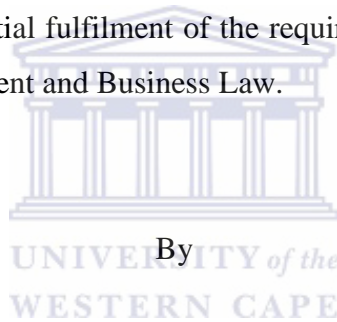


**THE UNIVERSITY OF THE WESTERN CAPE**

**FACULTY OF LAW**

**INTEGRATING NATIONAL OIL COMPANIES IN THE CORPORATE  
GOVERNANCE DISCOURSE: A COMPARATIVE ANALYSIS OF THE  
NORWEGIAN STATE OIL COMPANY (STATOIL) AND THE PROPOSED  
NATIONAL OIL COMPANY OF UGANDA**

A mini-thesis submitted in partial fulfilment of the requirements for the degree of LL.M  
in International Trade, Investment and Business Law.



By  
Timothy Kyepa

Student Number: 3082062

Supervisor: Professor Riekie Wandrag

**MAY 2011**

## KEY WORDS

Corporate Governance

National Oil Companies

Norway

Norwegian State Oil Company

Oil

Organisation for Economic Co-operation and Development

Petroleum (Exploration, Development, Production and Value Addition) Bill 2010

State Intervention

State Owned Enterprises

Uganda



## LIST OF ACRONYMS

<b>CC</b>	Control of Corruption
<b>CNOOC</b>	China National Offshore Oil Corporation
<b>ENAP</b>	Empresa Nacional del Petróleo (National Petroleum Company of Chile)
<b>GDP</b>	Gross Domestic Product
<b>GE</b>	Government Effectiveness
<b>IMF</b>	International Monetary Fund
<b>INOC</b>	Iraq National Oil Company
<b>KPC</b>	Kuwait Petroleum Corporation
<b>NIOC</b>	National Iranian Oil Company
<b>NOCs</b>	National Oil Companies
<b>NRC</b>	National Resistance Council
<b>NRM</b>	National Resistance Movement
<b>NSSF</b>	National Social Security Fund
<b>NWSC</b>	National Water and Sewerage Corporation
<b>OECD</b>	Organisation of Economic Co-operation and Development
<b>ONGC</b>	Oil & Natural Gas Corporation Limited
<b>P&amp;AV</b>	Political Stability and Absence of Violence
<b>PdVSA</b>	Petroleos De Venezuela, S.A (National Oil Company of Venezuela)
<b>RL</b>	Rule of Law
<b>ROC</b>	Republic of Congo
<b>RQ</b>	Regulatory Quality
<b>SNPC</b>	Société Nationale des Pétroles du Congo (National Oil Company of Congo)
<b>SOEs</b>	State Owned Enterprises
<b>V&amp;A</b>	Voice and Accountability
<b>YPFA</b>	Yacimientos Petrolíferos Fiscales Autárquicos (National Oil Company of Argentina)
<b>YPFB</b>	Yacimientos Petrolíferos Fiscales Bolivianos (National Oil Company of Bolivia)

## DECLARATION

**I, Timothy Kyepa**, declare that **Integrating National Oil Companies in the Corporate Governance Discourse: A Comparative Analysis of the Norwegian State Oil Company (Statoil) and the Proposed National Oil Company of Uganda** is my own work and that it has not been submitted before for any degree or examination in any other university, and that all sources I have used or quoted have been indicated and acknowledged as complete references.

Signed:

---

**Timothy Kyepa**



May 2011

Signed:

---

**Prof. Riekie Wandrag**

May 2011

## ACKNOWLEDGEMENTS

I am greatly indebted to the Almighty God, for the invincible arm of support he has provided, and for answering my prayers at all times.

I am also eternally grateful to Prof. Rieke Wandrag, Chief Justice Fredrick Egonda Ntende, Dr. Patricia Leneghan, Prof. Israel Leeman, Advocate Fourie Kotze, Dr. Henry Ojambo, Dr. Sarah Ssali, Dr. Jamil Mujuzzi, and Mr. Ivan Ruygema for the support they have provided at the different stages of my legal education and for the input provided in the writing of this thesis.

I would also like to thank AusAID for the generous funding that enabled me to pursue the LL.M programme.

I am profoundly grateful to the World Bank Oil, Gas, and Mining Division and the Centre for Energy Economics at the University of Texas at Austin, for granting me permission to use some of their work.

I would like to abundantly thank Dr. George Bagwana and Mrs. Idah Bagwana, my lovely parents; for instilling in me, the love of God and the passion for education. Thank you for the endless love and the financial and moral support.

Additionally, I would like to thank, Mr. Aaron Kabirizi and Mrs. Sande Kabirizi, for the support they have provided me at all times. I am also most grateful to my siblings, Esther Nakayima, Martha Bagwana, Aaron Mwidu, and my brother-in-law Albert Byaruhanga for the motivation and support. To my cousins, Tezie Nakayima, Mark Kabirizi, and Aaron Mwidu, who provided moral support and with whom we have shared so many pleasant moments, I am very grateful for the encouragement.

To a very special friend, Henriette Hitchcock, who has been a pillar to lean on, I am grateful for the love and support. I would also like to thank my classmates, Sunduzwayo Madise, Adedayo Adedeji, Cezanne Britain-Renecke, Hilda Thopacu, Maryanne Macheru, Egidius Mweyunge, James Madiga, Toby Moody, Ala Runick Fru, Sadat Lunani and Samuel Yeboah for the great friendship we shared.

Finally, to my friends who encouraged me and who have been more than an inspiration to me, Edgar Mwesigye, Dr. Muchindu Munkombe, Stella Muheki, Raymond Ndiyagambaki, Steven Dungu, Don Mbuga, Bruce Musinguzi, Gracious Miti, Andrew Nyombi, Nusula Nassuna, Collin Kigonya, Robert Mugagga, Richard Baguma, Jack Mugume, Nixon Tasakana, Terence Babila, Craig Horne, Clariss Faith, and the others who have not been mentioned, I treasure the memories and you certainly made my days brighter.

## DEDICATION

This work is affectionately dedicated to my parents, Dr. and Mrs. Bagwana, who continue to nurture my dream and to my supervisor, Prof. Riekie Wandrag, who gave me the opportunity to pursue post-graduate education.



## TABLE OF CONTENTS

KEY WORDS .....	i
LIST OF ACRONYMS .....	ii
DECLARATION .....	iii
ACKNOWLEDGEMENTS .....	iv
DEDICATION .....	v
CHAPTER 1 .....	1
INTRODUCTION .....	1
1.1 Background .....	1
1.2 The Research Problem .....	10
1.3 Hypothesis .....	10
1.4 Aims of the Study .....	11
1.5 Scope .....	11
1.6 Methodology .....	12
1.7 Significance of the Study .....	13
1.8 Chapter Outline and Overview .....	15
1.9 Conclusion .....	16
CHAPTER 2 .....	17
HISTORY, UNDERSTANDING AND RELEVANCE OF STATE OWNED ENTERPRISES AND NATIONAL OIL COMPANIES .....	17
2.1 Introduction to State Intervention, State Owned Enterprises (SOEs) and National Oil Companies (NOCs) .....	17
2.1.1 Growth and Relevance of SOEs .....	19
Graph 2.1 .....	21
2.2 A Brief on State Ownership in Norway and Uganda .....	22
2.2.1 Norway .....	22
2.2.2 Uganda .....	26
2.3 History and Relevance of NOCs .....	33
2.3.1 History of NOCs .....	33
Table 2.1 .....	36
Select NOCs and Year Established .....	36
2.3.2 Current Position of NOCs .....	37

2.4 Relevance of NOCS .....	38
2.4.1 Arguments for the Establishment of NOCs .....	38
Table 2.2 .....	41
The Importance of the Oil and Gas Sector for Select Oil Exporting Countries (2003)	41
2.4.2 Arguments against the Establishment of NOCs .....	42
2.5 Conclusion .....	45
CHAPTER 3 .....	47
CORPORATE GOVERNANCE IN STATE OWNED ENTERPRISES.....	47
3.1 Background and Understanding of Corporate Governance .....	47
3.1.1 Origin of Corporate Governance .....	47
3.1.1.1 Recent Trends in Corporate Governance: A South African Perspective .....	48
3.1.2 Definitions of Corporate Governance .....	49
3.1.3 An Overview of the Major Theories of Corporate Governance .....	52
3.1.3.1 Agency Theory.....	52
3.1.3.2 The Stewardship Theory .....	57
Table 3.1 .....	58
Major Differences between the Agency Theory and the Stewardship Theory .....	58
3.1.3.3 Stakeholder Theory .....	59
3.2 The Relationship between Public Governance and Corporate Governance .....	60
Graph 3.1.....	62
Worldwide Governance Indicators: Performance of Norway and Uganda (2009).....	62
3.3 OECD Principles of Corporate Governance .....	63
3.3.1 Ensuring the Basis for an Effective Corporate Governance Framework.....	64
3.3.2 The Rights of Shareholders and Key Ownership Functions .....	65
3.3.3 The Equitable Treatment of Shareholders .....	65
3.3.4 The Role for Stakeholders in Corporate Governance .....	66
3.3.5 Disclosure and Transparency .....	67
3.3.6 The Responsibilities of the Board.....	68
3.4 OECD Guidelines for Corporate Governance in State Owned Enterprises.....	69
3.4.1 Ensuring an Effective Legal and Regulatory Framework for State Owned Enterprises.....	70
3.4.2 The State Acting as Owner .....	71



3.4.3 Equitable Treatment of Shareholders.....	72
3.4.4 Relations with Stakeholders.....	73
3.4.5 Transparency and Disclosure.....	74
3.4.6 The Responsibilities of the Boards of State Owned Enterprises .....	74
3.5 An Overview of the Corporate Governance Framework for SOEs in Norway .....	76
3.5.1 All Shareholders shall be Treated Equally.....	76
3.5.2 There shall be Transparency in the State’s Ownership of Companies. ....	76
3.5.3 Ownership Decisions and Resolutions shall be made at the General Meeting....	77
3.5.4 The State may set Performance Targets for Each Company Together with other Owners. The Board is Responsible for Meeting these Targets.....	77
3.5.5 The Capital Structure of the Company shall be Consistent with the Objective of the Ownership and the Company's Situation. ....	78
3.5.6 The Composition of the Board shall be Characterised by Competence, Capacity and Diversity and shall Reflect the Distinctive Characteristics of Each Company.....	78
3.5.7 Compensation and Incentive Systems shall Promote the Creation of Value in the Companies and shall be Generally Regarded as Reasonable.....	79
3.5.8 The Board shall Exercise an Independent Control of the Company’s Management on Behalf of the Owners. ....	79
3.5.9 The Board shall Adopt a Plan for its Own Work and shall Work Actively with Development of its Own Competence. The Board’s Activities shall be Assessed.....	80
3.5.10 The Company shall Recognise its Responsibilities to all Shareholders and Stakeholders in the Company. ....	80
3.6 An Overview of the Corporate Governance Framework for SOEs in Uganda; Proposals for Reform .....	81
3.6.1 Board and Directors .....	83
Table 3.2 .....	85
Status and Operation of Boards of Directors for Select SOEs in Uganda .....	85
3.6.2 Risk Management .....	85
3.6.3 Relations with Shareholders .....	86
3.7 Conclusion .....	87
CHAPTER 4 .....	90

CORPORATE GOVERNANCE STRUCTURES IN THE NORWEGIAN STATE OIL COMPANY (STATOIL); LESSONS FOR THE PROPOSED NATIONAL OIL COMPANY OF UGANDA .....		90
4.1 Introduction.....		90
Figure 4.1 .....		92
Major Milestones in the History of the Norwegian State Oil Company (Statoil) .....		92
4.2 Company Organs and Corporate Governance in Statoil.....		93
4.2.1 Shareholders in General Meeting.....		94
4.2.2 Board of Directors.....		95
4.2.3 Corporate Assembly.....		97
4.2.4 Nomination Committee.....		98
4.2.5 Audit Committee.....		99
Figure 4.2 .....		101
Company Organs in Statoil.....		101
4.2.6 Statoil’s Corporate Governance Principles.....		102
4.3 Corporate Structure for the Proposed National Oil Company of Uganda .....		103
4.3.1 Shareholders in General Meeting.....		103
4.3.2 Board of Directors.....		105
4.3.3 Audit Committee.....		106
Figure 4.3 .....		107
Proposed Company Organs of the Proposed National Oil Company of Uganda .....		107
4.3.4 Corporate Governance Principles for the Proposed NOC of Uganda.....		108
4.4 Conclusion .....		108
CHAPTER 5 .....		112
CONCLUSION AND SUMMARY OF RECOMMENDATIONS.....		112
5.1 Introduction.....		112
5.2 Conclusion .....		112
5.3 State Intervention, SOEs and NOCs: Broad Recommendations .....		115
5.4 Recommendations on Corporate Governance for SOEs in Uganda .....		116
5.5 Corporate Governance Structures in the Norwegian State Oil Company; Lessons for the Proposed NOC of Uganda.....		118
BIBLIOGRAPHY.....		120

BOOKS:.....	120
JOURNAL ARTICLES:.....	121
WORKING PAPERS AND REPORTS: .....	122
DISSERTATIONS:.....	124
LEGISLATION-UGANDA:.....	124
LEGISLATION-NORWAY:.....	125
CODES: .....	125
CASE LAW: .....	125
GENERAL INTERNET SOURCES: .....	126



# CHAPTER 1

## INTRODUCTION

### 1.1 Background

The concept of state intervention in the economy can be traced back to ancient civilizations.<sup>1</sup> Be that as it may, the great depression and the Second World War, among others, amplified the role of the state in the economy and led to the growth of national companies or State Owned Enterprises (SOEs) in sectors, such as energy.<sup>2</sup> Proponents of state intervention mainly locate their arguments in favour of the practice, in potential market failure and regulation failure.<sup>3</sup>

A basic examination of the term ‘market economy’ is important for the understanding of state intervention and market failure. The term refers to an economic system where market forces of demand and supply guide economic decisions in a country.<sup>4</sup> Countries that have market economies rarely engage in state intervention, although they may allow state intervention in certain sectors of the economy.<sup>5</sup> An open or mixed economy, though related to the market economy, is a combination of both planned<sup>6</sup> and market economies.<sup>7</sup>

---

<sup>1</sup> Organisation for Economic Co-operation and Development *Corporate Governance of State Owned Enterprises: A Survey of OECD Countries* (2005) 20 (Hereafter cited as Organisation for Economic Co-operation and Development 2005) The author is of the opinion that the term *ancient civilizations* is an ambiguous phrase and does not sufficiently locate the origin of state intervention.

<sup>2</sup> Organisation for Economic Co-operation and Development (2005) 20

<sup>3</sup> Organisation for Economic Co-operation and Development (2005) 20 See also The World Bank ‘Overview of the Political and Economic Arguments in Favor of and Against the Establishment of a NOC’ (2009) 6 (Working Draft of Chapter 2 of the Study on National Oil Companies and Value Creation) (Hereafter cited as The World Bank 2009) Regulation failure may be overcome by state intervention where the state does not have the capacity to regulate efficiently among others. The term ‘regulation failure’ is self explanatory and refers to the government failing to regulate the market.

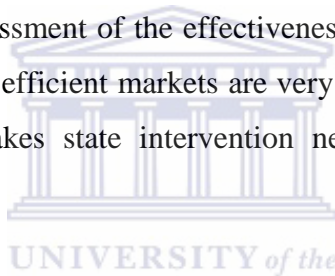
<sup>4</sup> Market Economy accessed at <http://www.investopedia.com/terms/m/marketecconomy.asp> (accessed on 2 May 2011) and <http://www.economywatch.com/market-economy> (accessed on 2 May 2011)

<sup>5</sup> Market Economy accessed at <http://www.investopedia.com/terms/m/marketecconomy.asp> (accessed on 2 May 2011) and <http://www.economywatch.com/market-economy> (accessed on 2 May 2011) This definition of market economies shows that state intervention happens in a market economy. The state intervenes in a market economy, when there is reason to do so.

<sup>6</sup> In a planned economy, the government decides what is to be produced and the prices of the different commodities. It is the opposite of the market economy. See <http://www.economywatch.com/market-economy> (accessed on 2 May 2011)

The above discussion indicates that there is a distinction between planned economies and state intervention. While both concepts allow the state to participate in guiding the economy, they differ on the degree of state participation. Planned economies allow greater state participation as compared to state intervention under a market economy.

