain at the forefront of global standards by renewing the IOSA audit and obtaining accreditation.<sup>394</sup>

#### 4.5.4 Stakeholder Engagement

One of RwandAir's goals is to ensure profitable business continuity, which can be accomplished by attracting stakeholders who will help make it a reality.<sup>395</sup> The board of directors, management, and employees are internal stakeholders; external stakeholders include the government, partners, lenders, suppliers, customers, and the community.<sup>396</sup> One of RwandAir's core values is to take the time to comprehend its stakeholders by fostering dialogue to foster an environment that benefits not only the airline but also the economy.<sup>397</sup> This is evident with RwandAir's current stakeholder, Qatar Airlines, and it is believed that this partnership will have a positive impact not only on RwandAir but also on the economy of the country. This is known as the multiplier effect.<sup>398</sup> The Qatar Airlines partnership with Rwanda will see the

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<sup>392</sup> Afema R The Driving Female Force Behind Rwanda's Aviation Success available at <https://simpleflying.com/yvonne-makolo-rwandair-profile/> (accessed 12 June 2023)

<sup>393</sup> SAFETY-OUR NUMBER ONE PRIORITY available at <https://rwandair.com/media-centre/news-press-release/safety-our-number-one-priority/> (accessed 23 May 2023), The IATA IOSA programme is an internationally recognised evaluation system designed to assess the operational management and control system of an airline.

<sup>394</sup> SAFETY-OUR NUMBER ONE PRIORITY available at <https://rwandair.com/media-centre/news-press-release/safety-our-number-one-priority/> (accessed 23 May 2023)

<sup>395</sup> INTERNAL AND EXTERNAL STAKEHOLDER ANALYSIS available at <https://peachyessay.com/sample-essay/internal-and-external-stakeholder-analysis/> (accessed 12 June 2023)

<sup>396</sup> INTERNAL AND EXTERNAL STAKEHOLDER ANALYSIS available at <https://peachyessay.com/sample-essay/internal-and-external-stakeholder-analysis/> (accessed 12 June 2023). Stakeholders are members or organizations with an interest or concern in the organisation.

<sup>397</sup> Rwanda T Understanding the Qatar-Rwanda US \$1.3B aviation deal available at <https://furtherafrica.com/2022/02/20/understanding-the-qatar-rwanda-us-1-3b-aviation-deal/> (accessed on 9 June 2023)

<sup>398</sup> Rwanda T Understanding the Qatar-Rwanda US \$1.3B aviation deal available at <https://furtherafrica.com/2022/02/20/understanding-the-qatar-rwanda-us-1-3b-aviation-deal/>

Middle Eastern airline inject USD 1.3 billion in the economy, which will create opportunities for the country as well as build capacity for RwandAir to compete favourably in the aviation market.<sup>399</sup> For SAA, engagement with stakeholders will be required for brand positioning and management, as well as for transformation that includes socioeconomic transformation plans at a broader scale.

#### **4.6 SAA's comeback and lessons from Ethiopian Airlines and RwandAir**

SAA appears to be making a comeback, as it is no longer regarded as insolvent.<sup>400</sup> It allegedly managed to make a profit of ZAR 500 million in March 2023 after years of reliance on taxpayer money. This was confirmed by the Treasury, but no other state institution has been willing to confirm it. Indeed, it is hard to believe, given that SAA posted a loss in February 2023.<sup>401</sup> How it has managed to turn itself around is still a mystery, but the rehabilitative steps it took may have played a role in this sudden change of status. These are discussed in the next sections, along with the lessons that may be drawn from Ethiopian Airlines and RwandAir.

