

# AN EXPERT EVALUATED NOMINATION PROCESS FOR THE BOARD OF DIRECTORS IN SOUTH AFRICA'S STATE-OWNED COMPANIES

Modi Hlobo, University of Johannesburg  
Tankiso Moloi, University of Johannesburg  
Ben Marx, University of Johannesburg

## ABSTRACT

The primary challenge facing the majority of South Africa's State Owned Companies (SOCs) is the implementation of an ineffective nomination process used to appoint directors which often results to the appointment of incompetent executives and boards of directors. As a result, this paper provides an effective process that can be used by SOC when appointing directors. This research paper aims to identify an effective nomination process for non-executive directors overseeing SOCs.

This study conducted a systematic literature review as well as a two-round Delphi process where experts provided their input on the most effective nomination process for non-executive directors serving on SOCs. The research study has identified the most effective nomination process that can be used when appointing non-executive directors in SOC. The research study's findings suggest an effective nomination process that SOCs can use to select non-executive directors for SOCs. This study contributes to the scant research on corporate governance in SOC, especially on research focusing on the nomination process of non-executive directors, as the majority of research has been concentrated on listed companies.

**Keywords:** Board members; Non-Executive Directors; Corporate Governance; Nomination process; competencies and qualities; State-Owned Companies

## INTRODUCTION

South Africa currently has 21 Schedule 2 State-Owned Companies (SOCs), which are public companies regulated by the Companies Act and the subject of this study (Kikeri, 2016). Most of these SOCs were established to stimulate South African economic growth and to create employment. In 2016, the main SOCs in South Africa, Eskom, Transnet, SAA, and Denel, were valued at R908 billion, and these SOCs were considered key strategic assets that must be preserved. Furthermore, the (CIPC, 2017) states that SOCs play a crucial role in job creation with Eskom, Transnet, SAA, Denel, and Safcol employing around 114 000 people in 2018.

Notwithstanding being entrusted with a critical role in developing the South African economy, these SOCs have undermined corporate governance values in recent years, as evidenced by their poor performance (Thomas, 2012). According to the Auditor General's report for 2017-2018, the audits of the South African Airways (SAA), Denel, the South African Nuclear Energy Company, and SA Express were not completed by the statutory

deadline because these SOCs failed to demonstrate that they were operating as "going concerns" (Auditor General, 2018).

According to (Madumi, 2018), the primary governance challenges that SOCs faces are incompetence and misconduct among executives and boards of directors. (Thabane and Snyman-Van Deventer, 2018) concur with (Madumi, 2018) and attribute SOC weaknesses to ineffective boards of directors, which are typically politically appointed.

To contextualise the governance and performance deficiencies affecting SOCs, during the 2014/2015 financial year, the SABC reported a loss of about R395 million. In the same year, the company witnessed the resignation of the majority of its board members due to political interference in SABC's operational affairs by the Minister (Thabane & Snyman-Van Deventer, 2018).

Similarly, SAA had seven CEOs in less than four years. During that same period, the corporation received a bailout of R550 million to cover fuel costs, and it was granted an additional R5 billion guarantee by the shareholders for a restructuring exercise. Other SOCs such as Eskom, Denel, the South African Post Office and Transnet have also experienced a high turnover of the board and executive management and continued underperformance, necessitating regular bailouts and challenges amongst their boards and various shareholders (Hill & Bowker, 2015).

This instability created by the high turnover in the executive and board of directors in SOCs calls appointment of board members that are primarily from the private sector, with business, professional and, other relevant backgrounds, based on a structured and transparent nominations process. Furthermore To ensure properly appointed boards, the board nominations process itself has moved to become more transparent and merit based through a properly outlined board nominations policy and procedures ( Kikeri, 2018)

These SOCs have recently been plagued by State capture, which is estimated to have cost South Africa R4.9 trillion and missed opportunities (Merten, 2019). During the State Capture Commission of enquiry, the chairperson of the commission, Justice Raymond Zondo, is quoted saying, *"Quite frankly, processes followed in terms of which people are appointed as board members in SOEs must be reviewed"*.

Subsequently, the commission of inquiry was completed, and the Zondo Commission report issued in 2022 states:

*"With regard to the appointment of members of boards of directors of SOEs as well as senior executives, the commission found that this responsibility can no longer be left exclusively in the hands of politicians, as they have miserably failed in their constitutional mandate to lead these institutions successfully. It has been recommended that a body be established that would be entrusted to identify, recruit and select competent people for such appointments in SOEs (Zondo, 2022a.)"*

On 27 April 2021, President Cyril Ramaphosa admitted at the Commission of Inquiry into State Capture that:

*"The parlous condition of state-owned enterprises was the result of a massive system failure in how the boards of SOEs were appointed, some of the (failures) may have been inadvertent, and some may have been purposeful. Some of (the appointments) were hidden and masked (Zondo, 2022b.)"*

From the above context, it is clear that the fundamental problem confronting SOCs is the incompetent directors who are politically appointed to oversee these institutions. Found

that SOC's are unable to recruit experienced board members, as most qualified candidates with the appropriate skills and knowledge prefer to serve on private sector boards (Ambe and Bandenhorst-Weiss, 2012; McGregor, 2011).