Market failure occurs in the absence of efficient markets.<sup>8</sup> Efficient markets are defined as markets where resources are allocated perfectly, that is, everyone has access to full information and equal opportunity to bid.<sup>9</sup> Efficient markets also refer to instances where there are no external forces acting to influence the outcome in the markets.<sup>10</sup> The existence of efficient or perfect markets is debatable.<sup>11</sup> Economists argue that the concept of efficient and perfect markets is merely idealist and only relevant in the development of economic models.<sup>12</sup> Despite the existence of such opinions, the idea of efficient markets is relevant in the practical assessment of the effectiveness of markets. It can be deduced from the above definition, that efficient markets are very rare, thus market failure occurs in many economies. This makes state intervention necessary in very many market economies.



Market failure may exist in natural monopolies, which arise due to large economies of scale and costs in this instance can only be reduced if output is supplied by a single monopolistic producer, for example, electricity and gas sectors.<sup>13</sup> Market failure may also exist in public goods, for example law and order, where consumption and payments are de-linked, as everyone benefits from the services.<sup>14</sup> Lastly, market failure may exist in merit goods which can be restricted to particular groups, but consumption is desirable

---

<sup>7</sup> See <http://www.economywatch.com/market-economy> (accessed on 2 May 2011)

<sup>8</sup> Katz A W *Foundations of the Economic Approach to Law* (1998) 39-40 (Hereafter cited as Katz A W 1998 )

<sup>9</sup> Katz A W (1998) 39-40

<sup>10</sup> Katz A W (1998) 40

<sup>11</sup> Perfect markets imply efficient markets, although efficient markets do not always imply perfect markets. Nevertheless, there is a correlation between the two terms. See University of Hull Business School 'Efficient Markets Hypothesis' (2002/2003) 6 at <http://www.e-m-h.org/FM08.pdf> (accessed on 12 April 2011)

<sup>12</sup> Chun L 'Challenging Privatization: A Conceptual and Theoretical Argument' (2009) *Journal of Chinese Political Science* 2009 14: 23 (Hereafter cited as Chun L 2009)

<sup>13</sup> Organisation for Economic Co-operation and Development (2005) 20

<sup>14</sup> Organisation for Economic Co-operation and Development (2005) 20

even if consumers cannot pay a market price, for example health and education.<sup>15</sup> Thus in such circumstances, the state will intervene to control these market imperfections.

Related to the foregoing discussion, in April 1965, the Norwegian government passed a Royal Decree to lay down basic guidelines for Norway's administration of oil and gas.<sup>16</sup> The said Decree laid the foundation for the widely admired Norwegian Model of administration of oil as a natural resource.<sup>17</sup> In 1972, the Norwegian State Oil Company was formed.<sup>18</sup> The government also established the Norwegian Petroleum Directorate and later created the Ministry of Petroleum and Industry in 1978.<sup>19</sup>

In contrast to the above developments in Norway, Denmark had relied on individuals and private companies to develop its oil and gas industry.<sup>20</sup> In 1948, a committee set up to investigate allegations of fraud regarding oil discoveries in Denmark by Frederic Ravlin, found that the discoveries were a sham and that Ravlin had committed fraud against the state.<sup>21</sup> Later in 1962, Denmark transferred all its oil and gas exploration rights to the Danish ship builder A P Møller, Gulf and Shell.<sup>22</sup> The concession attracted a lot of controversy in addition to the high oil prices that characterised the 1970s and the 1980s.<sup>23</sup> The oil and gas industry in Norway thus developed against the backdrop of the unfortunate Danish experience, induced by private players as discussed above.

---

<sup>15</sup> Organisation for Economic Co-operation and Development (2005) 20

<sup>16</sup> Thurber M and Istad T B 'Norway's Evolving Champion: Statoil and the Politics of State Enterprise.' (2010) Working Paper 92, Program on Energy and Sustainable Development 11 (Hereafter cited as Thurber M and Istad T B 2010) See also Norway's Economy <https://www.cia.gov/library/publications/the-world-factbook/geos/no.html> (accessed on 2 May 2011) The Norwegian Economy is a welfare capitalist economy, featuring free market activity and state intervention.

<sup>17</sup> Thurber M and Istad T B (2010) 5

<sup>18</sup> Thurber M and Istad T B (2010) 15

<sup>19</sup> Thurber M and Istad T B (2010) 15

<sup>20</sup> Hahn-Pedersen M *A P Møller and the Danish Oil* (1999) 22 (Hereafter cited as Hahn-Pedersen M 1999)

<sup>21</sup> Hahn-Pedersen M (1999) 22

<sup>22</sup> Hahn-Pedersen M (1999) 52

<sup>23</sup> Hahn-Pedersen M et al *A P Møller and the Danish Oil* (1999) cited by Thurber M and Istad T B (2010)

Subsequently, countries, especially those that have not fully realised the economic benefits of their oil sector,<sup>24</sup> or those<sup>25</sup> that have recently discovered commercially viable deposits of oil, are now considering the Norwegian model for management of oil as a natural resource. The aforementioned model envisages administration of oil resources using three government entities: a NOC engaged in commercial operations; a government ministry to establish policy; and a regulatory body to perform the regulatory and technical advisory role.<sup>26</sup>

Uganda has recently discovered reasonably large deposits of oil<sup>27</sup> and is moving towards the above described trend. The Petroleum (Exploration, Development, Production, and Value Addition) Bill 2010 (the Petroleum Bill 2010); provides for the creation of a NOC<sup>28</sup> and the Petroleum Authority of Uganda.<sup>29</sup> It is worth noting that in addition to the above institutions, the Ministry of Energy and Mineral development is maintained, thus creating a tripartite framework similar to that in the Norwegian Model. The above structure is a departure from the Petroleum (Exploration and Production) Act 7 of 1985, where most functions are vested in the minister responsible for petroleum exploration and production and the commissioner for petroleum exploration and production. The Norwegian State Oil Company which has successfully managed Norwegian oil and gas this far, provides an example upon which the proposed Ugandan NOC can be structured.

---

<sup>24</sup> Thurber M et al 'The Limits of Institutional Design in Oil Sector Governance: Exporting the Norwegian Model' (2010) ISA Annual Convention, Program on Energy and Sustainable Development 5 (Hereafter cited as Thurber M et al 2010)

<sup>25</sup> Ghana and Uganda are examples of countries towing this line. 'Norway Helps Ghana Prepare for the Oil Age' See: [http://www.embnorway.com.ng/News\\_and\\_events/development/Norway\\_Ghana\\_oil\\_cooperation/](http://www.embnorway.com.ng/News_and_events/development/Norway_Ghana_oil_cooperation/) (accessed on 11 April 2011) Reporting on Norwegian and Ghanaian co-operation. See also the Petroleum (Exploration, Development, Production, and Value Addition) Bill 2010 of Uganda.

<sup>26</sup> Thurber M et al (2010) 7

<sup>27</sup> The oil reserves in Uganda are estimated at 2 billion barrels as quoted by Reuters, Bagh C 'Uganda's Oil Industry'. See: <http://uk.reuters.com/article/2010/03/27/uganda-oil-investments-idUKLDE62N1I820100327> (accessed on 24 August 2010)

<sup>28</sup> The Petroleum (Exploration, Development, Production, and Value Addition) Bill 2010 clause 42

<sup>29</sup> The Petroleum (Exploration, Development, Production, and Value Addition) Bill 2010 clause 9

The international forum has taken cognisance of the success of the Norwegian model. The draft Natural Resources Charter<sup>30</sup> details best practices in management of natural resources. The best practices indicated are quite similar to the structure of the Norwegian model. It should be noted however that this Charter is intended to guide countries and has no legal effect.

NOCs developed during the era of increased state intervention in national economies.<sup>31</sup> NOCs may be classified under the overarching category of SOEs. David Robinett has described SOEs to include a diverse range of corporations:

State-owned enterprises—sometimes also referred to as government corporations, government-linked companies, parastatals, public enterprises, or public sector enterprises—are a diverse mix ranging from internationally competitive listed companies, large-scale public service providers, wholly owned manufacturing and financial firms, to small and medium enterprises.<sup>32</sup>

This definition of SOEs is very broad and it envisages both fully owned and partially owned enterprises. Entities, such as, public enterprises and government linked companies are partially owned by the state, with other shareholders holding shares. The term ‘State Owned Enterprises’ thus generally refers to all these entities whether fully or partially owned by the state.

Paul Stevens defines an NOC as:

---

<sup>30</sup> The draft charter has been written by an independent Group of experts comprising of economists, lawyers and political scientists.

<sup>31</sup> Wainberg M F et al ‘Commercial Frameworks for National Oil Companies’ (2007) Working Paper, Center for Energy Economics 4 (Hereafter cited as Wainberg M F et al 2007) See also Stevens P ‘National Oil Companies: Good or Bad? - A Literature Survey’ (2003) National Oil Companies workshop presentation, World Bank 1 (Hereafter cited as Stevens P 2003) A big number of NOCs were established in the 25 years that followed the end of the Second World War

<sup>32</sup> Robinett D ‘Held By The Invisible Hand, The Challenge of SOE Corporate Governance for Emerging Markets’ (2006) The World Bank Corporate Governance Department 1 (Hereafter cited as Robinett D 2006) at <http://rru.worldbank.org/Documents/Other/CorpGovSOEs.pdf> (accessed on 20 November 2011)



An oil company operating in some part of the oil value chain owned and controlled by government.<sup>33</sup>

He further observes that NOCs set up by oil importing countries and those set up by oil exporting countries should be distinguished.<sup>34</sup> However, the above definition is narrow and does not make the distinction between those partially owned NOCs and those fully owned by the government. This research focuses on NOCs set up by oil exporting countries, both fully and partially owned by the government.

Research conducted in 2005 indicates that at the time 9 of the top 10 oil companies in terms of oil reserves were NOCs and all 10 of the top 10 companies in terms of natural gas were NOCs.<sup>35</sup> It further shows that these NOCs were mainly located in developing countries.<sup>36</sup> The above statistics, though not conclusive, point to NOCs being the preferred entities in dealing with national oil resources.

Discussing the involvement of OECD countries in the oil sector, Paul Stevens<sup>37</sup> notes that the involvement of governments was mainly driven by the view that they should address social and economic problems. He further notes that the existence of market failure required state intervention.<sup>38</sup>

During the 1970s and 1980s state intervention was strongly criticized, translating into partial or full privatization of several NOCs during the 1990s and the early 21<sup>st</sup> century.<sup>39</sup> Central to the debate and criticism of NOCs at the time, was the lack of competition and transparency which resulted in inefficiency, corruption and incompetence.<sup>40</sup>

---

<sup>33</sup> Stevens P (2003) 5

<sup>34</sup> Stevens P (2003) 5

<sup>35</sup> Petroleum Intelligence Weekly 'Ranking the World's Oil Companies' (2005) See: [http://www.energyintel.com/PublicationHomePage.asp?publication\\_id=4](http://www.energyintel.com/PublicationHomePage.asp?publication_id=4) (accessed on 4 January 2011)

<sup>36</sup> Wainberg M F et al (2007) 2

<sup>37</sup> Stevens P (2003) 1

<sup>38</sup> Stevens P (2003) 2

<sup>39</sup> Wainberg M F et al (2007) 6

<sup>40</sup> Wainberg M F et al (2007) 6

Paul Stevens notes that market forces, though supported by several critics of state intervention, may not be the solution.<sup>41</sup> Currently, resource ‘nationalism’, including the re-emergence of NOCs, justifies the foregoing statement to a large extent.<sup>42</sup> The re-emergence of NOCs is attributed to several factors; though the rise in oil and gas prices coupled with the fact that NOCs are still perceived as contributing greatly to economic development appear to strongly favour the reemergence of NOCs.<sup>43</sup> Additionally, the fact that oil revenue is a tool for political control cannot be understated and this may be another reason for the re-emergence of NOCs.<sup>44</sup>

Despite the challenges that many NOCs faced in the 1970s and the 1980s, these institutions remain relevant.<sup>45</sup> However, the fact that in many African countries, the commercial space is rife with political interference and corruption; stands to undermine the relevance of SOEs and NOCs.<sup>46</sup> Research indicates that good governance of NOCs is a must have, at both the public sector level and the corporate level.<sup>47</sup> It is only through good governance, at both the public sector level and the corporate level, that the evils of corruption, inefficiency and incompetence, which besieged state intervention and NOCs, during the 1970s and 1980s,<sup>48</sup> will be expunged.

Though NOCs may be difficult to manage in Africa, they are a key ingredient of the Norwegian Model. Moving forward, it is necessary to insulate these companies from poor corporate practices and guide them in ensuring maximization of resources to attain their full potential. Central to this objective is the concept of corporate governance in NOCs.<sup>49</sup>

---

<sup>41</sup> Stevens P (2003) 4

<sup>42</sup> Wainberg M F et al (2007) 9-10

<sup>43</sup> Wainberg M F et al (2007) 9

<sup>44</sup> Wainberg M F et al (2007) 9

<sup>45</sup> See Section 2.4 of the thesis on the relevance of NOCs.

<sup>46</sup> Goldsmith A ‘Perceptions of Business and Governance in Africa: A survey of Eight Countries’ (2001) African Economic Policy Discussion paper number 82 12 (Hereafter cited as Goldsmith A 2001) at [http://pdf.usaid.gov/pdf\\_docs/PNACM787.pdf](http://pdf.usaid.gov/pdf_docs/PNACM787.pdf) (accessed on 3 March 2011)

<sup>47</sup> Foss M, Wainberg M F ‘CEE’s Research on National Oil Companies’ (2008) Research Note, Centre for Energy Economics 4 (Hereafter cited as Foss M, Wainberg M F 2008)

<sup>48</sup> Wainberg M F et al (2007) 6

<sup>49</sup> Foss M, Wainberg M F (2008) 4

Several definitions of corporate governance have been advanced; however, this study will focus on those definitions which touch on the regulation of SOEs, in particular NOCs.

Sir Adrian Cadbury has defined corporate governance as the system by which companies are directed and controlled.<sup>50</sup> Later in 2000, he expanded on the above definition, he stated that:

Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society.<sup>51</sup>

The above definition has been adapted for this discussion as it fits in with the role of SOEs and NOCs which usually have commercial and social functions.

Special attention is drawn to the stakeholder theory<sup>52</sup> in the analysis of corporate governance theories relevant to NOCs. The stakeholder theory is wide, involving all stakeholders in the NOC and not limited to the shareholder-director relationship espoused by the agency and stewardship theories which may not consider the unique structure of SOEs and NOCs.<sup>53</sup> The discourse on corporate governance is guided by the Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance<sup>54</sup> and the OECD Guidelines on Corporate Governance of State Owned Enterprises,<sup>55</sup> among others.

---

<sup>50</sup> The Committee on Financial Aspects of Corporate Governance *Report of the Committee on Financial Aspects of Corporate Governance* (1992) 14 (Hereafter cited as the Committee on Financial Aspects of Corporate Governance 1992)

<sup>51</sup> Cadbury A 'Global Corporate Governance Forum' (2000) World Bank accessed at <http://www.corpgov.net/library/definitions.html> (accessed on 2 February 2011)

<sup>52</sup> Wicaksono A 'Corporate Governance of State-Owned Enterprises: Investment Holding Structure of Government-linked Companies in Singapore and Malaysia and Applicability for Indonesian State-Owned Enterprises' (2008) unpublished PhD thesis, University of St Gallen 24 (Hereafter cited as Wicaksono A 2008)

<sup>53</sup> Wicaksono A (2008) 18- 26

<sup>54</sup> 2004

<sup>55</sup> 2005

Presently, the corporate governance regime in Uganda is mainly limited to financial institutions and listed companies.<sup>56</sup> The Institute of Corporate Governance of Uganda Guidelines<sup>57</sup> are also in existence although these are not legally binding. Efforts have been made to include corporate governance provisions in the Companies Bill 2009,<sup>58</sup> which is currently before Parliament. The Companies Bill 2009 provides for a Code of Corporate Governance in the Second Schedule under Table F. It should be noted that section 14 of the Companies Bill makes the application of the Code optional for private companies and allows public companies to select particular provisions that will apply to them.

Related to the foregoing, section 42 of the Petroleum Bill 2010, establishes the National Oil Company of Uganda. The Company is to be established under the Companies Act of Uganda. Section 42(1) of the Act provides as follows:

There shall be incorporated, under the Companies Act, a National Oil Company to manage, on behalf of the State, the commercial aspects of petroleum activities and the participating interests of the State in the licences.