##### **4.6.1 SAA Business Rescue**

SAA's placement in business rescue was one of the most important steps.<sup>402</sup> SAA is said to be the first SOC to be placed under the business rescue process; it submitted a resolution per section 129 (1) of the Companies Act of 2008 and was placed under business rescue on 5 December 2019.<sup>403</sup> Creditors approved the business rescue plan in July 2020, and its implementation required ZAR 10.3 billion.<sup>404</sup> SAA was able to restructure as a result of the business rescue, reducing its cost base and financial

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(accessed 9 June 2023)

<sup>399</sup> Rwanda T Understanding the Qatar-Rwanda US \$1.3B aviation deal available at <https://furtherafrica.com/2022/02/20/understanding-the-qatar-rwanda-us-1-3b-aviation-deal/> (accessed 9 June 2023)

<sup>400</sup> Jacobs S SAA turns surprise profit after billions in bailouts available at <https://dailyinvestor.com/business/18809/saa-turns-surprise-profit-after-billions-in-bailouts> (accessed 8 June 2023)

<sup>401</sup> Neeley B SAA Profit Secret available at <https://biz.crastr.net/saas-profit-secret/> (accessed 20 June 2023)

<sup>402</sup> Business Rescue of South African Airways (SOC) Limited available at <https://matusonassociates.co.za/saa> (accessed 12 June 2023). Business rescue is a procedure that rehabilitates a company that is in financial distress.

<sup>403</sup> Business Rescue of South African Airways (SOC) Limited available at <https://matusonassociates.co.za/saa> (accessed 12 June 2023)

<sup>404</sup> Smith C SAA exists business rescue available at <https://www.news24.com/amp/fin24/companies/just-in-saa-exits-business-rescue-20210430> (accessed 7 June 2023)

obligations and establishing a sustainable foundation for the future.<sup>405</sup> SAA's historical debt of ZAR 8.4 billion was set aside, and the DPE confirmed that it was the government's responsibility to settle it. This was a key factor in the successful business rescue.<sup>406</sup>

#### **4.6.2 Takatso Consortium deal finalised with SAA.**

The merger between Takatso Consortium and SAA has been approved by the Competition Tribunal, which is an independent adjudicative body and the nation's highest anti-trust watchdog with the authority to approve or prohibit large mergers.<sup>407</sup> This means Takatso owns 51 percent of SAA's shares and the government owns 49 percent, making SAA a private company.<sup>408</sup> This is a new day for SAA, which means it can continue to learn from Ethiopian Airlines and RwandAir in the future. Below are a few of the lessons the new company can learn from the two African airlines.

#### **4.6.3 Lessons from Ethiopian Airlines and RwandAir corporate governance practices**

The line ministers of both SAA and Ethiopian Airlines have the authority to appoint the boards of directors for their respective airlines. In Ethiopia, however, appointments are based on expertise and experience. In contrast, in South Africa, appointments are heavily influenced by politics. (See chapter 3) SAA can learn valuable lessons from Ethiopian Airlines' corporate governance practices, which have contributed to the airline's success and profitability. SAA requires a robust board of directors comprised of qualified, independent members with a variety of skills and experience who can provide effective oversight and strategic guidance without political interference.

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<sup>405</sup> Smith C SAA exists business rescue available at <https://www.news24.com/amp/fin24/companies/just-in-saa-exits-business-rescue-20210430> (accessed 7 June 2023)

<sup>406</sup> Dlodla S SAA historic debt remains responsibility of the government in spite of Takatso Stake. Available at <https://www.iol.co.za/business-report/companies/saas-historic-debt-remains-responsibility-of-the-government-in-spite-of-takatso-stake-667fb7ea-8bd4-4055-a0ab-e53784dfbc80#:~:text=THE%20DEPARTMENT%20of%20Public%20Enterprises%20%28DPE%29%20has%20confirmed,carrrier%20to%20a%20private%20strategic%20equity%20partner%20%28SEP%29> (accessed 27 September 2023)

<sup>407</sup> Karuwa T Competition Tribunal Conditionally Approves South African Airways Part Privatization available at <https://simpleflying.com/saa-part-privatization-approved-competition-tribunal/> (accessed 7 August 2023)

<sup>408</sup> Taylor M South African Airways is going Private available at <https://topauto.co.za/news/83716/south-african-airways-is-going-private/> (accessed 6 August 2023)

#### 4.6.4. Long-term strategic vision

As with Ethiopian Airlines, SAA can concentrate on its long-term strategic vision, which is aligned with the government's development agenda. As previously stated, Ethiopian Airlines was able to achieve its Vision 2025 objectives in 2018, and it is currently working on its Vision 2035 objectives.<sup>409</sup> SAA can benefit from developing clear, comprehensive long-term strategies that align with South Africa's economic development goals.