This context demonstrates that the current nomination process for selecting the board of directors in SOC's is inadequate and that a comprehensive screening and selection strategy is required to reduce the appointment of incompetent board members. Concur and states that the selection of the appropriate board members with the relevant skills in an organisation is essential in order to enhance the effectiveness and performance of the organisation (Minichilli, Gabrielsson and Huse 2007).

Given the problems mentioned above, the main objective of this study is to identify the most suitable nomination process for the board of directors in SOC's and to address the question as to what is the most effective nomination process to adopt for identifying suitable directors in SOC's.

### **A brief theoretical overview**

The primary theories adopted in this study are agency theory, resource dependency theory, and trait theory, as these theories are associated with the nomination of competent, ethical directors. The agency theory is focused on the relation between the principals (the business owners) and the agents (represented by the managers). The shareholders appoint agents to manage the company and increase shareholder value (Boshkoska, 2015). Managers generally have excellent knowledge and expertise in the company's day-to-day operations. However, sometimes they act in their own self-interests rather than the shareholders' (owners') interests (Olowosegun & Moloi, 2020; Fama & Jensen, 1983). Managers' need for self-interest undermines trust between shareholders and managers. As a result, shareholders are compelled to appoint a board of directors to oversee and protect their interests (Moloi & Marwala, 2020; Fama & Jensen, 1983).

As with the private sector, SOC's are operated by executive managers, while directors have an oversight role. The Agency theory is complicated in the SOC environment as the executives and directors do not own the companies. To further exacerbate the problem, the ministers are assigned to serve as the shareholder representative, yet they also do not own the SOC's. The real owners of the SOC's are the citizens of the country. This structure creates a conflict of interest among managers, directors, and shareholders (Thabane & Snyman-Van Deventer, 2018). According to Menozzi and Vannoni (2014), there is a "double agency" problem caused by conflicts between managers, boards of directors, politicians, and citizens.

In this double-agency phenomenon, neither the executive, the directors, nor even the ministers can be expected to protect the interests of the SOC's with the same dedication as they would have done if the SOC's had been their own companies. What intensifies this double agency problem is that citizens (who are shareholders) typically do not have the knowledge or institutional ability to monitor and evaluate the performance of directors and ministers (Thabane & Snyman-Van Deventer, 2018). Thabane and Snyman-Van Deventer (2018) further reveals that an agency system of this nature enables ministers (who are supposed to represent the shareholders) to pursue their own interests instead of those of the citizens (Thabane & Snyman-Van Deventer, 2018). Further point out that this double agency practice tends to create a culture of unnecessary bureaucracy that inevitably frustrates the

company's operating system and the accomplishment of SOC objectives (Shapiro and Willig, 1990).

In accordance with the Agency Theory, the purpose of the boards is to monitor managers' activities and, more specifically, to use their expertise to advise the management of the company (Fama & Jensen, 1983). Accordingly, the agency theory is relevant to the present study as it emphasizes on appointing competent ethical board members. The resource dependence theory of corporate governance is another theory adopted in this study. It holds that directors bring valuable resources to the organisation, notably knowledge, experience, and access to critical external contacts such as suppliers, buyers, and investors (Hillman, Cannella & Harris, 2002). Therefore, it is evident that to be able to play their role efficiently, the board of directors needs to be resourceful and bring knowledge, skills, and networks to the companies they serve. This theory is applicable to the present study, which investigates the ideal nomination process to ensure that competent and ethical directors are appointed. Over the years, researchers have paid close attention to the characteristics and qualities of good leaders, including their personality traits such as their motives, values, cognitive abilities, social as well as problem-solving skills and expertise (Zaccaro, 2007). Further reported that knowledge, abilities, and social skills are the most critical traits of board members (Carmeli, 2006). Believe that integrity and moral values are essential qualities for board members and that such attributes contribute to positive results for the entire organisation, including its investors. The traits theory suggests that essential traits such as integrity, ethical values and problem-solving are essential to a strong leader.

This study suggests that to optimise the screening of potential board members, it is necessary to integrate various theories rather than consider a single theory. Thus, an integrated approach was adopted, which encompassed the agency theory, the resource dependency theory, the human capital theory, the social capital theory and the trait theory. Following the above discussion on three theories that underpin this study, the subsection that follows provides a literature review on the screening of directors.

### **A brief literature review**

Considering the fundamental role that SOEs play across the world in implementing the government's socio-economic goals, it is critical that these SOEs are efficiently governed by both their management and directors (Molefe, 2006). Adds that the public expects nothing less than good governance and administration from these SOEs from management (McLellan, 2009).

Over the past years, the OECD has played a leading role in setting standards for ethical practice in government, particularly in raising awareness of increased accountability and transparency in public sector organisations. The OECD is also leading in efforts to help governments around the world develop sound corporate governance by developing generally accepted good governance principles. In 2015, standards unique to SOEs, although compatible with the general principles, were published by the OECD and adopted by many countries (Jesover & Kirkpatrick, 2005).

Among the different governance practices addressed in the 2015 OECD SOE Guidelines are the SOE Board Principle. The guideline emphasised that the central function in the governance of the SOEs is that the board is responsible for ensuring that the SOEs are

successful. The board must act as an intermediary between the government as a shareholder, the SOEs, and the executive management. With the recent increase in "commercialisation" of SOEs, most governments have made efforts to professionalise boards of directors and have given the boards a higher degree of autonomy. The following subsection describes the board nomination processes adopted in various countries.