The Petroleum Bill 2010 has no provisions on corporate governance and does not make any reference to corporate governance. Reference to the Companies Act, in the Petroleum Bill 2010, is a futile attempt at covering up this anomaly. The Companies Act Cap 110 doesn't have a Corporate Governance Code. However, it is up for amendment and will soon be replaced by the Companies Bill 2009, which provides for a Code of Corporate Governance. This Code is not tailor-made for the unique oil and gas industry or SOEs with numerous stakeholders. The Petroleum Activities Act 29<sup>59</sup> of Norway does provide

---

<sup>56</sup> The Financial Institutions Act 2004 and the Capital Markets Authority (Corporate Governance Guidelines) 2003

<sup>57</sup> See [http://www.icgu.or.ug/index.php?option=com\\_content&task=view&id=35&Itemid=79](http://www.icgu.or.ug/index.php?option=com_content&task=view&id=35&Itemid=79) (accessed on 18 September 2010)

<sup>58</sup> The Companies Bill 2009 section 14

<sup>59</sup> Petroleum Activities Act 29 Section 11-2 to 11-10

for basic provisions on corporate governance. Norway also has a corporate governance framework dedicated to SOEs.<sup>60</sup>

## **1.2 The Research Problem**

Corporate governance is central to the effective and profitable management of corporations. This applies to all corporations. SOEs are in a unique position as they have to cater for commercial and social functions. Thus the need to develop and maintain a comprehensive corporate governance framework is even greater. The concept of corporate governance of SOEs in Uganda has received very little attention. This is evident in the Petroleum Bill 2010, which makes no reference to corporate governance, yet it provides for the creation of a NOC under the Companies Act. Further, as stated above, the current Companies Act Cap 110 has no Corporate Governance Code; however, it is under review and will be replaced soon. Although the Companies Bill 2009 provides for corporate governance, it makes it optional and does not cater for the corporate governance needs of SOEs. On the other hand, Norway has taken very big strides in building a formidable corporate governance framework. The Norwegian State Oil Company is one of the beneficiaries of good corporate governance in Norway.

## **1.3 Hypothesis**

The main assumption which this study seeks to evaluate is:

The absence of a comprehensive corporate governance framework in the proposed NOC under the Petroleum Bill 2010 is bound to create inefficiency and corruption in the management of the oil sector in Uganda.

More than 90% of the world's proven oil and gas reserves lie in countries outside the OECD. If these resources are well managed, they can encourage growth and reduce

---

<sup>60</sup> Kallevig M 'Ownership Function of the Norwegian State' (2005) OECD Russian Corporate Governance Roundtable meeting 5 (Hereafter cited as Kallevig M 2005) at <http://www.oecd.org/dataoecd/10/21/35175246.pdf> (accessed on 5 December 2010) and The White Paper No. 22 (2001-2002) On Reduced and Improved State Ownership

poverty on a large scale in such nations. With [*weak governance*]<sup>61</sup> systems, however, large and concentrated revenue outflows can lead to corruption, unproductive use of resources and social unrest.<sup>62</sup>

The evaluation of this major assumption shall entail discussion of the following minor assumption:

State intervention and SOEs are justified in some sectors of the economy.

#### **1.4 Aims of the Study**

The strategic aims are:

- a) To propose corporate governance structures for SOEs and NOCs so as to address the lacunae in the Petroleum Bill 2010, the Companies Bill 2009, as well as other laws establishing SOEs.
- b) To build on further research in the area of corporate governance of SOEs and regulation of the natural resources sector in Africa.

#### **1.5 Scope**

The subject area of corporate governance is quite extensive, in light of the broad scope of the subject; a basic overview of the general principles of corporate governance has been undertaken. This comparative study is also limited to corporate governance in SOEs with particular reference to the National Oil Company of Uganda and the Norwegian State Oil Company as well as other relevant SOEs in Norway and Uganda. Various SOEs in Norway and Uganda have been cited as examples in the thesis.

---

<sup>61</sup> Emphasis mine.

<sup>62</sup> Statoil 'Mastering Challenges'(2006) Statoil and Sustainable Development 8 (Hereafter referred to as Statoil 2006) at [http://www.statoil.com/en/EnvironmentSociety/Sustainability/Downloads/Sustainability\\_report\\_2006.pdf](http://www.statoil.com/en/EnvironmentSociety/Sustainability/Downloads/Sustainability_report_2006.pdf) (accessed on 5 April 2011)

## 1.6 Methodology

This study is based on literature on corporate governance, state intervention, SOEs and NOCs. A critical examination of the literature and the various schools of thought on the relevant subjects has been undertaken. The study is a comparative analysis and therefore involves a detailed review of the literature from Uganda and Norway on the areas indicated above. Literature in this instance includes but is not limited to: legislation of the above mentioned countries, guidelines, relevant texts and articles, among others. The recommendations for the different chapters are discussed simultaneously. A summary of the recommendations is presented in the last chapter.

Norway presents a stellar example of a country that has effectively managed its oil and gas sector.<sup>63</sup> It has continued to demonstrate that state intervention is an efficient tool in the management of the oil and gas sector.<sup>64</sup> Though various countries<sup>65</sup> have established NOCs, the Norwegian State Oil Company stands out for its transparency and good corporate governance.<sup>66</sup> The above reasons, coupled with very good public governance in Norway, make the Norwegian State Oil Company ideal for comparison with the proposed National Oil Company of Uganda.<sup>67</sup> The Norwegian example helps identify best practice for the operation of an NOC.

The comparative analysis has taken note of the fact that the legal systems of Norway and Uganda are different; Norway operates a system which leans towards civil law<sup>68</sup> while Uganda operates a system which is largely common law based.<sup>69</sup> Nevertheless, as

---

<sup>63</sup> Figure 4.1 on the History of the Norwegian State Oil Company and the explanation thereafter in chapter 4 of this thesis, strongly justifies this statement.

<sup>64</sup> Figure 4.1 on the History of the Norwegian State Oil Company and the explanation thereafter in chapter 4 of this thesis, supports the above proposition.

<sup>65</sup> Table 2.1 in chapter 2 of the thesis shows some of the National Oil Companies in different countries.

<sup>66</sup> Section 3.5 of chapter 3 of the thesis discusses the corporate governance framework for SOEs in Norway.

<sup>67</sup> Graph 3.1 in chapter 3 on the Worldwide Governance Indicators supports the above argument. Broadly, the indicators show that Norway has very good public governance structures.

<sup>68</sup> The legal system of Norway is said to be civil law although it borrows heavily from the common law system. See: 'Brief Information About the Norwegian Legal System'

[http://www.norlag.ge/index.php?option=com\\_content&view=article&id=63&Itemid=37&lang=en](http://www.norlag.ge/index.php?option=com_content&view=article&id=63&Itemid=37&lang=en)

(accessed on 3 February 2011)

<sup>69</sup> The Judicature Act Cap 13 Section 14

discussed above, both systems provide for NOCs. Norway has already established a NOC while Uganda is in the early stages of establishing a NOC. The convergence is that both systems provide for NOCs, although the NOCs are at different stages of development. Despite the difference in legal systems highlighted above, a comparative analysis is indeed feasible.

Due to the intricacies involved in accessing information on the oil sector in Uganda, the study is mainly founded on available legislation. A more cogent study involving interviews with key people involved in the oil sector could surely provide more practical recommendations but this cannot be undertaken at this point in time; however, this may form the basis for further research in this area. Information regarding the oil sector has been shrouded in secrecy; the Ugandan Government only released the oil production sharing agreements to Parliament after enormous pressure.<sup>70</sup>

### **1.7 Significance of the Study**

The contribution of the oil sector to the economy of Uganda, a least developed country, merits discussion. It is worth noting that oil production may be the dawn of economic prosperity in Uganda. The IMF has noted that while it may be too early to forecast the benefits of oil production in Uganda, oil revenues are expected to exceed one third of total government revenue and to contribute 8 per cent of GDP.<sup>71</sup> Despite the importance of the oil sector to Uganda, literature, on the subject especially in the academia, is still thin. This study will attempt to address the gaps in the discussion of the proposed NOC and the oil sector in Uganda, which has not been substantially addressed in any existing literature.

---

<sup>70</sup>See Kyalimpa J, Pressure mounts to make Public, Oil Agreements  
<http://ipsnews.net/news.asp?idnews=50548> (accessed on 2 November 2010)

<sup>71</sup> Reported by Imara Africa Securities Team 'What Oil Production will mean for Uganda's economy?'  
<http://www.howwemadeitinafrica.com> (accessed on 8 October 2010)



NOCs are an important institution in the management of oil resources, and this is evident in Norway.<sup>72</sup> It has also been noted that the top oil companies today are NOCs.<sup>73</sup> Uganda has chosen to follow this route and establish a NOC; thus it is imperative that the pros and cons are evaluated.

The contribution of SOEs to investment, employment and other sectors of the economy cannot be understated. SOEs affect the livelihoods of quite a large number of people in Africa; thus, improvement of the management of SOEs will go a long way to improving the livelihoods of people in Africa. This study is a modest contribution in that direction.

Globally, SOEs account for 20 percent of investment and 5 percent of employment. In Africa SOEs produce around 15 percent of GDP, in Asia 8 percent, and in Latin America 6 percent. In Central and Eastern Europe, the state sector remains significant, accounting for 20 to 40 percent of output. Overall, SOEs play an important role in a number of major economies.<sup>74</sup>

There is a dearth of corporate governance literature relating to SOEs in Africa. This makes it difficult for countries like Uganda to develop corporate governance frameworks for SOEs. The study will assist least developed and developing African countries to formulate corporate governance structures for SOEs.

The fact that several SOEs and NOCs were privatized due to lack of transparency amongst other reasons, and that nonetheless the same have re-emerged makes this study very significant.<sup>75</sup>

---

<sup>72</sup> Statoil (2006) 10

<sup>73</sup> Petroleum Intelligence Weekly 'Ranking the World's Oil Companies' (2005) see: [http://www.energyintel.com/PublicationHomePage.asp?publication\\_id=4](http://www.energyintel.com/PublicationHomePage.asp?publication_id=4) (accessed on 4 January 2011)

<sup>74</sup> Robinett D (2006) 1

<sup>75</sup> Wainberg M F et al (2007) 9

## 1.8 Chapter Outline and Overview

### 1. Introduction and Background:

The chapter provides a general background to the research, the rationale for the research and what the research seeks to achieve. The chapter also details the research question(s) that the research attempts to answer and the likely challenges attending the answering of these question(s). The chapter further illustrates the proposed approach in answering the research question(s).

### 2. History, Understanding and Relevance of SOEs and NOCs:

This chapter provides a general overview of SOEs and NOCs. It also underscores their functions and illustrates their contribution to development. The discussion in this chapter is guided by the concept of state intervention in the economy. The chapter also identifies the distinction between the organisation of SOEs in Norway and Uganda and makes some recommendations to improve the organisation and operation of SOEs in Uganda. The chapter also broadly analyses the origin of NOCs and provides arguments for and against the establishment of a NOC.

### 3. Corporate Governance in SOEs :

This chapter discusses the concept of corporate governance and theories of corporate governance. The chapter also briefly touches on the relationship between public sector governance and corporate governance. The discussion of corporate governance involves a critical examination of relevant legislation, codes and guidelines. The OECD principles of corporate governance and the OECD guidelines on corporate governance of SOEs are used as a benchmark for evaluation of corporate governance structures. The chapter concludes with an overview of the corporate governance frameworks for SOEs in Norway and Uganda. The chapter also makes some recommendations for reform of the corporate governance of SOEs in Uganda.

4. The Corporate Governance Structures in the Norwegian State Oil Company;  
Lessons for the Proposed National Oil Company of Uganda:

This chapter examines the background to and history of the Norwegian State Oil Company. Moving forward, it critically analyses the management and governance structures of the company. Finally, the chapter examines the provisions for a NOC in Uganda, under the Petroleum Bill 2010, and, based on the structure of the Norwegian State Oil Company, proposes a corporate structure for the proposed National Oil Company of Uganda.

5. Summary of Recommendations and Conclusion:

This chapter provides a conclusion for the thesis. Further, it draws from the substantive discussion in chapters 2 to 4 and summarises the recommendations for Uganda regarding state intervention and SOEs, corporate governance in SOEs, and the proposed NOC of Uganda discussed in the above chapters. This is done against the backdrop of the Norwegian case study and the Norwegian State Oil Company.

UNIVERSITY of the  
WESTERN CAPE

## **1.9 Conclusion**

The importance of a comprehensive corporate governance framework in the management of SOEs is critical to the efficient operation of these entities. This also applies to the proposed NOC of Uganda. While a certain degree of state intervention in the economy is justified in some key sectors, this has to be attended by a comprehensive corporate governance framework to succeed.

The next chapter discusses the history and relevance of SOEs and NOCs. This provides a firm basis for the understanding of these entities and the need for specific tailor-made corporate governance structures, given their unique set-up and the roles that they have to play in the development of national economies.

## CHAPTER 2

### HISTORY, UNDERSTANDING AND RELEVANCE OF STATE OWNED ENTERPRISES AND NATIONAL OIL COMPANIES

#### 2.1 Introduction to State Intervention, State Owned Enterprises (SOEs) and National Oil Companies (NOCs)

It is important to understand SOEs and NOCs before engaging in the corporate governance debate and examining the importance of corporate governance to these entities. As discussed in chapter 1, section 1.1, NOCs developed during the era of increased state intervention.<sup>76</sup> NOCs are also categorized under the genus of SOEs.<sup>77</sup> Thus the chapter begins with an analysis of state intervention, moves to SOEs and finally discusses NOCs.

State intervention is part of the free market economy (laissez-faire) discourse.<sup>78</sup> It is therefore not unusual that a discussion of one will elicit some exposition of the other. As elaborated earlier, it has been stated that state intervention dates way back in time.<sup>79</sup> On the other hand, laissez-faire is said to be fairly recent and to have its origins in 18<sup>th</sup> century France.<sup>80</sup> The author is of the opinion that the origin of state intervention discussed above, is based on the conceptualization of state participation under planned economies and not state intervention under market economies, which is the subject of discussion in this study. State intervention under market economies should have arisen at about the same time as the laissez faire economy.<sup>81</sup>

---

<sup>76</sup> Wainberg M F et al (2007) 4

<sup>77</sup> Robinett D (2006) 1

<sup>78</sup> See section 1.1 in chapter 1 of the thesis.

<sup>79</sup> Organisation for Economic Co-operation and Development (2005) 20 See section 1.1 of chapter 1

<sup>80</sup> Taylor A *Laissez-faire and State Intervention in Nineteenth-Century Britain* (1972) Studies in Economics and Social History 11 (Hereafter cited as Taylor A 1972)

<sup>81</sup> See Section 1.1 in chapter 1 on the relationship between state intervention and the free market economy. State intervention is part of the free market economy.

Literature indicates that the 19<sup>th</sup> century was *largely*<sup>82</sup> an era where laissez-faire reigned.<sup>83</sup> However, towards the end of the 19<sup>th</sup> century, the free market economy came under attack.<sup>84</sup> State participation re-emerged into the limelight in the 20<sup>th</sup> century, especially after the Second World War.<sup>85</sup>

It is important to note that while some economists advocate a complete free market economy, others, like Adam Smith, appreciated the need for some degree of government involvement in the economy.<sup>86</sup>

Smith, indeed, goes back and forth when he expresses his opinion on the state's functions. To him, the least government is certainly the best, simply because he believes that governments are spendthrift, irresponsible, and unproductive. Nevertheless, he has a flexible view of government's role in promoting general welfare through public works and institutions.<sup>87</sup>

State intervention indeed has a place in the pure free market economy discourse. Commentators, like Jacob Viner, have interpreted Adam Smith's attitude towards government involvement as capable of growth, if governments improved their standards of competence, honesty and public spirit and showed they were capable of handling wider responsibilities.<sup>88</sup>

---

<sup>82</sup> The term 'largely' is used because as the author indicates; economists of note, such as J M Keynes *The End of Laissez-faire* (1926) at <http://www.panarchy.org/keynes/laissezfaire.1926.html> (accessed on 13 March 2011) and other distinguished authorities viewed the whole of the 19<sup>th</sup> century as an age of laissez-faire. However some economists have also argued that by 1865, laissez-faire had lost its dominance.

<sup>83</sup> Taylor A (1972) 51 to 54 The author is of the view that the statement in the foregoing source should be qualified. It is very unusual for laissez faire to exist in a pure form. Thus even in the 19<sup>th</sup> century there was some state intervention. See section 1.1 in chapter 1 on the discussion of a market economy.

<sup>84</sup> Taylor A (1972) 51

<sup>85</sup> Organisation for Economic Co-operation and Development (2005) 20 The author is of the opinion, that, based on the discussion in section 1.1 of chapter 1, of the thesis, it is logical for one to state that the re-emergence of state participation was more an increase in the degree of state participation. As noted above, state intervention should have existed at the time when laissez faire reigned.