#### 4.6.5. Financial Management Systems

Additionally, SAA can learn from the robust financial management system of Ethiopian Airlines, whose revenue for fiscal years 2020 and 2021 was USD 3.51 billion.<sup>410</sup> It focuses heavily on efficiency, cost management, and revenue generation.<sup>411</sup> SAA can learn from this and improve its financial management practices, which will result in increased stability and profitability. As SAA recovers, it will need capital to implement its turnaround strategies. Nyatumba argues that during a turnaround, more so than at any other time in a company's lifetime, 'cash reigns supreme'.<sup>412</sup>

#### 4.6.6 Corporate Social Responsibility

Ethiopian Airlines has a solid reputation and attracts customers who value corporate social responsibility and sustainability due to its strong corporate social responsibility and sustainability initiatives.<sup>413</sup> The airline has indicated that it has been a long-time supporter of people-to-people initiatives in Ethiopia, such as funding Western universities to develop strategies and solutions for Ethiopia's most intractable medical

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<sup>409</sup> Ethiopian Airlines: A glass half full available at <https://airlines.iata.org/2013/05/31/ethiopian-airlines-glass-half-full> (accessed 23 May 2023)

<sup>410</sup> Endeshaw D Ethiopian Airlines reports 2020/21 revenue at \$3, 5bln available at <https://www.zawya.com/en/business/aviation/ethiopian-airlines-reports-2020-21-revenue-at-35bln-q7dfplqw> (accessed 23 June 2023)

<sup>411</sup> Endeshaw D Ethiopian Airlines reports 2020/21 revenue at \$3, 5bln available at <https://www.zawya.com/en/business/aviation/ethiopian-airlines-reports-2020-21-revenue-at-35bln-q7dfplqw> (accessed 23 June 2023)

<sup>412</sup> Nyatumba KM and Pooe D Failure to implement turnaround strategy at South African Airways: Reflection from strategic players. Volume 40 *Development Southern Africa* 1 available at <https://www.tandfonline.com/doi/full/10.1080/0376835X.2021.1965865> (accessed 25 June 2023)

<sup>413</sup> Ethiopia Supports People to People -January 2019 available at <https://corporate.ethiopianairlines.com/company/responsibility/social-responsibility> (accessed 21 June 2023)

problems.<sup>414</sup> SAA can learn from this by establishing a corporate social responsibility strategy that is more comprehensive and reflects South Africa's social and environmental priorities. SAA has stated in the past that identifying and achieving its corporate social responsibility objectives is difficult due to a lack of resources, which hinders its ability to achieve its goal of creating a globally competitive country.<sup>415</sup>

#### **4.6.7 Risk Management**

Risk management is the process of controlling the outcome of a future occurrence that has a specific probability of occurring and can have a positive or negative impact.<sup>416</sup> To mitigate risks to its operations and reputation, SAA could benefit from adopting a risk management strategy comparable to that of Ethiopian Airlines. The latter's strategic risk management program assisted the airline when it was involved in two crashes that resulted in the loss of 346 lives.<sup>417</sup> SAA's business operations have exposed the airline to numerous risks, primarily financial risks. Over time, the use of risk management instruments such as currency option contracts and swaps has proven ineffective.<sup>418</sup>

#### **4.7 More lessons from RwandAir**

Similarities between RwandAir and Ethiopian Airlines in terms of applicable lessons can be advantageous for SAA. The following lessons are additional measures available to SAA.

