



# Corporate Governance: The Companies Act and CIPC's role

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# Introduction

*“Corporate governance refers to the structures and processes for the **direction** and **control** of companies. Corporate governance concerns the **relationships** among the management, board of directors, controlling shareholders, minority shareholders and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital.”*  
(IFC)

# Ingredients of good governance

- A strong and effective relationship between the management of a company, the board, its shareholders and other stakeholders;
- A well qualified and suitable board that provides guidance and oversight to management;
- Shareholders that show an interest in the business without interfering in the day-to-day operations;
- An executive that manages the company effectively and achieves the results that the shareholder wishes to see;
- An organisation with an effective system of controls and which complies with applicable laws and regulations.

Companies Act guides relationships,  
actions and controls

# State Owned Companies (SOCs)

“state-owned company” means an enterprise that is registered in terms of this Act as a company and either –

- (a) Is listed as a public entity in Schedule 2 or 3 of the Public Finance Management Act, 1999 (Act No 1 of 1999); or
- (b) Is owned by a municipality, as contemplated in the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) and is otherwise similar to an enterprise referred to in paragraph (a).

# State Owned Companies (SOCs)

Schedule 2	Schedule 3
<ol style="list-style-type: none"><li>1. Air Traffic and Navigation Services Company Limited</li><li>2. Airports Company of South Africa Limited</li><li>3. Alexkor Limited</li><li>4. Armaments Corporation of South Africa Limited</li><li>5. Broadband Infrastructure Company (Pty) Ltd</li><li>6. CEF (Pty) Ltd</li><li>7. DENEL (Pty) Ltd</li><li>8. Development Bank of Southern Africa</li><li>9. ESKOM</li><li>10. Independent Development Trust</li><li>11. Industrial Development Corporation of South Africa Limited</li><li>12. Land and Agricultural Development Bank of South Africa</li><li>13. South African Airways (Pty) Limited</li><li>14. South African Broadcasting Corporation Limited</li><li>15. South African Express (Pty) Limited</li><li>16. South African Forestry Company Limited</li><li>17. South African Nuclear Energy Corporation Limited</li><li>18. South African Post Office Limited</li><li>19. Telkom SA Limited</li><li>20. Trans-Caledon Tunnel Authority</li><li>21. Transnet Limited</li></ol>	<p>Part A: 154 entities Part B: 26 entities</p>

# Application of the Act

**Sec 9 Modified application with respect to state-owned companies –** provisions applicable to public companies apply to SOCs, except where exempted by Minister in sec 9(3) i.e. where other legislation imposes an equivalent or higher requirement, and subject to conflict resolution provision in sec 5

Section	Requirement
30	Preparation of Annual Financial Statements
34	Additional Accountability requirements for certain companies which require that a state-owned company with the extended accountability requirements as set out in Chapter 3
44	Financial assistance for subscription of securities
45	Loans or other financial assistance to directors
61(7)	Shareholder meetings
66	Board, directors and prescribed officers
84	Application of enhanced accountability requirements to state-owned companies
86	Mandatory appointment of company secretary
90	Appointment of Auditor
92	Rotation of Auditors
94	Audit Committees
Regulation 42	Qualification for members of Audit Committees

# Compliance survey

	S30	S34	S44	S45	S61(7)	S66	S84	S86	S90	S92	S94	Reg 42
SAA	✓	✓	n/a	✗	✗	✓	✓	✓	✓	✓	✓	✓
Transnet	✓	✓	n/a	n/a	✓	✓	✓	✓	✓	✓	✓	✓
Denel	✓	✓	n/a	n/a	✓	✓	✓	✓	✓	✓	✓	✓
Armcor	✓	✓	n/a	n/a	✓	✓	✓	✓	✓	✓	✓	✓
ACSA	✓	✓	n/a	n/a	✓	✓	✓	✓	✓	✓	✓	✓
ATNS	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Telkom	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Alexkor	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Broadband Infracore	✓	✓	n/a	n/a	✓	✓	✓	✓	✓	✓	✓	✓
SA Express	✓	✓	n/a	n/a	✓	✓	✓	✓	✓	✓	✓	✓
Eskom	✓	✓	n/a	n/a	✓	✓	✓	✓	✓	✓	✓	✓
CEF	✓	✓	✓	✓	✓	✗	✓	✓	✓	✓	✓	✓
Post Office	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
SABC	✓	✓	n/a	n/a	✓	✓	✓	✓	✓	✓	✓	✓
Safcol	✓	✓	n/a	n/a	✓	✓	✓	✓	✓	✓	✓	✓
Necsa	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Responses from a self-assessment by entity boards

# Audit findings (2012, 2013)

1. Financial statements submitted for auditing not prepared in accordance with International Financial Reporting Standards and supported by full and proper records;
2. Accounting records for non-current assets not complete and accurate
3. Contravention of sect 94 in that an audit committee member that served during the financial period had also been involved in the day-to-day management of the company's business during the 2013 financial year.
4. The MOI had not been finalised
5. There was non-compliance with sec 45 of the Companies Act
6. There was a lack of proper record keeping
7. The board of directors did not take effective steps to prevent irregular and fruitless expenditure
8. Proper control systems to safeguard and maintain assets were not implemented
9. Non-compliance with laws and regulations



# CIPC Findings

## **Question: why are we seeing these failures?**

- Lack of consequences – responsible boards are replaced without being held to account – point made by AG as well;
- Lack of appropriate skills and qualification in boards
- Lack of knowledge of the requirements of the Companies Act and obligations on the Board and management
- Role confusion, resulting in inappropriate interventions

# CIPC Findings

- Provide time for new management to address underlying problems – monitor improvement rather than remove or suspend;
- Need to incentivise good people to play key roles in governance and management
- Reconsider some of the compliance requirements, such as the procurement rules?

# Steps taken

- Breaches of sec 45 are common and serious, especially where organisations are in financial trouble
- CIPC issued compliance notices and instructed boards to recover the loaned funds – R91 million recovered to date
- CIPC has required Company law education for one Executive
- CIPC working with AG, various inter-ministerial governance units

# Conclusions

- Compliance - first step in a hierarchy of governance practices
- CIPC's focus on strengthening, shaping and adjusting behaviour
- **Let's get the basics right!**