<sup>86</sup> Nagger T 'Adam Smith's Laissez Faire' (1977) *The American Economist*, Vol. 21, Fall 35-39 published in Wood J C (ed) *Adam Smith Critical Assessments* (1984) (Hereafter cited as Nagger T 1977)

<sup>87</sup> Nagger T (1977) 35-9

<sup>88</sup> Viner J 'Adam Smith and Laissez Faire' (1927) *Journal of Political Economy* 35 228-230 published in Wood J C (ed) *Adam Smith Critical Assessments* (1984) (Hereafter cited as Viner J 1927)

State intervention is further supported, to some extent, by economists, such as, David Ricardo and Alfred Marshall.<sup>89</sup> Additionally, Tahany Nagger, discussing Keynes's general theory, states that the economy can no longer depend on laissez faire, guided only by forces of supply and demand to produce consistently high levels of employment.<sup>90</sup> This statement though primarily concerned with employment points to the need for state intervention in the economy.

The arguments of Adam Smith and other scholars who are of the opinion that state participation is sometimes necessary in a market economy are relevant in budding economies.

As mentioned earlier, support for state intervention is mainly founded in potential market failures and regulation failure.<sup>91</sup>

### **2.1.1 Growth and Relevance of SOEs**

As discussed in the preceding chapter, the growth of SOEs was greatly facilitated by the increased participation of the state in the economy after the Great Depression and the Second World War, among others.<sup>92</sup>

Post War reconstruction in Europe and Japan pushed a number of governments to play a direct role in the economy and therefore to nationalise or found companies placed in “strategic” sectors, especially in energy, transport and banking segments.<sup>93</sup>

Today, state ownership of resources and enterprises remains relevant in middle and low income countries despite widespread privatisation.<sup>94</sup> In line with the above, research

---

<sup>89</sup> Nagger T (1977) 35-39

<sup>90</sup> Nagger T (1977) 35-39

<sup>91</sup> Organisation for Economic Co-operation and Development (2005) 20 See also section 1.1 of chapter 1, for a detailed discussion of market failure and regulation failure.

<sup>92</sup> Organisation for Economic Co-operation and Development (2005) 20

<sup>93</sup> Organisation for Economic Co-operation and Development (2005) 20

<sup>94</sup> Robinett D (2006) 1

conducted by the World Bank indicates that for both political and economic reasons, the state will remain an owner of productive assets for years to come.<sup>95</sup>

State ownership has been fronted as the best alternative to regulation, especially in instances where regulation by the state is not sufficient to meet the state's objectives.<sup>96</sup> State ownership has also been lauded as highly effective in circumstances where competition will not deliver optimum results.<sup>97</sup> State ownership is also desirable where the state cannot guarantee that it will not confiscate or excessively tax enterprises.<sup>98</sup> Various other reasons have been advanced to support state ownership, including better labour relations and industrialization, among others.<sup>99</sup> The above arguments have also met stiff resistance from detractors who argue for privatisation and liberalization. Further, it has also been argued that state ownership should be temporary to allow the state to develop regulatory capacity.<sup>100</sup> The above argument is subject to debate, as the duration of temporary state ownership is not indicated.

The data indicated on the pie chart below (Graph 2.1), reveals the continued existence of SOEs in select countries. It should be noted that the pie chart and the countries used, are merely descriptive, showing the proportions of SOEs in select countries, and not intended for comparison.

---

<sup>95</sup> Robinett D (2006) 1

<sup>96</sup> Robinett D (2006) 2

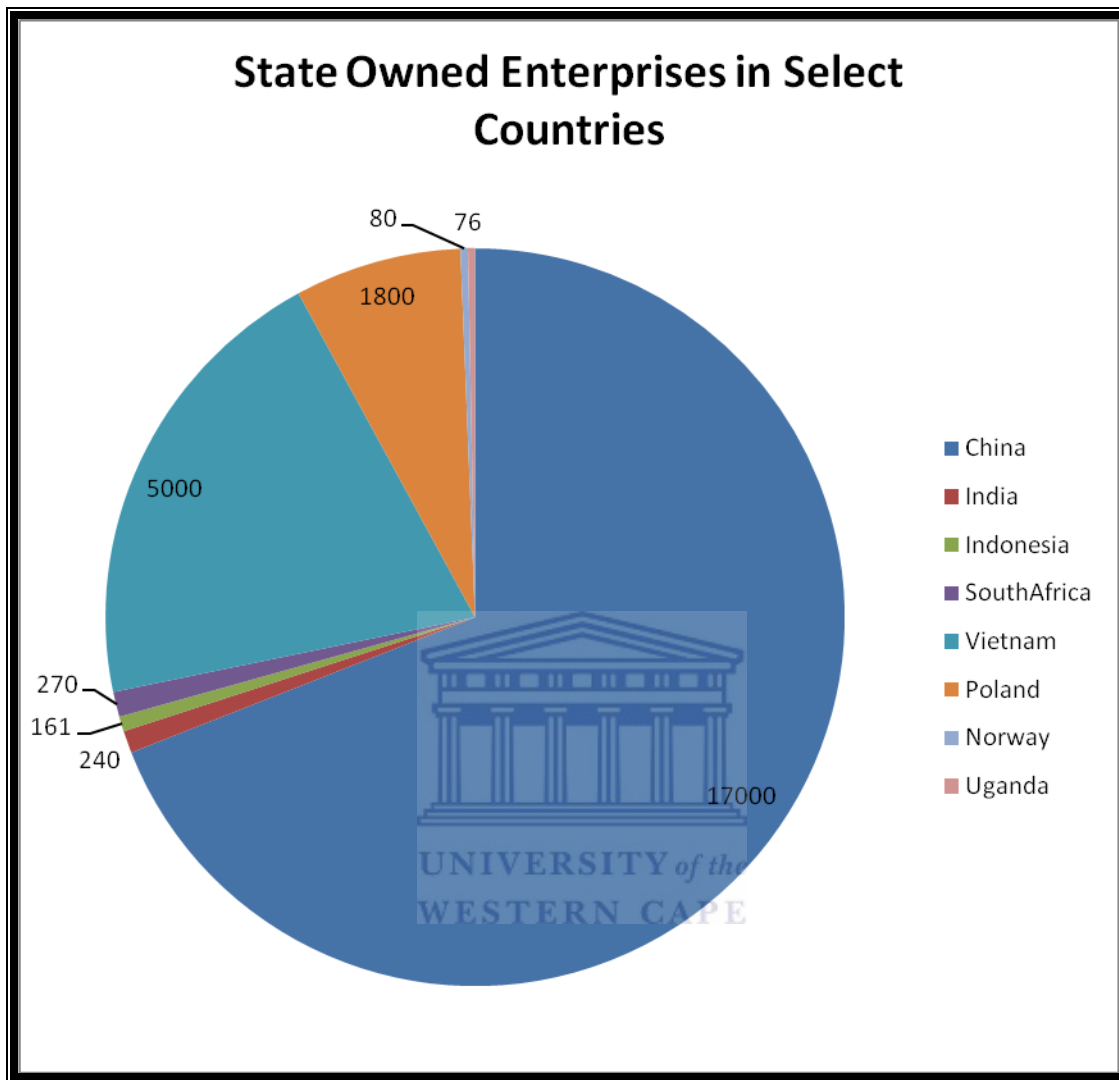
<sup>97</sup> Robinett D (2006) 3

<sup>98</sup> Organisation for Economic Co-operation and Development (2005) 20

<sup>99</sup> Robinett D (2006) 3

<sup>100</sup> Robinett D (2006) 3

Graph 2.1



Sources: See below<sup>101</sup>

<sup>101</sup> Organisation for Economic Co-operation and Development *Corporate Governance in Eurasia, A Comparative Overview* (2004a), Organisation for Economic Co-operation and Development *Experiences from the Regional Corporate Governance Roundtables* (2004b), Organisation for Economic Co-operation and Development *Principles of Corporate Governance* (2004c), Organisation for Economic Co-operation and Development *Survey of Corporate Governance Developments in OECD Countries* (2004d), Organisation for Economic Co-operation and Development *Comparative Report on Governance of State Owned Assets* (2005a), Organisation for Economic Co-operation and Development *Guidelines for the Corporate Governance of State Owned Assets* (2005b); China: Qu Q ‘Corporate Governance and State-Owned Shares in China Listed Companies’ (2003) *Journal of Asian Economics* 14: 771–83, Mako et al ‘State Equity Ownership and Management in China: Issues and Lessons from International Experience’ (2004) Paper presented at the Policy Dialogue on Corporate Governance in China, Shanghai, *The Economist* (London) February 6, ‘A Survey of Asian Finance’ (2003); Indonesia: Lee B H. ‘A Survey of Issues Relevant to an Organisational Change and Its Strategy at the Indonesian Ministry of State-Owned Enterprises’ (2002) Jakarta unpublished paper and Ministry of State-Owned Enterprises ‘Master Plan: State-Owned Enterprises’ (2002); Poland: Marta P ‘Corporate Governance in Treasury Companies’ (2003)



The Ugandan data as indicated in the sources above represent both Statutory Authorities and SOEs, thus the SOEs, in the true sense of the word, are less than the figure indicated above.

The selected countries represent a cross-section of countries at different levels of development, that is, developing countries, developed countries and regions, transition economies and least developed countries.<sup>102</sup> Thus NOCs exist in all these varying economies.

## **2.2 A Brief on State Ownership in Norway and Uganda**

### **2.2.1 Norway**

The legal framework under which State Owned Enterprises are organized in Norway includes the following major pieces of legislation; The Constitution of Norway of 1814 as amended, especially Article 75, which enjoins the Parliament to supervise the economic affairs of the Kingdom; The Business Enterprise Registration Act No. 59, section 2-1, which provides for registration of Public Companies and other business enterprises; The Norwegian Public Limited Liability Companies Act No. 45 of 13, chapter 2 on the formation of a Public Limited Liability Company; and The State Owned Enterprises Act No. 71 chapter 2 on formation of business entities which are fully owned by the state.

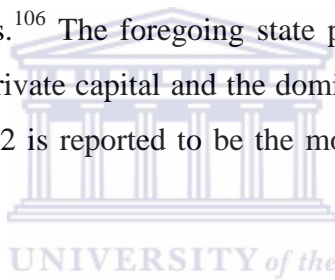
---

Paper presented at the 3rd meeting of the OECD Working Group on Privatisation and Corporate Governance of State-Owned Assets (all the above are cited by Robinett D (2006) 2); Uganda: Office of the Auditor General 'Annual Report of the Auditor General on the Financial Statements of Statutory Authorities and State Enterprises for the Year ended 30<sup>th</sup> June 2009' (2009) at [http://www.oag.go.ug/uploaded\\_files/1271768253Vol4%202008-2009%20Statutory%20Corporations.pdf](http://www.oag.go.ug/uploaded_files/1271768253Vol4%202008-2009%20Statutory%20Corporations.pdf) (accessed on 4 February 2011); Norway See <http://www.regjeringen.no/en/dep/nhd/selectedtopics/ownership.html?id=1336> on State Ownership in Norway (accessed on 16 February 2011).

<sup>102</sup> Composition of Macro Geographical (continental) Regions, Geographical Sub-regions, and Selected Economic and Other Groupings See <http://unstats.un.org/unsd/methods/m49/m49regin.htm#developed> (accessed on 17 February 2011)

History indicates that the state's direct participation in the economy started prior to the turn of the century, with the establishment of infrastructure based service provision and continued with the enactment of concession laws in 1906 to 1917, to protect the public interest in the exploitation of waterfalls for the production of electricity.<sup>103</sup> Some scholars however locate state ownership in Norway, beyond the time frame suggested above; they are of the opinion that in the old days most of the industrial activity in Norway originated with the King who had control over the minerals and financed much of the mineral extraction.<sup>104</sup> Prior to the Second World War, two factories manufacturing arms and ammunition were set up and a naval shipyard was also established.<sup>105</sup>

State participation continued to grow especially after the Second World War with the establishment of the steel and iron industry and the acquisition of several German assets in several industrial companies.<sup>106</sup> The foregoing state participation was preceded by a weak economy, insignificant private capital and the dominance of foreign capital.<sup>107</sup> The establishment of Statoil in 1972 is reported to be the most significant national resource motivated ownership.<sup>108</sup>



Research carried out in 2003 shows that about three-quarters of all Norwegian savings are controlled by the State.<sup>109</sup> The research further shows that State ownership is quite extensive; this is illustrated by the fact that the state holds about 40 per cent of the total value of all companies listed on the Oslo Stock Exchange.<sup>110</sup> State ownership in Norway has been attributed to the desire for national control of utilization of natural resources and the need to develop infrastructure and infrastructure-based provision of services.<sup>111</sup>

---

<sup>103</sup> Organisation for Economic Co-operation and Development 'Regulatory Reform in Norway Marketisation of Government Services- State Owned Enterprises' (2003) 7 (Hereafter cited as Organisation for Economic Co-operation and Development 2003) at <http://www.oecd.org/dataoecd/28/28/32682052.pdf> (accessed on 16 January 2011)

<sup>104</sup> Kallevig M (2005) 2

<sup>105</sup> Kallevig M (2005) 2

<sup>106</sup> Organisation for Economic Co-operation and Development 'Reforming Public Enterprises Case studies: Norway' (1998) 1 (Hereafter cited as Organisation for Economic Co-operation and Development 1998)

<sup>107</sup> Organisation for Economic Co-operation and Development (2003) 7

<sup>108</sup> Organisation for Economic Co-operation and Development (2003) 7

<sup>109</sup> Organisation for Economic Co-operation and Development (2003) 7

<sup>110</sup> Organisation for Economic Co-operation and Development (2003) 7

<sup>111</sup> Organisation for Economic Co-operation and Development (2003) 7

While it may be argued that State ownership in Norway has been facilitated by the fact that it is a welfare state, it is interesting to note that state ownership has actually influenced the development of the welfare state.<sup>112</sup>

Norway has recently started to revisit its public sector and many of the State Owned Enterprises have been incorporated into companies while others have been privatized.<sup>113</sup> Nevertheless, privatization has not been a dominant issue in the Norwegian reorganization debate.<sup>114</sup>

Net budgeted agencies, including administrative enterprises, statutory enterprises and Incorporated companies have all been used to organize the provision of services. The choice of organizational form has been determined by a number of factors, some sector specific, others such as labor concerns, public interest concerns, or international obligations, particularly those deriving from the European Economic Area Agreement (the EEA), have determined the organizational form chosen.<sup>115</sup>

Administrative Enterprises are entities that are created by statute and are functionally separate from the state; they are organized along commercial lines with their own management structures.<sup>116</sup> They are part of the state as a legal person and are included in the government budget.<sup>117</sup> These are no longer common in Norway.<sup>118</sup> Examples of such enterprises include the Directorate for Public Construction and Property and the Norwegian Mapping Authority.<sup>119</sup>

On the other hand Statutory Enterprises are akin to private limited companies and operate as such, albeit with some limitations.<sup>120</sup> Their capital and income are not part of the

---

<sup>112</sup> Organisation for Economic Co-operation and Development (2003) 7

<sup>113</sup> Organisation for Economic Co-operation and Development (2003) 5

<sup>114</sup> Organisation for Economic Co-operation and Development (2003) 9

<sup>115</sup> Organisation for Economic Co-operation and Development (2003) 10

<sup>116</sup> Organisation for Economic Co-operation and Development (2003) 10

<sup>117</sup> Organisation for Economic Co-operation and Development (2003) 10

<sup>118</sup> Organisation for Economic Co-operation and Development (2003) 11

<sup>119</sup> Organisation for Economic Co-operation and Development (2003) 11

<sup>120</sup> Organisation for Economic Co-operation and Development (2003) 11

Treasury though they are wholly owned by the State.<sup>121</sup> Examples of entities that were established under this structure were the State Electricity Production Company and the State Electricity Network Company.<sup>122</sup>

State Owned Incorporated Companies are those entities that were previously organized within the central government.<sup>123</sup>

This is the preferred form of business organization in commercial and industrial activity in which no particular sectoral policy considerations apply, or where the enterprises operate in a competitively exposed market and are given this organizational form in the interests of business efficiency and freedom of action. Increasingly companies that are considered to be important policy instruments are nevertheless organized in this form in order to provide them with the greatest possible freedom to run the companies according to normal business practice.<sup>124</sup>

The Companies Act in Norway has special provisions that relate to these companies, such as, the minister with the ownership role, is the general meeting.<sup>125</sup> The Norwegian Public Broadcasting Corporation is an example of a corporation that was established under this model of organisation.<sup>126</sup>

State Owned Incorporated Companies should be distinguished from Incorporated Companies with State Ownership, where the government owns either majority or minority shares.<sup>127</sup> Here, government influence is mainly exerted through the general meeting by voting with other shareholders.<sup>128</sup> Statoil ASA is one of the entities organized under this model.<sup>129</sup> Be that as it may, these Incorporated Companies with state

---

<sup>121</sup> Organisation for Economic Co-operation and Development (2003) 11

<sup>122</sup> Organisation for Economic Co-operation and Development (2003) 11

<sup>123</sup> Organisation for Economic Co-operation and Development (2003) 11

<sup>124</sup> Organisation for Economic Co-operation and Development (2003) 11

<sup>125</sup> Organisation for Economic Co-operation and Development (2003) 12

<sup>126</sup> Organisation for Economic Co-operation and Development (2003) 12

<sup>127</sup> Organisation for Economic Co-operation and Development (2003) 12

<sup>128</sup> Organisation for Economic Co-operation and Development (2003) 12

<sup>129</sup> Organisation for Economic Co-operation and Development (2003) 12

ownership are still SOEs as per the definition of SOEs seen above; they are linked to the government.<sup>130</sup>

Corporatisation appears to be considered best practice for organizing SOEs in Norway.<sup>131</sup> This allows SOEs to compete with the private sector.<sup>132</sup>

As earlier noted in chapter 1, Norway operates a legal system<sup>133</sup> distinct from that of Uganda. The operation and organisation of its companies may differ to some extent from the structures and forms that are used in a common law system.