##### **4.7.1 Emphasis on customer service**

RwandAir places a high priority on customer service, and this is reflected in its policies and procedures. The CEO, Mrs. Makolo, has been quoted as stating, 'Customer service is of huge importance to both RwandAir and Qatar Airways as both airlines

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<sup>414</sup> Ethiopia Supports People to People -January 2019 available at <https://corporate.ethiopianairlines.com/company/responsibility/social-responsibility> (accessed 21 June 2023)

<sup>415</sup> SAA and its Corporate Social Investment (CSI) Responsibility available at <https://www.flysaa.com/about-us/leading-carrier/social-responsibility/corporate-social-investment> (accessed 27 June 2023)

<sup>416</sup> Zeray H Assessing *Practice of Risk Management in IT Projects: The case of Ethiopian Airlines digital project management office* (published Masters in Arts-Project Management Addis Ababa University 2020) 1

<sup>417</sup> Cope M How a stronger SMR Program could have helped Boeing available at <https://www.riskmanagementmonitor.com/tag/ethiopian-airlines> (accessed 5 July 2023)

<sup>418</sup> Ramaremissa N *Corporate Risk Management :A case study of SAA* (Published Masters in Management: Finance and Investment University of the Witwatersrand 2014)

strive to put customer experience first,<sup>419</sup> SAA can learn from this and concentrate on enhancing its customer service, which will enhance the passenger experience and increase customer loyalty.

#### 4.7.2 Effective Leadership

With the completion of the Takatso Consortium deal and the consortium's ownership of 51 percent of SAA's shares, it will be crucial for the airline to have competent leadership.<sup>420</sup> The airline can learn from RwandAir's leadership, appointed by the cabinet (board of directors and executive management). As stated previously, the cabinet selects qualified professionals with the necessary expertise. Like SAA, RwandAir has sold its shares (49 percent) to Qatar Airlines, while maintaining excellent leadership that provides clear direction and oversight.<sup>421</sup>

#### 4.8 Conclusion

This chapter sought to highlight the governance journeys of Ethiopian Airlines and RwandAir, which led to their respective successes, as well as the lessons that SAA can learn from these two airlines. Ethiopian Airlines has travelled a longer route, and it has taken them some time to reach the top of the aviation industry. This journey did not occur by accident: the Ethiopians have taken steps to differentiate themselves, such as learning from their partnership with the American airline TWA, selecting boards of directors with extensive knowledge and limited political influence, and carving a brand that is easily recognisable in Africa. RwandAir, on the other hand, is a relatively new airline that, like Ethiopian Airlines, is making waves by partnering with well-known, reputable airlines and ensuring that its governance is sound and that it employs qualified industry professionals. It has also created a niche for itself by emphasising customer service and ensuring that passengers have a positive experience. All the lessons that SAA can learn from these two airlines have to do with effective governance, and SAA can apply these lessons to its new partnership with Takatso Consortium.

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<sup>419</sup> RwandAir Dream miles and Qatar Airways Privilege Club launch partnership for frequent fliers available at <https://www.rwandair.com/media-centre/news-press-releases/rwandair-dream-miles-and-qatar-airways-privilege-club-launch-loyalty-partnership-for-frequent-fliers/> (accessed 23 June 2023)

<sup>420</sup> Smith Carin SAA deals in sight as Takatso Minorities agree to sell available at <https://www.news24.com/amp/fin24/companies/saa-deal-in-sight-as-takatso=minorities-agree-to-sel-20230613> (accessed 20 June 2023)

<sup>421</sup> Leadership Team available at <https://theorg.com/org/rwandair-ltd/teams/leadership-team> (accessed 30 June 2023)

## **CHAPTER 5: CONCLUSION AND RECOMMENDATIONS**

### **5.1 Introduction**

SOEs occupy an interesting position in most governments around the world because they operate as commercial enterprises while also advancing the state's political interests.<sup>422</sup> In South Africa, SOEs are critical drivers of economic growth and significant vehicles for providing critical services such as transportation, energy, and water, thereby enabling the economy to grow while ensuring equal access to services.<sup>423</sup> Some of South Africa's major SOEs are also referred to as SOCs, as they are incorporated in terms of the Companies Act 71 of 2008, and these SOCs play a vital role in the development and stability of the country's economy.<sup>424</sup>

In South Africa, SOEs and SOCs are believed to be dysfunctional and draining taxpayer funds through government bailouts.<sup>425</sup> As a result, they are unable to efficiently provide the services for which they are responsible. Furthermore, these entities lack good governance, which has led to a variety of undesirable outcomes, such as political interference, chaotic and insufficient leadership accountability, and poor administration.<sup>426</sup>

SAA, a SOC, has been engulfed by the above problems and is the focus of this study. The purpose of the study was to establish the challenges of governance at SAA and to identify other airlines on the continent that are thriving: Ethiopian Airlines and RwandAir were identified as two such airlines. These two airlines were selected so that SAA can learn from their experiences, especially now as it enters into a new partnership with Takatso Consortium.