In 2018, the OECD surveyed SOEs' "board nominations processes" in various countries and found that in countries where they had adopted the centralised form of ownership in SOEs, such as Chile, Slovenia and South Africa, the government minister was responsible for nominating members to SOE boards. However, in countries where they had adopted the decentralised form of ownership, such as Brazil, Estonia, Latvia and Turkey, the line ministries were more often responsible for nominations and, the public finance ministry may appoint one or more representatives to the board (OECD, 2015).

The 2015 OECD guideline on SOE governance suggests that it is good practice for ministerial decisions on board appointments to be subject to consensus by a wider group of ministers, the Cabinet or the Head of State, which is practised in various countries such as Norway and Sweden. Furthermore, the Guidelines suggest that appointing members of the board should be supported by transparent and consistent methods of nominating candidates to the board and should involve current members of the SOE board and non-government shareholders (OECD, 2015). Different countries are using different board nomination processes, for instance:

- *In Canada*, a formal nomination process requires current SOE boards to establish a board profile to identify potential directors for the appointment. The board of directors liaises with the responsible minister's office and the portfolio department on all appointment-related issues, including advising the government on selection criteria for Chairpersons and developing competency profiles and future needs for directors to fill upcoming vacancies. The responsible minister and his or her department will then use the board profile and the director profile to guide them in identifying suitable candidates for consideration for appointment to a board of directors (OECD, 2015).
- *In the UK*: The central ownership advisory unit, the Shareholder Executive (ShEx), and the SOE Chair agree on the mix of skills and experience required on the board, leading to agreement on a strategic plan of public appointments. A timetable for recruitment is then agreed upon between the SOE, the lead Director in ShEx and an Independent Assessor (IA). An interview panel is established comprising the lead ShEx policy official, the IA, and the SOE Chair. The panel will then reach an agreement on the preferred candidate and submit a panel report with recommendations to Departmental Ministers; once they have agreed on the recommendation, the appointment can be made (OECD, 2015).
- *In France*: There is an established "directors' pool" which includes pre-selected candidates that have already gone through a formal nomination, and the minister would then choose a suitable board candidate from this pool (OECD, 2015).
- *In Israel*: A special committee approves the board's appointment after verifying that the candidates comply with the minimum requirements laid down by the law. In addition, the Government Companies Authority (GCA) is leading the recruitment process for the board members (OECD, 2015).
- *In New Zealand*: The country has adopted a comprehensive approach to board appointments, from soliciting, vetting and recommending candidates to conduct induction training after an

appointment. There is a Crown Ownership Monitoring Unit (COMU) responsible for managing the appointment process by advising the bodies responsible for appointment (i.e. the relevant Minister after approval by a Cabinet Appointments and Honours Committee and confirmation by Cabinet).

COMU is responsible for developing a longlist and shortlist of candidates (with options) for consideration by the minister after conducting due diligence on preferred candidates (including conflict of interest clearance, background checks), managing the cabinet approval process, and managing the formal appointment process (OECD, 2015).

- *Finland*: Finland stands out with regards to modernising its selection procedures. The ownership agency outsources the development and maintenance of a database of pre-qualified candidates to a recruitment consulting firm (OECD, 2015). The outsourced contract is subject to competitive tender every four years. This arrangement offers some advantages over maintaining an internal database as it provides access to the networks and resources of the recruiting firm, which has specialist skills in sourcing candidates for private sector boards, especially international candidates. This process also reduces the risk of political involvement in the selection process and provides a cost-effective, transparent and consistent process for dealing with applications received from a wide variety of sources. This solidly structured proved to be beneficial in avoiding some political interferences in the appointment process (OECD, 2015).
- *In Norway*: nominations to the boards of listed SOEs are made via nomination committees made up of representatives from the government and non-government shareholders (OECD, 2015). (Table 1) below summarises the nomination processes adopted by the different OECD countries.

<b>Table 1</b> <b>SUMMARY OF NOMINATION PROCESSES ADOPTED IN VARIOUS OECD COUNTRIES</b>	
<b>OECD Country</b>	<b>Nomination Process adopted</b>
Canada	Existing board profiles potential candidate <b>Minister appoints the candidates</b>
United Kingdom	Shareholder Executives (ShEx) profile potential candidates <b>Minister appoints the candidates</b>
France	There is an established directors' pool <b>Minister appoints candidates</b> from this pool
New Zealand	Crown Ownership Monitoring Unit (COMU) profiles potential candidates <b>Minister appoints the candidates</b>
Israel	Government Companies Authority (GCA) profiles potential candidates <b>Special nomination committee appoints candidates</b>
Finland	The <b>nomination process is outsourced</b> to an independent recruitment consulting firm
Norway	Nomination is conducted by <b>nomination committee</b> with representatives from both government and private sector

**Source:** Researchers Conceptualisation

Based on the above table , it is evident that it is important for a country to have guidelines and regulations that govern how boards are appointed and ensure that suitable

candidates with the appropriate competencies and value systems are appointed. Namara, Karyeija and Mubangizi (2015) add that good governance extends beyond public companies' compliance to universal governance standards to involve the efficient administration of public affairs in a transparent, responsible and accountable manner (Kanyane & Sausi, 2015).