### **2.2.2 Uganda**

The legal framework that regulates SOEs in Uganda is found in various laws creating the different SOEs. However, the basic laws under which SOEs are organized include: The Constitution of the Republic of Uganda 1995 as amended, Article 163(3) provides for the auditing of public corporations; The Companies Act Cap 110, Part II which deals with incorporation of companies and other matters incidental to incorporation; The National Audit Act 2008, Section 17 which deals with the auditing of public organisations; Sections 38 and 39 of the Public Finance and Accountability Act 6 of 2003, which provide for preparation of accounts by state enterprises and public organisations; The Public Enterprises Divestiture Act Cap 98, which provides for privatisation and reform of public enterprises, among others; and The Expropriated Properties Act cap 87, which was enacted to facilitate the return of private property taken by the military regimes.

The history of state participation and ownership in the economy, in Uganda, is quite rich. Literature indicates that in 1948 the Uganda Electricity Board was established to take care of electricity distribution in Uganda; the colonial state established the Uganda Credit

---

<sup>130</sup> Robinett D (2006) 1 See also section 1.1 in chapter 1 of the thesis.

<sup>131</sup> Organisation for Economic Co-operation and Development (2003) 13 and 14

<sup>132</sup> Organisation for Economic Co-operation and Development (2003) 13

<sup>133</sup> The legal system of Norway is said to be civil law although it borrows heavily from the common law system. See: [http://www.norlag.ge/index.php?option=com\\_content&view=article&id=63&Itemid=37&lang=en](http://www.norlag.ge/index.php?option=com_content&view=article&id=63&Itemid=37&lang=en) (accessed on 3 February 2011) See also section 1.6 of chapter 1 of the thesis.

and Savings Bank in 1950, the Uganda Development Corporation was established in 1952, and the African Loans Fund in 1954.<sup>134</sup>

The above appear to have been followed by the establishment of several parastatals. Some scholars are of the view that initially parastatals were established to carry out strategically and socially important functions at the national level, for example, the Uganda Electricity Board, and to establish new industrial ventures, such as the Uganda Development Corporation mentioned above.<sup>135</sup>

Research further indicates that in May 1970 the government nationalized several enterprises including multinational subsidiaries and acquired stakes in others.<sup>136</sup>

SOEs continued to grow in 1972 with the expulsion of the Asians and the nationalization of several big private companies, such as, Kilembe Mines Limited in Kasese which belonged to Falconbridge of Canada, Lugazi sugar factory (Mehta Group) which belonged to the Mehta family, and the Kakira Sugar Factory (Madhavani Group) which belonged to the Madhavani family.<sup>137</sup> The state took over these businesses that belonged to Asian private owners.

In 1977, following the collapse of the East African Community, several parastatals were created in Uganda, to take over services, such the posts and telecommunications, the airline industry, and the railway service.<sup>138</sup> These services had previously been provided by the East African Community; they were transferred to the government when the Community disintegrated.

---

<sup>134</sup> Jørgensen J J *Uganda: A modern History* (1981) 187 (Hereafter cited as Jørgensen J J 1981)

<sup>135</sup> Rutega S 'Privatisation in Uganda' (1993) published in Ramanadhan V V (ed) *Privatisation: A Global Perspective* 290 (Hereafter cited as Rutega S 1993)

<sup>136</sup> Rutega S (1993) 290

<sup>137</sup> Mutibwa P *Uganda Since Independence: A Story of Unfulfilled Hopes* (1992) 115 (Hereafter cited as Mutibwa P 1992)

<sup>138</sup> Rutega S (1993) 290

After 1979, following the overthrow of President Idi Amin's government, Uganda initiated the return of various companies to their former private owners.<sup>139</sup> These included: the Mehta Group, the Madhavani Group, and the Bata Shoe Company.<sup>140</sup> It is interesting to note that the return of companies and assets to former owners may have been interrupted by the political instability between 1979 and 1986. This is best explained by the fact that the process of return of expropriated assets and divestiture were only formally launched in 1983 and 1993 respectively.<sup>141</sup> Further support is found in several of President Yoweri Museveni's speeches, which strongly indicate that the state still had some interest in these formerly private companies and continued to support formerly private companies and parastatals between 1986 and the early 1990s.<sup>142</sup>

As intimated above, in 1983, the Expropriated Properties Act cap 87 came into force.<sup>143</sup> The Act was made to facilitate the return of property taken by the military regimes. The long title of the Act states as follows;

An Act to provide for the transfer of the properties and businesses acquired or otherwise expropriated during the military regime to the Ministry of Finance, to provide for the return to former owners or disposal of the property by the Government and to provide for other matters connected therewith or incidental thereto.

This Act ensured that some of the property which had been expropriated by government was returned to the Asian private owners. Thus the state lost a stake in some of the Asian companies that were returned to the former owners. Nonetheless, there is sufficient evidence to suggest that the state continued to hold interests in various previously private companies.

In the President's address on the first anniversary of the National Resistance Movement (NRM) Administration on January 26 1987, he noted thus:

---

<sup>139</sup> Rutega S (1993) 290

<sup>140</sup> Rutega S (1993) 290

<sup>141</sup> The Expropriated Properties Act Cap 87 and The Public Enterprises Reform and Divestiture Statute, enacted in 1993 for divestiture. Further discussion of divestiture has been undertaken in this chapter.

<sup>142</sup> Museveni Y *What is Africa's Problem?* (1992) 46 (Hereafter cited as Museveni Y 1992)

<sup>143</sup> The Expropriated Properties Act Cap 87

In the one year we have been in power, we have carried out partial rehabilitation of the following enterprises: Nyanza Textiles, Uganda Blanket Manufacturers, Uganda Breweries, Nile Breweries, Lake Victoria Bottling Company etc.<sup>144</sup>

We have also paid the debts of Uganda Airlines, partially rehabilitated Mulago hospital...<sup>145</sup>

In the President's address at the state opening of the first session of the expanded National Resistance Council, on 11<sup>th</sup> April 1989, he informed the Council that the rehabilitation of the Lugazi Sugar Factory had been completed the previous year and that production was estimated at 300,000 tonnes.<sup>146</sup> It is worth noting that in the same year, while speaking at the opening of the National Workshop for the Development of Small-scale Industries, the President expressed gratitude to the private sector for being very dynamic and working towards building an independent economy.<sup>147</sup> The above remarks indeed give credence to the operation of an open economy in the period between 1986 to the early 1990s. The support by the government extended to several corporations and the apparent interest of government in formerly private enterprises did not mean that the government discouraged private entrepreneurs.

In 1990, while the President was addressing the state on the opening of the 4<sup>th</sup> session of the National Resistance Council (NRC), he made the following remarks:

We must expand and improve our processing and marketing structures. The Produce Marketing Board is going to improve its processing capacity so that it can handle half-a-million tonnes of grain at any given time...Additionally, the Produce marketing Board and other government organs will continue to search for markets for our crops in order to fulfill our obligations to our trade partners...<sup>148</sup>

---

<sup>144</sup> Museveni Y (1992) 46

<sup>145</sup> Museveni Y (1992) 46

<sup>146</sup> Museveni Y (1992) 54

<sup>147</sup> Museveni Y (1992) 212

<sup>148</sup> Museveni Y (1992) 90



Further support for the proposition that Uganda continued to support SOEs in this period is found in the President's remarks in his address at the Dag Hammarskjold Foundation Conference held at Mweya in 1990, where he opined thus;

My personal view, therefore, is that we should have used a mixture of market force and planned economy approaches, depending on convenience and individual countries' circumstances.<sup>149</sup>

The above remarks also indicate that the government was open to participation of the private sector in the economy alongside SOEs.

In 1993 the Public Enterprises Reform and Divestiture Statute was enacted and the process of privatisation was formally launched. The long title to the statute provides as follows:

A Statute to provide for the reform and divestiture of public enterprises; to establish the Divestiture and Reform Implementation Committee charged with the implementation of the Government's program on the matter, and for other related matters.

This statute is now referred to as the Public Enterprises Divestiture Act cap 98. The framework of reform and divestiture continues to this day. Government has recently advertised the divestiture of its interest in Kilembe Mines Ltd.<sup>150</sup>

Currently, a *large number* of SOEs<sup>151</sup> in Uganda remain overwhelmed by scandals. An example in point is the National Social Security Fund (NSSF). The Auditor-General's report for 2009 indicates a number of issues that taint the image of public enterprises in

---

<sup>149</sup> Museveni Y (1992) 188

<sup>150</sup> See: Advertisement Calling for Transaction Advisor on the Divestiture of Kilembe Mines [http://www.perds.go.ug/opportunities\\_minig.htm](http://www.perds.go.ug/opportunities_minig.htm) (accessed on 11 April 2011)

<sup>151</sup> The phrase 'large number' is used as not all SOEs are involved in scandals, some SOEs are performing quite well; case in point is the National Water and Sewerage Corporation (NWSC). See Mugisha S and Berg S 'State Owned Enterprises in Uganda: NWSC's Turn Around' (2008) 311 at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1317890](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1317890) (accessed on 11 January 2011) Table 3.2 in chapter 3 provides a snap shot of the poor governance that characterises some of the SOEs in Uganda. Some of the SOEs indicated in that table have been operating without a board of directors.

Uganda.<sup>152</sup> Some of the NSSF matters are presently being prosecuted in court and thus comments are restricted to this mini-thesis.

Investigations conducted by the Auditor-General revealed that in 2007 NSSF entered into a contract to purchase motor vehicles under an operating lease. After the tender had been awarded, the terms were changed to hire purchase, without due regard to procedure.<sup>153</sup> This was done in total disregard of the procurement laws of Uganda.

Further, investigations also revealed that top management used their offices to get salary advances, way beyond the amounts to which they were entitled.<sup>154</sup>

NSSF had also acted contrary to procurement laws, when it entered into a joint venture with Nsimbe Holdings Ltd, disregarding the procedures set out under the law.<sup>155</sup>

Additionally, NSSF entered into a joint venture with Victoria Property Development Ltd and advanced the private company a loan of US \$ 1 million without authorisation from the minister responsible or the Board of directors.<sup>156</sup>

The infamous Temangalo scandal<sup>157</sup> which involved the purchase of several acres of land at ridiculous prices was also one of the scandals that rocked this astute institution which is mandated to provide social security services to employees in Uganda.<sup>158</sup> This is an example of the mismanagement of public enterprises in Uganda.

---

<sup>152</sup> Office of the Auditor General 'Annual Report of the Auditor General on the Financial Statements of Statutory Authorities and State Enterprises for the Year ended 30<sup>th</sup> June 2009' (2009) 87 (Hereafter cited to as Office of the Auditor General 2009)

<sup>153</sup> Office of the Auditor General (2009) 88

<sup>154</sup> Office of the Auditor General (2009) 89

<sup>155</sup> Office of the Auditor General (2009) 90

<sup>156</sup> Office of the Auditor General (2009) 91

<sup>157</sup> See The Independent of 25<sup>th</sup> December 2008 'Temangalo Scandal Consumes Nation' (2008) at <http://www.independent.co.ug/index.php/news/436-temangalo-scandal-consumes-nation> (accessed on 13 January 2011),

<sup>158</sup> Section 2 of the National Social Security Fund Act Cap 222

The history of SOEs in Uganda appears to show that their growth was more an accidental affair, which arose mainly out of crisis, as opposed to thorough economic planning. This is especially true for the period between 1970 and 1979. The history of the said enterprises is also marred by the various economic ideological orientations of the different political and military regimes that have ruled Uganda.

In comparison, the SOEs in Norway appear to have arisen out of deliberate economic measures and policies. For example: Norway has a law to regulate State Owned Companies, even though the law relates only to those enterprises where the state is the sole owner. Norway also has a corporate governance regime for SOEs.<sup>159</sup> This may provide an explanation for the failure of many SOEs in Uganda. The above state of affairs also lends credence to the argument that, if the SOEs in Uganda had been born out of deliberate well thought through economic policies and not out of crisis, then they would have better corporate structures and would indeed be vehicles for development and change. Norway has also had the advantage of dealing with SOEs for a much longer period than Uganda. This is attributed to the fact that it is a much older nation than Uganda.

Additionally, Norway has undertaken corporatisation for most of its SOEs.<sup>160</sup> This allows the SOEs to ably compete with the private sector. Uganda is following the same trend and it has been proposed that the NOC of Uganda should be an incorporated entity. This trend should be adopted for all SOEs.

It may seem strange that despite the numerous problems associated with SOEs in Uganda, the country appears to be headed towards the creation of yet another SOE, which is the proposed NOC. However, as detailed above, state ownership and SOEs are still relevant in certain sectors of the economy and with proper corporate structures and a comprehensive corporate governance framework in place; these entities can be vehicles for development, as seen in Norway. Uganda's unpleasant experience with SOEs should

---

<sup>159</sup> White Paper No. 22 (2001-2002)

<sup>160</sup> Organisation for Economic Co-operation and Development (2003) 13 and 14

not be used as an excuse to shy away from these entities which are flourishing elsewhere,<sup>161</sup> what is needed is for Uganda to put in place a strong corporate governance framework for SOEs. Uganda can follow the example of the unique SOE corporate structures in Norway, highlighted above; however this should be done cautiously given the fact that the two countries operate distinct legal systems.

## 2.3 History and Relevance of NOCs

### 2.3.1 History of NOCs

As noted in the preceding chapter, NOCs were born at the time of increased state intervention in the economy.<sup>162</sup> The aforementioned period covered mainly the first 25 years after the Second World War.<sup>163</sup>

The basic explanation for this involvement (outside of the communist areas where it was driven by ideology), was a widely held view that governments could and should address both social and economic problems.<sup>164</sup>

Research further reveals that the first NOC was created in Austria over 100 years ago to ease the effect of excess supply of crude oil by constructing a topping plant owned and operated by the government.<sup>165</sup>

In 1959, the major oil exporting countries in the world met in Cairo and agreed to consult on important issues. It was also agreed that countries form NOCs to increase direct state participation in the oil sector.<sup>166</sup>

---

<sup>161</sup>Petroleum Intelligence Weekly 'Ranking the World's Oil Companies' (2005) See: [http://www.energyintel.com/PublicationHomePage.asp?publication\\_id=4](http://www.energyintel.com/PublicationHomePage.asp?publication_id=4) (accessed on 4 January 2011)

<sup>162</sup> Wainberg M F et al (2007) 4

<sup>163</sup> Stevens P (2003) 1

<sup>164</sup> Stevens P (2003) 1

<sup>165</sup> Heller C *The Birth and Growth of the Public Sector and State Enterprises in the Petroleum Industry. State Petroleum Enterprises in Developing Countries* (1980) (Hereafter cited as Heller C 1980) cited in Tordo S 'Overview of the Most Salient Advances in the Research on National Oil Companies' (2008) The World Bank 2 (Draft paper) (Hereafter cited as Tordo S 2008)

It was believed at the time that market forces were not sufficient to propel developing countries from poverty.<sup>167</sup> Suffice it to note, that developing countries had bad experiences with private international oil companies hence the motivation for national sovereignty over natural resources.<sup>168</sup>

Foreign international oil companies were also seen as having international interests which did not coincide with national interests.<sup>169</sup> In addition, the powerful private international oil companies were also seen as a source of foreign government interference with national objectives.<sup>170</sup>

The fact that at the time oil was regarded as a strategic resource, as it was the major source of hard currency inflows for national treasuries, also justified the creation of NOCs in many countries.<sup>171</sup>

The common opinion held at the time of nationalization of various oil companies in developing countries, was that private companies operating in a regulated sector could not develop a country's oil sector.<sup>172</sup> The rationale for state participation in the oil sector was that it could secure national interests more effectively than market forces.<sup>173</sup>

State participation in the OECD countries was mainly driven by the Keynesian legacy, the Soviet example and market failure.<sup>174</sup> The Soviet example was heralded by many as

---

<sup>166</sup> Wolf C 'Overview of the Political and Economic Arguments in Favour of and Against the Establishment of a NOC' (2009) The World Bank 10 (Draft paper) (Hereafter cited as Wolf C 2009)

<sup>167</sup> Wainberg M F et al (2007) 4

<sup>168</sup> Wainberg M F et al (2007) 4

<sup>169</sup> Wainberg M F et al (2007) 4

<sup>170</sup> Wainberg M F et al (2007) 4

<sup>171</sup> Foss M M 'The Struggle to achieve Energy Sector Reform in Mexico' (2005) prepared in 2004 for the US Agency for International Development, The Nexus between Energy and Democracy cited in Wainberg M F et al (2007) 4 (Hereafter cited as Foss M M 2005)

<sup>172</sup> Stevens P (2003) 3

<sup>173</sup> Noreng Ø *Oil and Islam: Social and Economic issues* (1997) cited in Wainberg M F et al (2007) 4 (Hereafter cited as Noreng Ø 1997)

<sup>174</sup> Stevens P (2003) 2

the way forward in mobilizing resources of an economy to promote growth.<sup>175</sup> It should be noted that with the downturn of the Soviet economy, the Soviet example was used by critics of state intervention to justify privatisation.