This chapter provides a summary of the research conducted. First, it reviews the research problem and research questions that were investigated. Following this, the chapter provides an overview of each chapter's findings. Finally, it summarises the research conducted and concludes. Furthermore, recommendations are provided

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<sup>422</sup> See Chapter 1 section 1.

<sup>423</sup> See Chapter 1 section 1.

<sup>424</sup> See Chapter 1 section 1.

<sup>425</sup> See Chapter 1 section 2.

<sup>426</sup> See Chapter 3 sections 3.4, 3.4.2, 3.4.3 & 3.4.3.1

based on the findings of chapters 2, 3, and 4. These are the recommendations for developing a coherent future for SAA.

## **5.2 Research problem**

This study's primary objective was to determine how SAA's flawed corporate governance contributed to its demise and what lessons can be drawn from benchmarking with RwandAir and Ethiopian Airlines for its revival. Ethiopian Airlines and RwandAir were chosen for this study because their business models are comparable to those of South Africa. Ethiopian Airlines was selected for this study because, like South Africa, it is an SOE.<sup>427</sup> Notably, this research was conducted before the Takatso Consortium deal, in which the government sold a 51 percent stake to the Consortium.<sup>428</sup> Rwanda was chosen because its national airline, RwandAir, is partially owned by the state and recently sold 49 percent of its stake to a Middle Eastern airline, Qatar Airlines.<sup>429</sup>

## **5.3 Research questions**

### **5.3.1 Main research question**

In what ways did SAA's flawed corporate governance contribute to its demise? How can benchmarking with RwandAir and Ethiopian Airlines inform its revival?

### **5.3.2 Sub-research questions**

- What is the current legal framework for SOEs in South Africa, Rwanda, and Ethiopia?
- What has caused the demise of SAA, and what is its current status?
- What are the successes and failures of RwandAir and Ethiopian Airlines?
- What lessons can be drawn from both Rwanda and Ethiopia?

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<sup>427</sup> See Chapter 1 section 2.

<sup>428</sup> See Chapter 3 section 3.5.

<sup>429</sup> See Chapter 1 section 2.

## **5.4 Chapter findings**

### **5.4.1 Chapter 1**

Chapter 1 serves as the study's introduction and includes the research question and sub-questions that will guide it. In addition, the chapter describes the significance of the research and its methodology.

### **5.4.2 Chapter 2**

The discussion in Chapter 2 examined the legal framework that governs SOEs and SOCs in South Africa, Ethiopia, and Rwanda. It was determined that the Constitution of South Africa is silent on the issue of SOE and SOC governance, but the National Assembly(NA) mandates the cabinet to hold the custodian minister accountable. The PFMA stipulates that the minister has the authority to appoint and dismiss both the board of directors and the chief executive officer. This is problematic, as the minister typically appoints political appointees who lack the necessary qualifications. This demonstrates the minister's excessive power to appoint and dismiss the board of directors and chief executive officers. In addition, the PFMA does not specify the appointment criteria. This highlights the fragmented nature of the legal framework, as there are no SOE and SOC-specific regulations. It has been observed that the absence of SOE and SOC rules has led to political interference in the appointment process, which has resulted in the appointment of unqualified and incompetent board members. The National State Enterprises Bill, which has been released for public comment, is expected to reorganise SOEs. Its characteristics include the incorporation of a holding company, the State Management SOC Ltd, following the Companies Act and the PFMA. As the government will continue to be the only shareholder, the President or minister will appoint the board of directors and executive management. This study argues that this bill neither addresses nor immunises SOEs from their problem, which has been political interference in board and executive management appointments.