Contrary to the international practice, governance in South Africa's SOEs is complex, with many stakeholders involved, including shareholders, policymakers, government ministers, and other stakeholders (Massie et al., 2014). Concerning the SOEs' oversight role, the relevant political minister represents the shareholders and appoints SOE boards along with the SOE CEOs and CFOs.

While the board may recommend candidates for the CEO position, it is entirely up to the ministers to decide who will be the CEO or CFO. Since the board has no real authority over the CEO, but is responsible for overseeing the company managed by the same CEO, such an administrative situation creates confusion. In addition, Rossouw and Reddy (2009) point out that political ties often inform the board and executive management appointments, and Howard and Seth-Purdie (2005) refer to such practices as "political patronage". Minichilli, Gabrielsson and Huse (2007) suggest that it is essential for Ministers to appoint people with the right level of competence and qualities for board positions. However, political agendas are usually at the centre when deciding on board appointments, and the expertise and integrity of the board members are overlooked. In such instances, politicians will pay less attention to selecting the right people to serve the citizens' interests (Kamal, 2010). Similarly, Vagliasindi (2008) points out that such practices result in the board members protecting the ministers' interests and not the interests of all stakeholders, including the citizens.

SOEs must implement sound corporate governance systems, such as appointing a competent board of directors and an executive management team that is honest, transparent, and responsible in their corporate relations, to operate efficiently and maximise social benefits (Williams, 2010). To address these challenges confronting SOCs, South Africa has enacted legislation and corporate governance guidelines outlined below. In South Africa, SOEs are affected by several legislations and guidelines to ensure good corporate governance in these entities. Such legislations include the 1996 South African constitution, the Companies Act of 2008, and Public Finance Management Act of 1999. Furthermore, there are the 2016 King IV Code of corporate governance, The DPE Protocol on corporate governance and the Treasury Regulations.

These regulations and guidelines serve as a foundation for the management and oversight of SOEs. However, these multiple legislations are sometimes inconsistent and contradictory, which has a negative impact on the performance of SOEs (Massie et al. 2014). The following section discusses the board appointment process, as explained by the legislature and corporate governance codes.

### **Companies Act of 2008**

The Companies Act defines an SOE as 'an enterprise registered under this Act that is a public entity in Schedule 2 or Schedule 3 of the PFMA' (Massie et al., 2014: 123). The Act applies to certain SOEs and not others, while the PFMA regulates all SOEs' governance aspects. The SOEs listed in Schedule 2 are major public companies under the governance of

political ministers, and they supply goods and services in accordance with ordinary business practices and are heavily subsidised by public resources. These entities are designated as "SOC Ltd" and are commonly referred to as SOCs, SOEs, parastatals and public entities. The Companies Act and the PFMA apply concurrently, although Section 5.4 of the Companies Act specifies that the PFMA shall prevail over the Companies Act in the case of contrary rules.

*Section 68 of the Companies Act of 2008* States that each company director must be elected by the persons entitled to exercise voting rights in such an election to serve for an indefinite term or a term as set out in the Memorandum of Incorporation. This means the shareholders' election confirms the directors' appointment at the AGM. The section further states that unless the Memorandum of Incorporation of a company provides otherwise, the board may appoint a person who satisfies the requirements for election as a director to fill any vacancy and serve as a director of the company temporarily until the vacancy can be confirmed at the AGM by the shareholders. In the case of SOCs, the Minister represents the shareholder, and therefore, it is the minister that ultimately appoints the board members.

### **Public Finance Management Act of 1999**

The Act aims to ensure transparency, accountability, and effective control of the entities to which the Act relates to the income, expenditure assets and liabilities. Although the PFMA addresses various matters on board of directors, the act is silent on board nominations. It is therefore also worth noting that the Companies Act of 2008 and the PFMA of 1999 have long since been updated and that there has been a lot of developments in the corporate governance environment that need the legislature to be revised, particularly since such revisions could close the gaps that have caused some of the South African corporates to fail (Mkhwanazi, 2016). These required updates include board composition, board appointment, and board evaluation processes, particularly in state-owned companies. Such considerations make this study relevant as it proposes an effective nomination process that can be used when appointing directors in South African SOCs.

### **King IV SOE supplementary of 2016**

The King report entails guidelines that can assist governing bodies to practice good corporate governance. The King IV report is not legislative; however, parliament has recommended that all SOCs comply with practices of the King reports. King IV of 2016 has a special supplemental manual that explicitly points out corporate governance principles applicable to SOCs. These guidelines are adhered to by SOCs to ensure sound financial management and efficient service delivery to citizens that will contribute to overall economic growth (Van der Nest, Thornhill & De Jager, 2008). Principle 3.2 of King IV requires that the process of selecting and appointing the board members should be transparent and involve existing governing bodies even though the minister makes the final decision.

Although King IV, suggests that the relevant political Ministers (elected to represent the shareholders) are responsible for appointing and dismissing the board of directors and the CEO. Believe that (Rossouw and Reddy, 2009) this practice is vulnerable to the recruitment of politically connected individuals (i.e. board members and senior managers). The process is



also complicated because the selected applicants are expected to make strategic decisions that the political minister finds desirable. Points out that this practice can undermine the provisions stipulated in the King report to appoint independent board representatives with the right level of competence and critical skills required by the SOCs (Williams, 2010).