It is apparent from the foregoing that the reasons for state participation and ownership in the oil sector, and the growth of NOCs in different economies varied (that is between developed and developing countries) although market failure appeared to have influenced state participation and ownership in both the developed and developing countries.

The table below (Table 2.1) shows the different years in which various NOCs were established in select developing countries. This list indicates that NOCs are not a new phenomenon in developing countries and they have been part of the economic strata for quite some time.



---

<sup>175</sup> Stevens P (2003) 2

**Table 2.1****Select NOCs and Year Established**

Country	NOC	Year
Argentina	YPFA	1922
Chile	ENAP	1926
Russia	Various	1934*
Peru	Petroperu	1934
Bolivia	YPFB	1936
Mexico	Pemex	1938
China	PetroChina	Early 1950
Colombia	Ecopetrol	1951
Iran	NIOC	1951
Brazil	Petrobras	1954
India	ONGC	1956
Iraq	INOC	1961
Saudi Arabia	Petromin	1962
Algeria	Sonatrach	1965
Indonesia	Pertamina	1968
Libya	Libya NOC	1968
Norway	Statoil	1972**
Ecuador	Petrocaudor	1973
Malaysia	Petronas	1974
Kuwait	KPC	1975
Venezuela	PdVSA	1976
China	CNOOC	1982

Sources: See below<sup>176</sup>

<sup>176</sup> United Nations Centre for Natural Resources, Energy and Transport 'State Petroleum Enterprises in Developing Countries' (1980) Company Reports adopted with modification from Wainberg M F et al (2007) 5. \* Russia nationalised its oil industry in 1918 but the industry was not consolidated into a NOC until 1934. \* \* See: Thurber M and Istad T B (2010) 5 for details on the formation of the Norwegian State Oil Company

The term ‘developing countries’ as used in the source of the data above is open to debate. Commentators have argued that countries, like Argentina, Brazil, India and China,<sup>177</sup> can no longer be considered developing countries. It can however be argued, that at the time the NOCs were established those countries were indeed developing countries and some are still developing countries to-date.<sup>178</sup> Certainly Norway can no longer be considered a developing country.

In the 1980s and early 1990s many of the NOCs were restructured and underwent partial or full privatisation.<sup>179</sup> This was occasioned by the growing consensus at the time that government intervention was not the appropriate model for running state economies.<sup>180</sup>

### 2.3.2 Current Position of NOCs

Today, the wheel seems to be moving back to increased state participation in the oil sector.<sup>181</sup> Commentators are wary of the growing inequalities that have been fostered by dependence on market forces, also the argument that market forces allow wealth to trickle down to all, is no longer tenable.<sup>182</sup> Wealth generated by oil, is usually concentrated in particular sections of the economy and does not get down to the common man.

Additionally, the inconsistency of the international financial system is pushing countries towards increased state participation.<sup>183</sup> The foregoing statement shows that the market economy is not always efficient. The recent upsurge in oil and gas prices has revived perceptions of resource nationalism.<sup>184</sup> Russia has recently nationalised Yukos and

---

<sup>177</sup> Summers T ‘Is China a Developing Country?’ See <http://opinionasia.com/ChinaDeveloping> (accessed on 3 February 2011)

<sup>178</sup> China Still a Developing Country See: [http://www.chinadaily.com.cn/china/201008/17/content\\_11164512.htm](http://www.chinadaily.com.cn/china/201008/17/content_11164512.htm) (accessed on 3 February 2011)

<sup>179</sup> Tordo S (2008) 3

<sup>180</sup> Tordo S (2008) 3

<sup>181</sup> Stevens P (2003) 4

<sup>182</sup> Stevens P (2003) 4

<sup>183</sup> Stevens P (2003) 4

<sup>184</sup> Wainberg M F et al (2007) 9



Argentina has established a new state energy company, Enarsa, which will be involved in all aspects of the energy sector.<sup>185</sup> This greatly justifies the creation of a NOC in this era.

It should however be noted that privatisation of NOCs continues in certain countries, such as, China, Brazil, India, Pakistan, Norway and Japan.<sup>186</sup>

## **2.4 Relevance of NOCS**

Several arguments have been advanced to show the relevance of NOCs. On a similar note, several arguments have been made to support the hypothesis that NOCs are irrelevant and have no place in the oil sector. The pros and cons for the establishment of NOCs are discussed below.

### **2.4.1 Arguments for the Establishment of NOCs**

Some of the arguments that have been advanced to support the continued existence of NOCs are discussed below. These arguments are divided into political and economic arguments.<sup>187</sup>

It has been argued that NOCs are an indispensable tool for mobilizing state policy at both national and international levels.<sup>188</sup> It has also been argued that NOCs allow a government to implement appropriate energy policy and effective environmental protection.<sup>189</sup> In Western Europe, five countries formed NOCs because they could not leave the formulation and realization of their energy policies to private oil companies.<sup>190</sup> Similarly, NOCs have been noted to ensure national mobilization of resources.<sup>191</sup> NOCs encourage governments to optimally collect revenue and allocate resources to beneficial

---

<sup>185</sup> Wainberg M F et al (2007) 10

<sup>186</sup> Wolf C (2009) 14

<sup>187</sup> Stevens P (2003) 6 See also The World Bank (2009) 16

<sup>188</sup> Khan K I F (ed) 'Petroleum Resources and Development' (1987) *Economic Policy* February Volume 20 No. 2 185-186 cited by Stevens P (2003) 6 (Hereafter cited as Khan K I F (ed) 1987)

<sup>189</sup> Griffin J M and Steel H B *Energy Economics and Policy* (1980) cited in Stevens P (2003) 10

<sup>190</sup> Grayson L E (1981) 8

<sup>191</sup> Khan K I F (ed) (1987) 185-186

national interests. It is noted that in many countries NOCs were established at the time when governments undertook a wave of asset nationalization, this might have been premised on the advantages discussed above.<sup>192</sup> Private international oil companies were seen as agents of foreign governments, and opposed to national interests.<sup>193</sup> NOCs helped promote sovereignty over natural resources, in this case oil.<sup>194</sup> This is particularly important in light of the bad experiences that were suffered by countries at the hands of private international oil companies.<sup>195</sup>

NOCs as opposed to private international oil companies, also help to fulfil political and social tasks, which private companies are not willing to undertake.<sup>196</sup> This argument should be treated with caution as the duality of functions may encourage political interference in the long run and derail the enterprise from its core commercial functions. Nonetheless, the argument is of particular relevance to developing countries where NOCs may be used to provide employment to people with disadvantaged backgrounds or be used to provide and improve social services, like health and education, in the communities adjacent to the operations of the NOC. Additionally, NOCs can also be used in international dealings to secure external political support; this improves the country's reputation and bargaining position.<sup>197</sup>

NOCs are also important in the construction of national pride.<sup>198</sup> This motivated the creation of Petro Canada at a time when Canada was regarded as the latest addition to the USA.<sup>199</sup> The creation of the NOC helped further the cause of sovereignty. In the developing countries, NOCs were regarded as symbols of independence in the post-

---

<sup>192</sup> The World Bank (2009) 16

<sup>193</sup> Grayson L E *National Oil Companies* (1981) cited in The World Bank (2009) 16 (Hereafter cited as Grayson L E 1981)

<sup>194</sup> Stevens P (2003) 6

<sup>195</sup> Stevens P (2003) 6

<sup>196</sup> Gorhban N 'National Oil Companies with Reference to the Middle East 1900-73' (Hereafter cited as Gorhban N 1900-73) cited in Ferreir RW and Forsenko A (eds) *Oil in the World Economy* (1989) 23 (Hereafter cited as Ferreir RW and Forsenko A (eds) 1989)

<sup>197</sup> The World Bank (2009) 19

<sup>198</sup> Stevens P (2003) 7

<sup>199</sup> Department of Energy (Canada) *An Energy Policy for Canada Phase 1 Volume 1* (1972) cited in Stevens P (2003) 7 (Hereafter cited as Department of Energy 1972)

colonialism era.<sup>200</sup> Developing countries have to build autonomous structures that allow them to manage their affairs with some degree of independence; this can be done through NOCs.

From an economic perspective, NOCs are very good vehicles for dealing with market failure associated with information asymmetries between host governments and private oil companies.<sup>201</sup> Control of private oil companies requires access to information from these companies, thus the creation of an NOC lessens the burden of accessing this information.<sup>202</sup> It has also been argued that in circumstances where NOCs are in competition with private oil companies, NOCs provide a yardstick for analyzing information needed to regulate the private oil companies.<sup>203</sup>

Another argument on market failure is the fact that NOCs (especially where a NOC is the sole operator), as opposed to private oil companies, will collect all the revenue due to the country. Conventional fiscal instruments, such as, royalties, income taxes and production sharing contracts, are considered sub-optimal tools for collecting economic rent; they are too rigid to be applied in a dynamic international oil market.<sup>204</sup> The above-mentioned instruments cannot be relied upon to collect all the revenue due and to hasten the process of development from the revenue received.

Additional support is found in the argument that the contribution of the oil sector to the national economy is too important to be left solely to the private sector.<sup>205</sup> Countries like Uganda which do not have laws to limit outflow of capital, may lose all profits from the oil sector, as the private oil companies repatriate profits to their home countries without reinvesting the same. Additionally, the oil sector in oil exporting countries accounts for a large portion of the GDP, government revenue and foreign exchange earnings.<sup>206</sup> The

---

<sup>200</sup> Stevens P (2003) 7

<sup>201</sup> Stevens P (2003) 7

<sup>202</sup> Grayson L E (1981) 10

<sup>203</sup> Grayson L E (1981) 10

<sup>204</sup> Kemp A G 'Petroleum issues in Developing Countries' (1992) *Energy Policy* February Volume 20 No. 2 105 cited in Stevens P (2003) 9

<sup>205</sup> Wolf C (2009) 17

<sup>206</sup> Wolf C (2009) 17

table (Table 2.2) below indicates the importance of the oil and gas sector to select oil exporting countries in 2003. It shows the oil and gas export percentage share of GDP and the fiscal oil and gas revenue as percentage share of GDP.

**Table 2.2**

**The Importance of the Oil and Gas Sector for Select Oil Exporting Countries (2003)**

Country	Oil and Gas Exports as % share of GDP	Fiscal Oil and Gas Revenue as % share of country GDP
Saudi Arabia	38.3	28.1
Norway	18.4	12.2
United Arabs Emirates	36.8	35.8
Nigeria	46.1	28.0
Kuwait	44.8	48.1
Libya	47.6	40.5
Qatar	47.0	24.9
Angola	65.3	28.3
Equatorial Guinea	96.6	23.7

Sources: See below<sup>207</sup>

In all the above countries, oil significantly contributes to the GDP. Thus, there is sufficient incentive to motivate state involvement or direct control to secure both political and financial advantages.<sup>208</sup> Oil is considered to be the biggest business in the world.<sup>209</sup> Countries that trade in oil stand to benefit. Thus the oil sector should be protected to some extent by the state. This can be done through an NOC.

<sup>207</sup> International Monetary Fund ‘Oil Market Developments and Issues’ (2005) International Monetary Fund Policy Development and Review Department 26 (Hereafter cited as International Monetary Fund 2005) (The original table has been modified to include only select countries, majorly those whose oil revenue greatly contributes to GDP. Norway was included for the simple reason that it is part of the comparative analysis in this study)

<sup>208</sup> Wolf C (2009) 17

<sup>209</sup> Wenar L ‘Clean Trade’ Draft (2009) see

[http://politicalscience.stanford.edu/politicaltheoryworkshop/0910pages/CT-Academics\\_9-09.pdf](http://politicalscience.stanford.edu/politicaltheoryworkshop/0910pages/CT-Academics_9-09.pdf) (accessed on 5 May 2011)

## 2.4.2 Arguments against the Establishment of NOCs

The political and economic dichotomy is maintained in discussing the various arguments against the establishment of NOCs.<sup>210</sup>

The attack on state intervention and the shift to control of state economies by market forces greatly crippled the concept of public enterprises.<sup>211</sup> Tony Crosland, a noted UK socialist intellectual,<sup>212</sup> described public corporations as being remote, irresponsible and immune from public scrutiny or democratic control.<sup>213</sup> Thus the above sentiments greatly motivate arguments against the establishment of NOCs especially those wholly owned by the state.

Another argument against the establishment of NOCs is founded on the possibility of 'political take over'.<sup>214</sup> NOCs are susceptible to excessive control by the state which makes them extensions of the civil service.<sup>215</sup> SOEs and NOCs have to operate separately from the government. This is usually difficult especially where the corporate governance framework is weak. This makes NOCs susceptible to political capture.

It has also been argued that NOCs may be subjected to conflicting objectives which may paralyse the operations of the company.<sup>216</sup> NOCs sometimes have various bodies dictating policies in the industry. In situations where the body regulating the NOC cannot be clearly identified, various bodies may try to interfere with the operations of the NOC and to influence its decisions. Then the NOC may be subjected to conflicting objectives from the different bodies.

---

<sup>210</sup> Stevens P (2003) 12

<sup>211</sup> Wainberg M F et al (2007) 6 and Madelin H *Oil and Politics* (1974) 131 (Hereafter cited as Madelin H 1974) cited in Stevens P (2003)

<sup>212</sup> Stevens P (2003) 13

<sup>213</sup> Quoted in Madelin H (1974) 127

<sup>214</sup> Stevens P (2003) 13

<sup>215</sup> Grayson L E (1981) 20

<sup>216</sup> Stevens P (2003) 14

Looking at the economic arguments, Paul Stevens states that NOCs may be exposed to rent seeking as opposed to profit seeking, especially where bureaucrats seek rent for their own purposes.<sup>217</sup> This may arise where bureaucrats strongly interfere with the operations of the NOC. This is also facilitated by corruption. A strong corporate governance framework for the NOC can substantially reduce this problem.

Related to the above, and another argument that defeats the argument of establishment of NOCs, is inefficiency.<sup>218</sup> Linde notes that a leaked report by Pricewaterhouse Coopers indicated that Pertamina, the Mexican NOC, had lost about US \$ 6.1 million to corruption and inefficiency.<sup>219</sup>

It has also been argued the NOCs are not given sufficient funds for investment which makes them redundant in terms of maintaining or increasing production.<sup>220</sup> Nigeria provides a classic example for this argument.<sup>221</sup> In some cases, the funds from the NOC are used for other activities and the NOC is neglected. Where the NOC has an operational board of directors, which is in charge of running the company without external influence, or with minimal external influence, then the funds from the NOC will be invested in the NOC or in accordance with company policy, leading to the growth of the NOC.

The argument that regulation of private companies operating in the private sector is the best mode of dealing with the oil sector, has also been advanced to discredit NOCs and their relevance in the oil sector.<sup>222</sup> This argument has certain shortcomings: it presumes that private companies are the best entities to deal with oil resources in all circumstances.