In examining Ethiopia's legal framework, it emerged that the country has taken deliberate steps to ensure that the laws governing public enterprises include a

regulatory body. Additionally, there is a proclamation which specifies the supervising authority accountable for electing and dismissing the board of directors. In terms of Ethiopia's governance, the board of directors should be competent and equipped with the necessary skills.

Rwandan law governs the selection and dismissal of board members. Like Ethiopian law, Rwandan law does not vest this authority in a single individual when it comes to the appointment and removal of board members. In addition, the law sets out the disciplinary measures to be taken against directors and board members who underperform. In addition, Rwanda, like Ethiopia, places a high value on trained and professional board members.

### **5.4.3 Chapter 3**

Chapter 3 sought to examine the achievements and failures of SAA from its inception to the present. It was observed that SAA was once one of the continent's leading airlines, competing with the best airlines in the continent. Its domestic subsidiaries were also among the country's most successful airlines. It is important to discuss the apartheid era to have a complete understanding of the demise of SAA. This is because the apartheid era played a significant role in the airline's demise, as major countries banned SAA from landing in their countries as part of their resistance against the apartheid government, while the deregulation of the aviation industry ended SAA's monopoly. In addition, Transnet, of which SAA was a subsidiary, became a profitable company, thereby increasing the pressure on SAA.

With the advent of democracy, SAA was able to establish a foothold in the African continent, but this status was short-lived as problems began to plague the airline. This has highlighted the issue that the minister who is the sole custodian of shares cannot be given such a large responsibility, as SAA has demonstrated how such a duty can lead to weakened corporate governance, resulting in financial difficulties and losses. The government has repeatedly attempted to rescue SAA, and even while under business rescue, SAA continued to use taxpayer funds. With Takatso Consortium's acquisition of a 51 percent stake in SAA, a significant step has been taken to introduce private sector players, one which will serve as a test case for privatisation.

#### **4.4 Chapter 4**

This chapter sought to highlight the governance journeys of Ethiopian Airlines and RwandAir, which led to their respective successes, as well as the lessons that SAA can learn from these two airlines. Ethiopian Airlines has travelled a longer and not easy route, as there were obstacles along the way, and it has taken it some time to reach the top of the aviation industry. This journey did not occur by accident: the Ethiopians have taken steps to differentiate themselves, such as learning from their partnership with the United States, selecting boards of directors with extensive knowledge and limited political influence, and carving out a brand that is easily recognisable in Africa. RwandAir, on the other hand, is a relatively new airline that, like Ethiopian Airlines, is making waves by partnering with well-known, reputable airlines and ensuring that its governance is sound and that it employs qualified industry professionals. It has also created a niche for itself by emphasising customer service and ensuring that its passengers have a positive experience. These are a few of the lessons SAA can take away on its road to recovery.

#### **5.5 Conclusion**

This study's primary objective was to determine how SAA's flawed corporate governance led to its demise and what lessons can be learned from Ethiopian Airlines and RwandAir. This research determined that SAA has numerous issues. First, the legislation under which SAA operates is fragmented, granting the line minister sole authority to appoint and remove board members and executives. This has led to problems with corporate governance, which have spawned additional issues such as political interference and chaotic leadership devoid of accountability. It was observed that good corporate governance can increase a company's competitiveness, as evidenced by RwandAir and Ethiopian Airlines have structured their aviation industries. Their legal frameworks clearly outline the responsibilities of the airline, and their boards and management personnel are selected based on their expertise and knowledge. This will lead to the subsequent section of the study, which will provide recommendations to help SAA make a comeback.

#### **5.6 Recommendations**

This section of the study will provide the necessary recommendations to ensure that SAA is placed on a growth trajectory.

### **5.6.1 Overarching Legal Framework**

This study argues that South Africa requires an overarching legal framework urgently. This legal framework 'State Owned Entities Act' should govern all SOEs together with SOCs to address the current legislation, which, as described in Chapter 2, is fragmented and frequently contradictory and redundant. The National State Enterprises Bill, which was supposed to re-organise SOEs and serve as the guiding legislation, has not addressed the critical governance issues that plague SOEs.