### Protocol on appointing directors of 2009

In September 2009, the parliament approved the "Handbook for the appointment of persons to boards of state and state-controlled institutions" published by the Department of Public Service and Administration (DPSA). The Handbook describes the selection process that needs to be followed when appointing the board of directors. The Handbook further requires that the appointment process should be standardised, objective, clear, understandable, and transparent. It also states that the appointment process should be applied consistently in all cases. However, the document is not detailed about the nomination process followed to ensure that competent and ethical directors are appointed (DPSA Handbook, 2009).

The following table summarises the nomination process stipulated in the legislature and various guidelines that South Africa's SOCs must adopt. (Table 2)

<b>Table 2</b> <b>SUMMARY OF THE BOARD NOMINATION AND APPOINTMENT PROCESS AS STIPULATED BY THE LEGISLATURE AND THE GUIDELINES</b>	
<b>Applicable Legislature or guideline</b>	<b>Board Nomination and Appointment Process</b>
Companies Act of Section 68 (2008)	The Board Nomination Committee appoints a board member The shareholders at the AGM confirm the appointment
PFMA: Section 50 (1999)	The Act is silent on board appointments
King IV (SOE Supplement) (2016)	Relevant political ministers are responsible for appointing board members.
Zondo Commission (2022)	An independent nomination body that must identify, recruit and select competent board members
DPSA Protocol on appointing directors (2009)	The appointment process should be standardised, objective, clear, understandable and transparent The Nomination Committee must make recommendations The political minister makes the final decision on the appointed board candidates in consultation with cabinet ministers
OECD Guidelines on SOE (2018)	The board appointments process should be transparent and consistent The board appointments are subjected to consensus by a wider group of ministers Existing board members should be involved in the appointment process

**Source:** Researcher's Conceptualisation

From the above discussion and table, it is clear that there is inconsistency and contradiction in legislature and guidelines prescribed for South Africa's SOCs for the processes that need to be followed when nominating directors. Consequently, this suggests the need for an effective nomination process that all SOCs must adopt.

## METHODOLOGY

Previous studies that investigated the characteristics of directors have used different research methods. For instance, Vandiar (2015) analysed JSE listed company directors and used a qualitative methodology where he first conducted a document analysis and used the results to compile questionnaires. Serretta, Bendixen and Sutherland (2009) investigated core corporate governance dilemmas facing boards, and the investigation was qualitative and used the Delphi technique. This study adopted a similar research approach and used the Delphi technique. The questionnaire used in the Delphi process was prepared using information collected from the review of literature on processes followed when nominating directors.

In the first round of the Delphi process, the questionnaire required experts to confirm whether the nomination processes identified from the literature were required to confirm the identified nomination processes. In the second round, experts were required to rank the nomination processes that were confirmed as being effective from round one. The essential key to a successful Delphi study is selecting a diverse group of experts. Since the results of a Delphi depend on various individuals' perspectives, it is essential to select individuals who are likely to make significant contributions. In most instances, the experts' profile is diverse and includes academics, business, government officials, and others (Okoli & Pawlowski, 2004). Expert selection criteria usually include publications on the researched problem, years of experience in the field, experts' self-evaluation of their experience and knowledge on the topic, and recommendations from relevant institutions (Gordon, 2009).

Therefore, to understand how these directors are screened and selected, it was important to determine from the senior officials in government departments involved in the process of appointing potential directors. It also added significant value to consult with corporate governance experts, including academics specialising in corporate governance and senior officials from the South African Institute of Directors (IoDSA). ( Table 3)

<b>Table 3</b> <b>LIST OF IDENTIFIED STAKEHOLDER GROUPS AND EXPERTS CONSULTED</b>	
<b>Stakeholders</b>	<b>Rationale for inclusion</b>
Academic researchers & Lecturers	Academic researchers and lectures on Corporate Governance and Public administration at higher learning institutions were requested to participate in the study as they have valuable knowledge on the subject matter and they would have researched the subject matter and have in-depth knowledge
Existing or former board members in both Public and Private Sector	Existing and former board members in both private and public sector were requested to participate as they had practical experience on what competencies and qualities were expected from them and what selection and evaluation processes were used to determine these attributes. The sector opted for both public and private sector as both institutions are governed by companies act and King IV and the requirements for competencies and qualities of directors are the same.

South African Institute of Directors (IoDSA)	The primary objective of IoDSA is director development, which includes supporting the continual learning and development of aspiring and experienced directors. Therefore, it was ideal to invite the Director Development Team from IoDSA to participate as they understand what board members' competencies and qualities are required.
Office of the Auditor-General of South Africa (AGSA)	The office of AGSA audits most of South Africa's SOEs. The institution has continuously raised concern on the quality and calibre of board members in SOEs, and on the process of appointing them. Therefore, it added value to the study to have their perception of what they consider to be the necessary competencies and qualities of directors and their view on board members' selection processes.
Government Officials (Ministers, Chief of Staff & Departmental Director-General)	Departmental Ministers represent the SOE shareholders; therefore, they are responsible for appointing SOE's board of directors. It added value to the study to find out from their representatives what they consider to be the most suitable way to screen board members as well as what competencies and qualities they consider in potential board members

**Source:** Researchers Own Conceptualisation

This study used purposive sampling to select participants for the Delphi survey. Since the sample is deliberately chosen and depends on the issue being studied, there are no specific guidelines for the numbers to use in studies when using the Delphi survey. In some trials, 15 participants were used, while 60 participants were acceptable in others (Hasson, Keeney & McKenna, 2000). Needham and de Loë (1990) suggest a sample size of a minimum of 10 (a smaller size does not generate enough ideas) and a maximum of 50 participants. De Villiers, de Villiers and Kent (2005) suggest that sample size depends on whether it is homogenous or heterogeneous. They suggest the following numbers: if they are homogeneous (same discipline), 15 – 30 participants are ideal, and if they are heterogeneous (from differing disciplines), 5–10 participants per professional group are ideal. Therefore, the present study initially targeted 15 participants from different disciplines, both locally and internationally and managed to have 50 experts participating on the study.