---

<sup>217</sup> Stevens P (2003) 14

<sup>218</sup> Stevens P (2003) 14

<sup>219</sup> Van der Linde C *The State and the International Oil Market: Competition and the Changing Ownership of Crude Oil Assets* (2000) 30 cited in Stevens P (2003) 15 (Hereafter cited as Van der Linde C 2000)

<sup>220</sup> Hartshorn J E *Oil Trade: Politics and Prospects* (1993) cited by Stevens P (2003) 16 (Hereafter cited as Hartshorn J 1993)

<sup>221</sup> Khan S *The Political Economy of Oil in Nigeria* (1994) cited by Stevens P (2003) 16 (Hereafter cited as Khan S 1994)

<sup>222</sup> Robinson C 'Energy policy: Errors, Illusions and Market Realities' (1993) Occasional Paper 90 The Institute of Economic Affairs cited by Stevens P (2003) 17 (Hereafter cited as Robinson C 1993)

This is not persuasive in light of the experience that countries have had with private oil companies.<sup>223</sup>

The lack of proper corporate governance structures in many NOCs greatly discredits the creation of NOCs.<sup>224</sup>

There is ample anecdotal evidence that the governance of NOCs typically compares unfavorably to private sector standards, whether it is regarding transparency, accountability, internal financial controls, commercial oversight or management structures.<sup>225</sup>

SNPC was founded in 1998 and is the NOC of the Republic of Congo (ROC). Among the conditions for securing debt relief through the Highly Indebted Poor Countries program, the ROC has undertaken to improve the transparency and governance of its NOC. To this end, the government has allowed the publication of certain oil sector data and has agreed regular independent audits, conducted by KPMG. The audits to a large extent confirmed a lack of transparency and governance. In the 2003 audit, for example, KPMG found significant risks of errors and fraud related to weak internal controls and current governance<sup>226</sup>

The lack of corporate governance in NOCs can be cured by establishing a corporate governance framework for SOEs and NOCs; thus this problem has a remedy.

The relevance of NOCs and the reasons for the establishment of NOCs indicate that state participation is necessary in the management of the oil sector. This can be achieved through the creation of a NOC. Nevertheless, it is also important that private oil companies are involved either as shareholders or through loose joint ventures with NOCS, to ensure that the commercial functions of NOCs are not abandoned. Thus the organisational structure of the NOC has to be chosen carefully.

---

<sup>223</sup> Stevens P (2003) 6

<sup>224</sup> Wolf C (2009) 29-30

<sup>225</sup> Wolf C (2009) 29-30

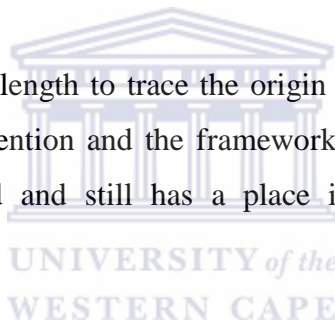
<sup>226</sup> See [http://www.mefb-cg.org/petroles/transp\\_gest\\_petroliere.html](http://www.mefb-cg.org/petroles/transp_gest_petroliere.html) cited by Wolf C (2009) 30

There are several valid reasons against the establishment of NOCs, and this makes it very difficult for one to make a general prescription that NOCs are the best method of engaging with the oil sector. However, these drawbacks can be cured by corporate governance and sufficient political will, to ensure that NOCs do not lose sight of their objectives. It has been observed that the shortcomings faced by NOCs are not tied to them and can be mitigated by appropriate institutional arrangements.<sup>227</sup>

NOCs allow developing countries which lack proper regulatory capacity and frameworks to keep an eye on the sector.

## 2.5 Conclusion

The chapter has gone to great length to trace the origin and relevance of NOCs against the background of state intervention and the framework of SOEs. As discussed above, state intervention is not dead and still has a place in the contemporary economic discourse.



SOEs still thrive in several critical sectors of state economies and allow states to keep watch over these sectors. It is very important that countries choose the appropriate form of organisation structure for their SOEs. The operation of SOEs does not mean that the private sector enterprises are abandoned or marginalized. The two can co-exist.

NOCs are still relevant and may provide a solution for the management of the oil sector of oil producing countries, especially those which lack proper regulatory frameworks and capacity. It should be noted that Uganda is a budding economy and despite the unstable past relationship with SOEs, it should establish a NOC to comprehensively deal with the commercial aspects of its oil sector. Private oil companies maybe involved as shareholders or through loose joint ventures with the NOC to maintain the balance between social and economic objectives of the NOC.

---

<sup>227</sup> Wolf C (2009) 36



The next chapter analyses the general concept of corporate governance and its relationship to SOEs. The chapter also briefly discusses the interaction between public sector governance and corporate governance. A brief overview of the corporate governance regime for SOEs in Norway and Uganda is also undertaken.



## CHAPTER 3

### CORPORATE GOVERNANCE IN STATE OWNED ENTERPRISES

#### 3.1 Background and Understanding of Corporate Governance

As discussed in the previous chapter, State Owned Enterprises (SOEs) and National Oil Companies (NOCs) remain relevant in various economies around the world. Thus there is need for proper corporate governance structures to keep these business entities operational. This chapter discusses the broad concept of corporate governance and gradually focuses on corporate governance in SOEs.

##### 3.1.1 Origin of Corporate Governance

The origin of corporate governance appears to differ according to various scholars. This may be attributed to the different meanings that are attached to the phrase.

Some commentators opine that the concept of corporate governance is a fairly recent notion which is currently in a state of development.<sup>228</sup> Corporate governance is said to have its origins in the western economies where the practice has developed tremendously over the last two decades.<sup>229</sup> The concept has been exported to other economies through multinational enterprises.<sup>230</sup>

---

<sup>228</sup>Ertuna Ö and Ertuna B 'Evolution of Corporate Governance and Potential Contribution of Developing Countries' (2009) published in Aras G and Crowther D (eds) *Global Perspectives on Corporate Governance and CSR* (2009) 163 (Hereafter cited as Ertuna Ö and Ertuna B 2009)

<sup>229</sup> Obalola M et al 'Corporate Governance and Corporate Social Responsibility Practices in Africa' (2009) published in Aras G and Crowther D *Global Perspectives on Corporate Governance and CSR* (eds) (2009) 131 (Hereafter cited as Obalola M et al 2009)

<sup>230</sup> Obalola M et al (2009) 131

Corporate governance has also been traced to the creation of modern corporations in the 19<sup>th</sup> century and the notion of separate legal personality.<sup>231</sup> Corporate governance was meant to ensure that the interests of the owners were protected and maximized.<sup>232</sup>

Additionally, some authors state that corporate governance developed over centuries owing to failures in the governance of business entities; they cite the South Sea Bubble scandal of the 1700s as one of the events that led to the development of corporate governance.<sup>233</sup>

It is not easy to reconcile these different views; the origin of corporate governance depends on the conceptualization of the term. Since different scholars allocate different interpretations to the term, they are also inclined to hold different opinions as to when the concept was born. Scholars who trace the concept to the creation of the modern corporation are most relevant, at least from a legal perspective.

### 3.1.1.1 Recent Trends in Corporate Governance: A South African Perspective

Today, corporate governance has become a holy grail for good corporate practices in many countries. Apart from Norway, South Africa is one of the countries which have established a commendable corporate governance framework.<sup>234</sup> The publication of the King Reports on corporate governance indicates the seriousness with which South Africa has approached the subject.<sup>235</sup> It is interesting to note, that the King Reports, especially King II of 2002 and King III of 2009, have introduced the concept of reporting on various

---

<sup>231</sup> Reaz M and Hossain M 'Corporate Governance around the World : An Investigation' (2007) *Journal of American Academy of Business*, Cambridge 11(2) 169 (Hereafter cited as Reaz M and Hossain M 2007)

<sup>232</sup> Obalola M et al (2009) 132

<sup>233</sup> Kooskora M 'Corporate Governance from the Stakeholder Perspective, in the Context of Estonian Business Organisations (2008) *Baltic Journal of Management* Vol 3 No. 2 196 (Hereafter cited as Kooskora M) The South Sea Company was formed in 1711 and was an unincorporated joint stock company, which failed disastrously in 1720. It is one of the first documented examples of financial scandals, involving business organisations. South Sea Company See <http://www.infoplease.com/ce6/history/A0846104.html> (accessed on 5 May 2011)

<sup>234</sup> Naidoo R *Corporate Governance an Essential Guide for South African Companies* (2009) 2<sup>nd</sup> Edition 2 (Hereafter cited as Naidoo R 2009)

<sup>235</sup> Naidoo R (2009) 2 The publication of the King Report of 1994, King Report of 2002 and the King Report of 2009, shows the progress made with regard to corporate governance matters in South Africa.

matters that affect stakeholders.<sup>236</sup> These include; social, health, ethical and environmental practices as well as issues such as black economic empowerment.<sup>237</sup>

King II was premised on the philosophy that governance in any context must reflect the value system of the society in which it operates.<sup>238</sup>

South Africa has continued to raise the bar, by publishing King III of 2009, which affects all companies in South Africa and not particular targeted companies, like the corporate governance codes of most countries.<sup>239</sup> The Code is based on the approach of ‘apply or explain’ as opposed to ‘comply or explain’, the former, is almost mandatory and indicates an intention to ensure good corporate governance in South Africa.<sup>240</sup> The ‘comply or explain’ approach is quite lenient and gives companies leverage to steer away from good corporate governance.

The King Reports on corporate governance also apply to SOEs.<sup>241</sup> This makes the reports quite comprehensive with regard to corporate governance. A specific protocol on corporate governance for SOEs has also been developed.<sup>242</sup> South Africa presents a very good example of countries that have established comprehensive corporate governance frameworks for their companies.

### **3.1.2 Definitions of Corporate Governance**

Corporate governance has been acknowledged as an issue of global importance; nevertheless the definition of corporate governance and its parameters are still open to

---

<sup>236</sup> Naidoo R (2009) 32

<sup>237</sup> Naidoo R (2009) 32

<sup>238</sup> Naidoo R (2009) 33

<sup>239</sup> Naidoo R (2009) 34

<sup>240</sup> Naidoo R (2009) 34

<sup>241</sup> Department of Public Enterprises ‘Protocol on Corporate Governance in the Public Sector’ (2002) 3 (Hereafter cited as Department of Public Enterprises 2002) at

<http://www.dpe.gov.za/res/DPEProtocolBooklet.pdf> (accessed on 8 May 2011)

<sup>242</sup> Department of Public Enterprises (2002) 3

debate.<sup>243</sup> Corporate governance has been approached from multiple disciplines and is characterised by several definitions.<sup>244</sup> Narrow and broad definitions have been adopted in the definition of corporate governance. The narrow approach to corporate governance constructs it in the following terms:

The ways in which the suppliers of finance to corporations assure themselves of getting a return on their investment<sup>245</sup>

On the other hand, the broad construction of corporate governance construes it as:

The system of laws, rules and factors that control operations in a company.<sup>246</sup>

The narrow and broad definitions of corporate governance in turn relate to the shareholder-oriented model of corporate governance and the stakeholder-oriented model, respectively.<sup>247</sup> The main characteristic of the shareholder-oriented model of corporate governance is maximization of shareholder wealth while the major characteristic of the stakeholder-oriented model is wealth and value creation for all stakeholders.<sup>248</sup> This research relies on definitions which address stakeholder interest due to the peculiarity of SOEs and NOCs.

Sir Adrian Cadbury has defined corporate governance as the system by which companies are directed and controlled.<sup>249</sup> As noted earlier, in 2000 he added to the above definition stating that corporate governance is concerned with establishing a balance between

---

<sup>243</sup> Naidoo R *Corporate Governance An Essential Guide for South African Companies* (2002) 1 (Hereafter cited as Naidoo R 2002)

<sup>244</sup> Ertuna Ö and Ertuna B (2009) 164

<sup>245</sup> Shleifer A and Vishny R 'A Survey of Corporate Governance' (1997) *Journal of Finance* 52 737-75 (Hereafter cited as Shleifer A and Vishny R 1997)

<sup>246</sup> Gillian S L and Starks L T 'A Survey of Shareholder Activism: Motivation and Empirical Evidence' (1998) *Contemporary Finance Digest* 2(3) 10-34 (Hereafter cited as Gillian S L and Starks L T 1998)

<sup>247</sup> See section 3.1.3 below on theories of corporate governance

<sup>248</sup> Deviations from Expected Stakeholder Management, Firm Value, and Corporate Governance See <http://69.175.2.130/~finman/Publications/FM/Forthcoming/Benson.pdf> (accessed on 5 May 2011)

<sup>249</sup> Cadbury A (1992) 14

economic and social goals and individual and communal goals.<sup>250</sup> Ramani Naidoo's definition of corporate governance, is quite similar to that elaborated by Sir Adrian Cadbury: she defines corporate governance as the practice by which companies are managed and controlled.<sup>251</sup>

The Institute of Corporate Governance of Uganda (ICGU) adopts the definition advanced by Sir Adrian Cadbury in his report of 1992 cited above, but goes further to provide that it applies to both private and public companies.<sup>252</sup> The Capital Markets Authority defines corporate governance in the following terms:

Corporate governance, for the purposes of these Guidelines is defined as the process and structure used to direct and manage business affairs of the company towards enhancing prosperity and corporate accounting with the ultimate objective of protecting and promoting shareholders' rights and realizing shareholders' long term value while taking into account the interests of stakeholders.<sup>253</sup>

The definition in the guidelines, though intended for listed companies, is comparable to the above definitions as it too points towards structures of control and management of companies; that said, the definition ultimately intends to offer protection mainly to shareholders with minimal protection of stakeholders. The definition and exposition by Sir Adrian Cadbury appear to include all stakeholders and not just shareholders. This renders the definition quite relevant to this research.

The OECD definition of corporate governance is a hybrid of both the broad and narrow definitions of corporate governance.<sup>254</sup>

---

<sup>250</sup>Cadbury A (2000) accessed at <http://www.corpgov.net/library/definitions.html> (accessed on 2 February 2011)

<sup>251</sup> Naidoo R (2002) 1

<sup>252</sup> See [http://www.icgu.or.ug/index.php?option=com\\_content&task=view&id=35&Itemid=79](http://www.icgu.or.ug/index.php?option=com_content&task=view&id=35&Itemid=79) (accessed on 2 February 2011)

<sup>253</sup>The Capital Markets Corporate Governance Guidelines (2003) accessed at [http://www.cmauganda.co.ug/onlinefiles/uploads/CMA/Downloads/laws\\_&\\_regulations\\_guidelines\\_CorporateGovernanceGuidelines.pdf](http://www.cmauganda.co.ug/onlinefiles/uploads/CMA/Downloads/laws_&_regulations_guidelines_CorporateGovernanceGuidelines.pdf) (accessed on 2 February 2011)

<sup>254</sup> Organisation of Economic Corporation and Development 'Principles of Corporate Governance' (1999)

It is apparent from the foregoing discussion that the various definitions are aligned to different theories of corporate governance. Some of the major theories are discussed below.

### **3.1.3 An Overview of the Major Theories of Corporate Governance**

A basic examination of the theories of corporate governance is necessary for a grounded understanding of the corporate governance *mantra*.<sup>255</sup> This research will consider three major theories and locate the most relevant for purposes of SOEs. The theories to be considered are the agency theory, the stewardship theory and the stakeholder theory.

#### **3.1.3.1 Agency Theory**

The Agency theory is based on the hypothesis that in modern corporations, where shares are widely held, managerial actions depart from those required to maximize shareholder returns.<sup>256</sup> Authors, such as Fama and Jensen, have put it more explicitly, stating that the theory is based on the assumption that there is an inherent conflict between the firm owners and its management.<sup>257</sup> It is against the foregoing assumption that commentators have made the argument that adequate monitoring mechanisms need to be established to protect shareholders from management's self-interest.<sup>258</sup> They further argue that a high proportion of external directors enhances a firm's performance.<sup>259</sup> Agung Wicaksono opines that the agency theory presupposes a contractual relationship between the

---

<sup>255</sup> The term *mantra* is used in context of the research hypothesis that good corporate governance is capable of creating change in the management of State Owned Enterprises.

<sup>256</sup> Berle A and Means G *The Modern Corporation and Private Property* (1932) cited by Wicaksono A (2008) 19 (Hereafter cited as Berle A and Means G 1932)

<sup>257</sup> Fama E F and Jensen M C 'Separation of Ownership and Control' (1983) *Journal of Law and Economics* 26 301-325 (Hereafter cited as Fama E F and Jensen M C 1983)

<sup>258</sup> Jackling B and Johl S 'Board Structure and Firm Performance : Evidence from India's Top Companies' (2009) *Corporate Governance: An International Review* 17(4) 494 (Hereafter cited as Jackling B and Johl S 2009)

<sup>259</sup> Jackling B and Johl S (2009) 494

directors and the stakeholders.<sup>260</sup> Thus checks and balances are put in place to ensure that the directors of a company act in the best interests of stakeholders.<sup>261</sup>

The theory tends to focus more on shareholders as opposed to stakeholders, as it focuses on shareholder returns. The theory is also very difficult to apply to SOEs where there are numerous principals or stakeholders. Additionally the theory fails to clearly draw a distinction between directors and managers.

Agency has been defined as a relationship which arises between two parties, agent and principal, where the principal authorises the agent to act on his behalf and the agent acquiesces.<sup>262</sup> In a company the directors don't act on behalf of the shareholders; the two bodies, the board and the general assembly are distinct organs, acting for the company.<sup>263</sup> Thus the agency relationship is difficult to fathom, except for cases where a contract exists for some particular purpose, which creates such a relationship between the two organs.