First, State Management SOC Ltd, which will serve as the holding company, is still incorporated following the Companies Law and is subject to the PFMA, which is how South African SOEs have been established. Second, the President or minister will continue to appoint and dismiss the board of directors and executive management, so political interference in the appointment of the board of directors and executive management is still possible, as nothing in the bill has been proposed to insulate it from political interference. Therefore, there is still a need for a legal framework that will remove the custodian minister as the sole authority to appoint and remove the board of directors. This legal framework should also include criteria for selecting board and management personnel. In addition, the legal framework should include harsh penalties for board members and executives who engage in fraudulent and unlawful behaviour.

### **5.6.2 New method for appointing SOEs' boards of directors**

This study recommends public representation in terms of board of director appointments. Like how the Judicial Service Commission conducts interviews and makes recommendations for the appointment of judges, this should be the method for appointing the board of directors. Together with the line minister, the various political parties should elect the board of directors and key management personnel. These boards should comprise experts in the field of a particular SOE or SOC. For instance, the SAA board's composition must include aviation and business experts whose goal is to ensure the growth of the airline. This will foster a culture of accountability and transparency.

### **5.6.3 Key Performance Management System**

These are evaluations that gauge the performance of key personnel in management

and should be utilised annually. The National State Enterprises Bill also emphasises performance management, but this study argues that a performance system will only be effective if there is a clear vision that includes strategic planning and financial transparency. As discussed in Chapter 3, SAA's leadership is frequently dysfunctional, resulting in little or no accountability. Setting key performance indicators that are regularly evaluated will ensure stability because management will be focused on a common objective, and this will lead to the retention of management based on their performance, not their political affiliation.

#### **5.6.4 New SAA Act**

This research argues furthermore that the SAA Act should be repealed and replaced with a new, more comprehensive statute that addresses how SAA should be administered. As discussed in Chapter 2, the current - founding legislation of SAA does nothing to speak on the direction of the airline. This necessitates a thorough discussion of corporate governance and the company's strategy for ensuring SAA's competitiveness in the new Act.

#### **6.5 Model public-private partnership**

The new partnership between Takatso Consortium and SAA should provide clear directives on how it intends to achieve its developmental goals while carving out a niche in the African aviation space. This will require SAA to leverage the commercial skills of Takatso, who brings expertise and experience from the private sector, to build a brand that enhances SAA's image. However, SAA should also learn from other aviation heavyweights on the continent, such as RwandAir and Ethiopian Airlines, which can provide the airline with growth-promoting lessons.

#### **5.6.6 Recommendations from Ethiopian Airlines and RwandAir**

The recommendations are contingent on effective leadership: they can only benefit SAA if its leadership structure is revised. SAA can learn from Ethiopian Airlines by emulating its leadership's expertise and long-term strategic vision, which enabled Ethiopian Airlines to accomplish most of its 2025 objectives in 2018. SAA can learn from Ethiopian Airlines by developing long-term strategies that align with the nation's economic goals. Secondly, as both RwandAir and Ethiopian Airlines focus on cost

management and revenue generation, their management systems have contributed to their upward trajectory. This can also benefit SAA, which will need turnaround strategies as it embarks on a new journey with the Takatso Consortium.

Thirdly, as part of enhancing its corporate governance, SAA will be required to develop initiatives that not only attract more customers but also have a positive effect on its social responsibility. Both airlines value social responsibility and sustainability, as evidenced by their initiatives. For instance, Ethiopian Airlines has the people-to-people initiative, which funds universities to develop health solutions for the Ethiopian people. In addition, both airlines are committed to enhancing their customer service; RwandAir places an enhanced emphasis on customer experience, which has fostered customer loyalty. This is significant for SAA, as it will be developing its brand with the new consortium and attempting to regain its position as one of the continent's leading airlines.

The recommendations above are crucial for turning around SAA's dire situation of ineffective corporate governance and guiding it through its new partnership with Takatso Consortium. Implementing the recommendations will resolve governance issues at SAA, thus answering the research question.

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