### Validity and Reliability

Validity is concerned with whether the study is credible and accurate and evaluating what it is supposed to evaluate. As a result, validating the data and the research instruments is essential. This study used content validity and triangulation to validate the data and instrument. In this study, the data collected was validated through the administration of two rounds of the Delphi questionnaire, where experts involved in the process of appointing and training directors gave input on the nomination process of directors.

The other validation method used in the study is triangulation. According to Zohrabi (2013), to strengthen the validity of the evaluation of data and findings, the researcher should try to collect data through several sources such as document analysis, questionnaires, interviews, and classroom observations. Gathering data through one technique can be questionable, biased, and weak. However, collecting information from a variety of sources and with a variety of techniques can confirm findings. Therefore, when the same results are achieved from different data collection methods, the data collected are deemed to be valid. In this study, two data collection methods are used systematic document analysis from the

literature review and questionnaires responses from experts in the two rounds of the Delphi process. These were used in triangulation to validate the data.

Lincoln and Cuba (1985) suggest that the reliability of the results can be ensured with three techniques: the investigator's position, triangulation, and audit trial. This study adopted the triangulation method for reliability. In triangulation, the researcher uses different procedures such as questionnaires, interviews, and classroom observations to collect data. In addition, this information is obtained through different sources; therefore, collecting varied types of information through different sources enhanced the reliability of the data and the results. This study used systematic document analysis to collect data and two round of the Delphi process to confirm the reliability of the data.

## DISCUSSION AND FINDINGS

### Findings from the systematic literature review

The first part of the study focused on the systematic literature review. The reviewed literature was used to identify effective nomination processes for the board of directors in SOCs. During this phase four suitable nomination processes were identified and then presented to experts. The Delphi participating experts were requested to confirm, reject, and suggest the nomination process. During this phase, the experts suggested two other nomination processes that could be adopted when appointing directors in SOCs. In the next phase the Delphi participating experts were requested to rank the confirmed nomination processes in terms of their importance. The outcome of the Delphi processes are outlined below.

### First Round of the Delphi Process: Confirmation Nomination process of directors

The study investigated the effective nomination process for directors in SOCs and Table 3 below outlines the findings from the first round of the Delphi process. (Table 4)

Table 4 FIRST ROUND DELPHI : BOARD OF DIRECTORS NOMINATION PROCESS		
	Nomination Process	
SP1	By an independent Nomination Committee	65%
SP2	Relevant Portfolio minister	3%
SP3	Portfolio Minister in consultation with other cabinet ministers	9%
SP4	Relevant Portfolio committee and confirmed by the minister	3%
SP5	By The public	12%
SP6	Other	10%

**Source:** Researcher's Conceptualisation

Regarding the nomination process of the directors, 65% of the participants believed that an independent nomination committee should nominate potential board candidates. This also corresponds to the requirements of the Company Act, the DPSA Protocol on the Appointment of Directors, and the recent Zondo Commission recommendation (2022). In

addition, a number of countries, including Norway and Israel, use an independent nominating committee for potential board candidates (OECD, 2018).

In addition to the identified nomination processes, the participants suggested that the nomination process include qualification verification and probity checks. Participants also believed that interviews for potential directors should be conducted in public (i.e. televised), like what is currently practiced when appointing chairpersons for Chapter 9 institutions. Even though the President appoints Chapter 9 institution chairpersons, the interviews of the shortlisted candidates are conducted by a panel of members of parliament. In recent years, this process has been televised live on national television for the public (Mkhwenazi, 2016). Although these points are valid, they fall outside the scope of this study, which focuses on who should conduct the nomination processes and not how the processes should be conducted.

### **Second Round of the Delphi Process: Rating of the nomination process of directors**

This section presents the results on the rating and ranking of the nomination process of the potential board of directors. In this round The experts were required to use a 5-point Likert scale: 5 = highly important; 4 = Important; 3 = Neutral; 2 = Less important, and 1= Not important

The results are presented in tables 4 below. (Table 5)

#### **Rating of Board of Directors nomination method**

<b>Table 5</b> <b>SECOND ROUND: BOARD OF DIRECTORS NOMINATION PROCESS</b>								
	<b>Nomination Process</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>High Ranking %</b>	<b>Lower Ranking %</b>
SP1	By an independent Nomination Committee		4%	7%	22%	67%	<b>89%</b>	<b>4%</b>
SP2	Relevant Portfolio minister							
SP3	Portfolio Minister in consultation with other cabinet ministers							
SP4	Relevant Portfolio committee and confirmed by the minister							
SP5	By The public							

**Source:** Researcher's Conceptualisation

Table 4 above illustrates that the participants ranked only one of the five identified nomination processes. Furthermore, it is worth highlighting that most of the participating experts regard nomination by an independent nomination committee as highly important and important (i.e. rated 4 and 5). This means that it is very important that an independent nomination committee conducts the nomination of potential directors.

## SUMMARY AND CONCLUSION

In conclusion, having an effective board begins with identifying and appointing suitable board members. As such, a careful consideration and nomination must be conducted to ensure each potential board member's suitability before the appointment is made. Therefore, the processes followed when nominating board members must be considered. This is usually guided by either the legislature or the corporate governance guidelines adopted in the country.

The literature review above shows that although the existing legislature governing South Africa's State-Owned Companies is dated it is still relevant as the Company's Act and the DPSA protocol on appointing directors, as well as the Zondo Commission recommendations, recommend the use of an independent nomination committee. These legislations and guidelines are aligned to the findings of this study. The primary objective of this study was to determine the most efficient nominating process for the board of directors in South Africa's SOC's. Following a comprehensive literature review and two Delphi processes, the use of an independent nomination committee is found to be the most effective nomination process to use when appointing SOC board members.

This suggests that the challenge is not with the approved nomination process but rather with the compliance and implementation of these regulations. Consequently, this non-compliance with the regulation has led to the appointment of incompetent board members, as revealed by the Zondo Commission. This study focused on the nomination process of Non-Executive directors that are charged with governance with a specific focus on SOC's, thus omitting directors in the private sector. Further, the study is also limited to the nomination process of Non-Executive directors in SOC, and it can be extended to executives in the SOC, such as the Chief Executive directors, the Chief Financial Officers, and Chief Operations Officers. As such, future research could focus on identifying an effective evaluation process for existing non-executive directors in SOC's. Further, future research could also focus on using Information and Communications Technology (ICT) in screening and nominating potential board candidates. This could assist in mitigating the reputation and financial risk that results from employing incompetent board members and that lack integrity.

## REFERENCES

- Ambe, I. M., & Badenhorst-Weiss, J. A. (2012). Procurement challenges in the South African public sector. *Journal of transport and supply chain management*, 6(1), 242-261.
- Auditor General. (2018). Auditor-general reports an overall deterioration in the audit results of national and provincial government departments and their entities. (Accessed 16 July 2020).
- Boshkoska, M. (2015). The agency problem: Measures for its overcoming. *International Journal of Business and Management*, 10(1), 204.
- Carmeli, A., & Schaubroeck, J. (2006). Top management team behavioral integration, decision quality, and organizational decline. *The Leadership Quarterly*, 17(5), 441-453.
- CIPC. (2017). The CIPC as the regulator of state owned companies "Boards of SOC's". Available:(Accessed: 27 May 2020).
- De Villiers, M. R., De Villiers, P. J., & Kent, A. P. (2005). The Delphi technique in health sciences education research. *Medical teacher*, 27(7), 639-643.
- Fama, E. F., & Jensen, M. C. (1983). Agency problems and residual claims. *The journal of law and Economics*, 26(2), 327-349.

- Gordon, T. J. (2009). The real-time Delphi method. *Futures research methodology version*, 3, 19.
- Hasson, F., Keeney, S., & McKenna, H. (2000). Research guidelines for the Delphi survey technique. *Journal of advanced nursing*, 32(4), 1008-1015.
- Hill, L. and Bowker, J. (2015). Transnet would consider Blue Train stake sale - *Moneyweb, Money web*. (Accessed: 29 February 2020).
- Hillman, A. J., Cannella Jr, A. A., & Harris, I. C. (2002). Women and racial minorities in the boardroom: How do directors differ?. *Journal of management*, 28(6), 747-763.
- Howard, C., & Seth-Purdie, R. (2005). Governance issues for public sector boards. *Australian Journal of Public Administration*, 64(3), 56-68.
- IoDSA( Institute of Directors South Africa). 2019, SOE boards: it matters who gets appointed and how they get appointed. Available(Assessed 10 August 2020).
- Jesover, F., & Kirkpatrick, G. (2005). The revised OECD principles of corporate governance and their relevance to non-OECD countries. *Corporate Governance: An International Review*, 13(2), 127-136.
- Kamal, M. (2010). Dealing with the Principals Dilemma: a Proposal for the Governance of Indonesia's State-owned Enterprises. *Lawasia J.*, 155.
- Kanyane, M. H., & Sausi, K. (2015). Reviewing State-Owned Entitiesâ€™ Governance Landscape in South Africa. *African Journal of Business Ethics*, 9(1).
- Kikeri, S. (2016). *Republic of South Africa Systematic Country Diagnostic*. An Incomplete Transition: Overcoming the Legacy of Exclusion in South Africa Background note Corporate Governance in South African State-Owned Enterprises Corporate Governance in South African State. Available: (Accessed 12 June 2020)
- Kikeri, S. (2018). Corporate governance in South African state-owned enterprises. World Bank.
- Lincoln, Y.S. and Guba, E.G. (1985). *Naturalistic Inquiry*. Thousand Oaks, CA Sage Publications.
- Madumi, P. (2018). Are State-Owned Enterprises (SOEs) catalysts for or inhibitors of South African economic growth?. *International Conference on Public Administration and Development Alternatives (IPADA)*.
- Massie, K., Collier, D., & Crotty, A. (2014). Executive salaries in South Africa. Who should have a say on pay.
- McGregor, L. (2014). Can South African State Owned Companies Succeed. University of Stellenbosch: Hans Seidel Foundation. Retrieved July, 26, 2017.
- McLellan, J. G. (2009). Applied corporate governance: new challenges in public sector governance. *Keeping Good Companies*, 61(8), 466-470.
- Menozzi, A., & Vannoni, D. (2014). Political connections in boards of directors. *Netw Ind Q*, 16(3), 8-10.
- Merten, M. (2019). State capture wipes out third of SA's R4. 9 trillion GDP—Never mind lost trust, confidence, opportunity', *Daily Maverick*.
- Minichilli, A., Gabrielsson, J., & Huse, M. (2007). Board evaluations: Making a fit between the purpose and the system. *Corporate Governance: An International Review*, 15(4), 609-622.
- Mkhwanazi, M. (2016). Efficiency and effectiveness of fraud risk management in the Department of Health, eThekweni District-KwaZulu-Natal Province (Doctoral dissertation).
- Molefe, P. (2006). Overview by the Director-General, An Analysis of the Financial Performance of State-Owned Enterprises, Department of Public Enterprises, Pretoria.
- Moloi, T., & Marwala, T. (2020). Artificial intelligence in economics and finance theories. Berlin/Heidelberg, Germany: Springer.
- Namara, R. B., Karyeija, G. K., & Mubangizi, B. C. (2015). Network governance and capacity of local governments to deliver LED in Uganda. *Commonwealth Journal of Local Governance*, (18), 82-107.
- Needham, R. D., & de Loë, R. C. (1990). The policy Delphi: purpose, structure, and application. *Canadian Geographer/Le Géographe Canadien*, 34(2), 133-142.
- OECD. (2015). OECD Guidelines on Corporate Governance of State-Owned Enterprises. (Access: 20 June 2019).
- Okoli, C., & Pawlowski, S. D. (2004). The Delphi method as a research tool: an example, design considerations and applications. *Information & management*, 42(1), 15-29.
- Olowosegun, O., & Moloi, T. (2021). Corporate governance disclosures in the annual reports of Nigerian banks. *Acta Commercii-Independent Research Journal in the Management Sciences*, 21(1), 857.
- PFMA. (2018). Public Finance Management Act, 2018. ( Accessed: 13 October 2019).
- Rossouw, G. J. (2009). The ethics of corporate governance: Global convergence or divergence?. *International Journal of Law and Management*, 51(1), 43-51.

- RSA. (2022a). State-Capture-Commission-Report-part-i-vol-1.pdf. (Accessed: 19 February 2022).
- RSA. (2022b). State-Capture-Commission-Report-part-i-vol-1.pdf. (Accessed: 19 February 2022).
- RSA.(2022c). State-Capture-Commission-Report-part-i-vol-1.pdf. (Accessed: 19 February 2022).
- Serretta, H., Bendixen, M., & Sutherland, M. (2009). Core corporate governance dilemmas facing boards: A South African perspective. *South African Journal of Economic and Management Sciences*, 12(2), 194-210.
- Shapiro, C., & Willig, R. D. (2019). Economic rationales for the scope of privatization. In *The political economy of public sector reform and privatization* (pp. 55-87). Routledge.
- Thabane, T., & van Deventer, E. S. (2018). Pathological corporate governance deficiencies in South Africa's state-owned companies: a critical reflection. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 21(1).
- Thomas, A. (2012). Governance at South African state-owned enterprises: what do annual reports and the print media tell us?. *Social Responsibility Journal*, 8(4), 448-470.
- Vagliasindi, M. (2008). Governance arrangements for state owned enterprises . World Bank Publications.
- Van der Nest, D. P., Thornhill, C., & De Jager, J. (2008). Audit committees and accountability in the South African public sector. *Journal of Public Administration*, 43(4), 545-558.
- Vandiar, T. (2015). A critical analysis of the capacity of South African non-executive directors: a model for best practice in South Africa. University of Johannesburg (South Africa).
- Williams, D. (2010). State-owned enterprises: End of the road. *Financial Mail*, 205(7), 34-8.
- Zaccaro, S. J. (2007). Trait-based perspectives of leadership. *American psychologist*, 62(1), 6.
- Zohrabi, M. (2013). Mixed method research: Instruments, validity, reliability and reporting findings. *Theory and practice in language studies*, 3(2), 254.
- Zondo. R. (2022a). State-Capture-Commission-Report-part-i-vol-1.pdf. (Accessed: 19 February 2022).
- Zondo. R. (2022b). State-Capture-Commission-Report-part-i-vol-1.pdf. (Accessed: 19 February 2022).
- Zondo. R. (2022c). State-Capture-Commission-Report-part-i-vol-1.pdf. (Accessed: 19 February 2022).

**Received:** 12-Jan-2024, Manuscript No. JLERI-23-13846; **Editor assigned:** 13-Jan-2024, Pre QC No. JLERI-23-13846(PQ); **Reviewed:** 27-Jan-2024, QC No. JLERI-23-13846; **Revised:** 01-Feb-2024, Manuscript No. JLERI-23-13846(R); **Published:** 08-Feb-2024