Related to the foregoing discussion, the relationship of agent and principal between directors and shareholders has been the hub of a sizeable amount of litigation over the years.<sup>264</sup> This to a great extent stands to discredit the theory. The duties of directors are owed to the company and not shareholders.<sup>265</sup> Common law also lays emphasis on the division of powers between the board and the shareholders.<sup>266</sup> This division of powers is detailed in the articles of the company.<sup>267</sup> Thus the basic foundation of the theory is questionable.

---

<sup>260</sup> Wicaksono A (2008) 19

<sup>261</sup> Wicaksono A (2008) 19

<sup>262</sup> Treitel G *The Law of Contract* (2003) 11<sup>th</sup> Edition 705 (Hereafter cited as Treitel G 2003)

<sup>263</sup> Gower L and Davies *The Principles of Modern Company Law* (2008) 8<sup>th</sup> Edition 479 Duties of directors are owed to the company. (Hereafter cited as Gower L and Davies 2008)

<sup>264</sup> The litigation mentioned above, is litigation in the common law countries, mainly Britain. Uganda being a common law country borrows heavily from this jurisprudence.

<sup>265</sup> Gower L and Davies (2008) 479 The duties are not owed to persons other than the company, for example, individual shareholders or employees. A duty may be owed by the board, to shareholders acting as the general meeting, but this is in particular instances.

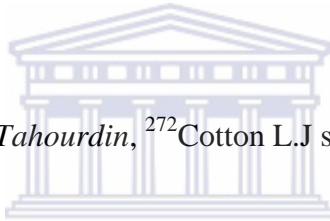
<sup>266</sup> Gower L and Davies (2008) 366

<sup>267</sup> Gower L and Davies (2008) 366



Gower points out that until the 19<sup>th</sup> century the shareholders in general meeting were considered the company while the directors were only agents of the company.<sup>268</sup> It is further noted by Berle and Means that while these agents had wide powers; they were accountable to and indeed governed by the owners of the company.<sup>269</sup> The shareholders in general meeting may act for the company in certain instances, as provided in the articles. However, this does not make them the company. The case of *Salomon V Salomon*,<sup>270</sup> established the principle of separate legal personality, which makes the company separate and distinct from its shareholders.

The various cases detailed below broadly map out the general background to this debate in the common law jurisdictions. In the case of *Foss V Harbottle*<sup>271</sup> it was held inter alia that the directors were always subject to the superior control of the proprietors assembled in general meeting.



In *Isle of Wight Railway Co. V Tahourdin*,<sup>272</sup> Cotton L.J stated thus:

It is a very strong thing indeed to prevent shareholders from holding a meeting of the company, when such a meeting is the only way in which they can interfere, if the majority of them think that the course taken by the directors, in a matter intra vires of the directors is not for the benefit of the company.

The foregoing averment indicates that directors were then considered inferior to the general meeting and the general meeting was allowed to interfere with decisions of the directors even where such decisions were made intra vires. This lends credence to the view that directors were regarded as agents of the shareholders at the time.

---

<sup>268</sup> Gower L C B et al *Gower's Principles of Modern Company Law* (1979) 4<sup>th</sup> Edition 143 Hereafter cited as Gower L C B et al 1979)

<sup>269</sup> Berle A and Means G (1932) 135

<sup>270</sup> [1897] AC 22

<sup>271</sup> 67 ER 189 (Ch 1843)

<sup>272</sup> (1883) 25 Ch. D 320 CA

The case of *Automatic Self-Cleansing Filter Syndicate Co. Ltd V Cunninghame*<sup>273</sup> appears to have changed the trend. The court stated that the division of powers between the board and the shareholders in general meeting depended in the case of registered companies on the construction of the Articles of Association and that where powers had been vested in the board by the Articles, the general meeting would not interfere. This case established that directors were not the agents of the shareholders.<sup>274</sup>

The above position was approved in 1908 in the case of *Gramophone & Typewriter Ltd V Stanley*<sup>275</sup> where Buckley LJ stated thus:

The directors are not servants to obey directions given by the shareholders as individuals, they are not agents appointed by and bound to serve the shareholders as their principals. They are persons who may by regulations be entrusted with the control of the business and if so entrusted they can be dispossessed from that control only by the statutory majority which can alter the articles.

The above cited case appears to have been overridden by the decision in *Marshall's Valve Gear Co V Manning Wardle & Co.*<sup>276</sup> However in *Quin & Axtens V Salmon*<sup>277</sup> the position established in the *Automatic Self Cleansing case*<sup>278</sup> was followed. The position that directors are not agents of shareholders was succinctly stated in *Shaw & Sons (Salford) Ltd V Shaw*<sup>279</sup> as follows:

A company is an entity distinct alike from its shareholders and its directors. Some of the powers may, according to its articles, be exercised by directors; certain other powers may be reserved for the shareholders in general meeting. If powers of management are vested in the directors, they and they alone can exercise that power...Shareholders cannot usurp

---

<sup>273</sup> [1906] 2 Ch 34 C A

<sup>274</sup> Slutsky B 'The Relationship between the Board of Directors and the Shareholders in General Meeting'(1967-1969) 3U *Brit Colum L Rev* 83

<sup>275</sup> [1908] 2 KB 89

<sup>276</sup> [1909] 1 Ch 267 The court held that where the directors are unwilling to act or exercise powers vested in them, the members may do so. The decision was criticized in *Quin & Axtens V Salmon* as being inconsistent with the decision in the *Automatic Self Cleansing case*

<sup>277</sup> [1909] 1 Ch 311 CA

<sup>278</sup> [1906] 2 Ch 34 C A

<sup>279</sup> [1935] 2 KB 113

the powers which by the articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of shareholders.

*Scott V Scott*<sup>280</sup> maintains the foregoing position. The general meeting and the directors are considered organs of the company rather than agents of the company.<sup>281</sup> Thus the Agency theory appears to be founded on shaky ground, at least from a legal perspective.<sup>282</sup> The necessity for the owners to create checks and balances for the board is indeed a positive attribute, but the underlying presumption that directors are agents of the owners of the company belies the whole principle of separate legal personality. The presumption that the shareholders are the company is no longer tenable in law and as such directors cannot be agents of the shareholders. The above position discussed in the cases above, has to some extent, been affected by the power granted to the shareholders under statute in England, to remove directors at any time, by ordinary resolution.<sup>283</sup> This sometimes forces directors to follow the wishes of the shareholders. Despite the existence of such powers, it does not make the directors agents of the shareholders.

Norwegian legislation regulating public companies does not envisage an agent-principal relationship between shareholders and directors. The functions of the shareholders in general meeting and the board of directors as well as other bodies are all distinct.<sup>284</sup> Further, resolutions of the corporate assembly and the board of directors in section 6-37 cannot be reviewed by the shareholders in general meeting except where the King grants special permission.<sup>285</sup> Norwegian legislation provides for a number of organs involved in the election of the board of directors, such as, the nomination committee and the corporate assembly.<sup>286</sup> Thus the shareholders and directors are subjected to other bodies.

---

<sup>280</sup> [1943] 1 All E. R. 582

<sup>281</sup> Gower L C B et al (1979) 146

<sup>282</sup> Agency theory in the above section is discussed from a legal perspective and not an economic perspective.

<sup>283</sup> Gower L and Davies (2008) 371

<sup>284</sup> Section 5-6 (2) of the Norwegian Public Limited Liability Companies Act, details the powers of shareholders in general meeting in a Norwegian public company. These powers are subject to the law and are quite limited.

<sup>285</sup> Norwegian Public Limited Liability Companies Act Section 5-1(2)

<sup>286</sup> The Norwegian Code of Practice for Corporate Governance principle 7 and Norwegian Public Limited Liability Companies Act Section 6-35

In Norway, just like in Uganda, registered companies are distinct entities separate from the shareholders.<sup>287</sup>

The foregoing discussion has also been the subject of contemporary research intended to re-cast the classic agency theory of corporate governance.<sup>288</sup> Luh Luh Lan and Loizos Heracleous argue that the board is not the agent of the shareholders but rather an autonomous fiduciary that is entrusted with power to act for and on behalf of a beneficiary.<sup>289</sup>

### 3.1.3.2 The Stewardship Theory

The Stewardship theory is founded on the assumption that individuals are not solely motivated by self-interest but also by altruism, generosity and service to others.<sup>290</sup> The theory presupposes that managers are good stewards of firms and that they want to be good stewards of corporate assets and not make secret profits at the expense of shareholders.<sup>291</sup> This theory is mainly built on trust between the principal and steward and achievement of aligned goals between the directors and shareholders.<sup>292</sup> The theory is almost a reversal of all the major assumptions that form the basis of the Agency theory. The table below (Table 3.1) provides the major distinctions between the Agency theory and the Stewardship theory of corporate governance.

---

<sup>287</sup> Norwegian Public Limited Liability Companies Act Section 1-1 which provides that a public company is that company where none of the members have personal liability for the obligations of the company.

<sup>288</sup> Lan L and Heracleous L 'Rethinking Agency Theory: The view from Law' (2010) Academy of Management Review Vol 35 No. 2 295

<sup>289</sup> Lan L and Heracleous L (2010) 295

<sup>290</sup> Le Breton-Miller I and Miller D 'Agency V Stewardship in Public Family Firms: A Social Embeddedness Reconciliation' (2009) Entrepreneurship, Theory and Practice Baylor University 1174

<sup>291</sup> Wicaksono A (2008) 22-23

<sup>292</sup> Wicaksono A (2008) 23

**Table 3.1**

**Major Differences between the Agency Theory and the Stewardship Theory**

	Agency Theory	Stewardship Theory
Assumption of human behaviour.	Agents are opportunistic and self-serving.	Stewards are trustworthy and work for the benefit of the corporation.
Primary role of supervisory board	Board members control and monitor managers.	Board members provide managers with expertise, resources, network and power.

Source: See below<sup>293</sup>

The theory is very idealistic and ignores directors' self-interest. If the assumption is indeed true, that the board acts in the best interest of the company at all times, there would be very little need for corporate governance. The rampant levels of corruption in various companies in Sub-Saharan Africa and the recurrence of corporate scandals around the globe, casts a shadow on the viability of this theory.<sup>294</sup> Further, the theory, like the Agency theory, is still shareholder oriented and focuses on shareholders as opposed to stakeholders; this makes it difficult for use as a tool in analyzing the corporate governance of SOEs.

It has been suggested by some authors, that the issue whether the board acts as a monitor of the management on behalf of the shareholders, or a conduit for management domination of the company, requires empirical investigation.<sup>295</sup> Thus the agency theory which considers the board as an agent of the shareholders and the Stewardship theory,

---

<sup>293</sup> Van Thang N 'Corporate Governance in Vietnam's Equitized Companies' (2005) Reforming Corporate Governance in South East Asia Institute of Southeast Asian Studies 352-374 cited in Wicaksono A (2008) 24

<sup>294</sup> Snapshot of the Uganda Country Profile See <http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/uganda/snapshot/> (accessed on 21 February 2011) and Corporate Scandals Exposed <http://www.corporatenarc.com/> (accessed on 21 February 2011)

<sup>295</sup> Gower L and Davies (2008) 362

which considers the board as guiding management and acting in the best interests of the company, require further investigation.

### 3.1.3.3 Stakeholder Theory

Defining stakeholders in a company is not an easy task, because there are various parties with long-term interests in a company.<sup>296</sup> These may include special interest groups, civil society, employees and the public at large. Employees have been recognized as stakeholders in the company, in about half the member states in the European Union.<sup>297</sup>

A company's stakeholders are 'those whose relations to the enterprise cannot be completely contracted for, but upon whose cooperation and creativity the company depends for its survival and prosperity.'<sup>298</sup>

The theory is based on the argument that besides shareholders, there are other parties and parts of society that are interested in the corporation.<sup>299</sup> The theory is said to have arisen in the 1970s due to societal fears that large corporations had become too powerful to be accountable only to shareholders.<sup>300</sup> It is posited by some authors that the theory provides the basis for a mode of corporate governance which takes into account not only profit making but also ethical and public concerns.<sup>301</sup> The theory appears to fit in with the exposition on corporate governance offered by Sir Adrian Cadbury stating that corporate governance is concerned with establishing a balance between economic and social goals and individual and communal goals.<sup>302</sup> It has been noted, that considering societal concerns about business and the various stakeholders is good business practice and determines an entity's success in the long term.<sup>303</sup>

---

<sup>296</sup> Gower L and Davies (2008) 360

<sup>297</sup> Final Report on the Group of Experts on European Systems of Worker Involvement (Davignon Report) Brussels (1997) cited in Gower L and Davies (2008) 360

<sup>298</sup> Naidoo R (2002) 130

<sup>299</sup> Freeman R E 'A Stakeholder Theory of the Corporation (1997) Bowie and Beauchamp (eds) Ethical Theory and business cited by Wicaksono A (2008) 24

<sup>300</sup> Freeman R E (1997) cited in Wicaksono A (2008) 24

<sup>301</sup> Kooskora M (2008) 197

<sup>302</sup> Cadbury A (2000) accessed at <http://www.corpgov.net/library/definitions.html> (accessed on 2 February 2011)

<sup>303</sup> Kooskora M (2008) 198

The Stakeholder theory is related to the emerging concept of corporate social responsibility. Corporate social responsibility has been defined as the commitment of businesses to contribute to sustainable economic development by working with their employees, families, the local community and society at large, to improve their lives in ways which are good for business and for development.<sup>304</sup> Corporate social responsibility further justifies the supremacy of the Stakeholder theory of corporate governance over other theories. Corporate social responsibility is closely related to the Stakeholder theory and advocates for involvement of stakeholders in the governance of the corporation. This is especially important for SOEs which have social responsibilities.

In comparison to the Agency and Stewardship theories, the Stakeholder theory is best suited for the examination of corporate governance in SOEs. This is because of its comprehensive approach that considers all stakeholders and in essence the public at large. Due to the nature of SOEs, the public has a keen interest in the way SOEs operate, irrespective of the fact that members of the public may not be direct shareholders but merely stakeholders.



### **3.2 The Relationship between Public Governance and Corporate Governance**

Related to the discussion of the Stakeholder theory above, is the concept of good public governance.

Public governance has been defined as the relationships that exist between Parliament and the Executive, on the one hand, and Ministers and management of public sector agencies, on the other hand, focusing on accountability and responsibility for the

---

<sup>304</sup> World Business Council for Sustainable Development (WBCSD) 'Corporate Social Responsibility: The WBCSD's Journey' (2002) cited in Clarke T and Klettner A 'Implementing Corporate Social Responsibility: A Creative Tension between Regulation and Corporate Initiatives?' (2009) (Hereafter cited as Clarke T and Klettner A 2009) published in Aras G and Crowther D (eds) *Global Perspectives on Corporate Governance and CSR* (2009) 277

management of public resources and delivery of programs and services.<sup>305</sup> It is also noted by the proponents of the above definition that effective and sound public governance arrangements are crucial for the management of national resources.<sup>306</sup>

Public governance has a direct impact on the management of SOEs. The governance discourse of SOEs goes beyond corporate governance and is directly or indirectly influenced by public governance. Based on the foregoing discussion, one can argue that proper corporate governance can only flourish in a well structured public governance framework. This is based on the fact that Parliament makes the laws and the Executive makes policy, which laws and policies in turn affect the management of SOEs. Related to the above statement, it has been argued that NOCs require good governance at both the public sector level and the corporate level.<sup>307</sup>

The above discussion is intended to locate the corporate governance discourse in the broader public governance discourse. The concept of corporate governance does not operate in the abstract but is greatly influenced by public governance. Good public governance is a prerequisite for the establishment of a proper corporate governance framework for SOEs and NOCs.

The worldwide governance indicators provide a snap shot of the importance of good public governance. As previously noted, the Norwegian model (the Norwegian NOC is one of the constituents of this model) of management of oil as a natural resource has been heralded as one of the best in the management of natural resources.<sup>308</sup> The worldwide governance indicators indeed show that Norway is performing quite well in terms of governance. The indicators are based on Voice and Accountability (V&A), Political Stability and Absence of Violence (P&AV), Government Effectiveness (GE), Regulatory Quality (RQ), Rule of Law (RL) and Control of Corruption (CC). The graph below

---

<sup>305</sup> Public Governance: It's Meaning and Importance for the Public Sector and Audit See <http://www.audit.sa.gov.au/98-99/a3/meaning.htm> (accessed on 8 February 2011)

<sup>306</sup> Public Governance: It's Meaning and Importance for the Public Sector and Audit See <http://www.audit.sa.gov.au/98-99/a3/meaning.htm> (accessed on 8 February 2011)

<sup>307</sup> Foss M and Wainberg M F (2008) 4

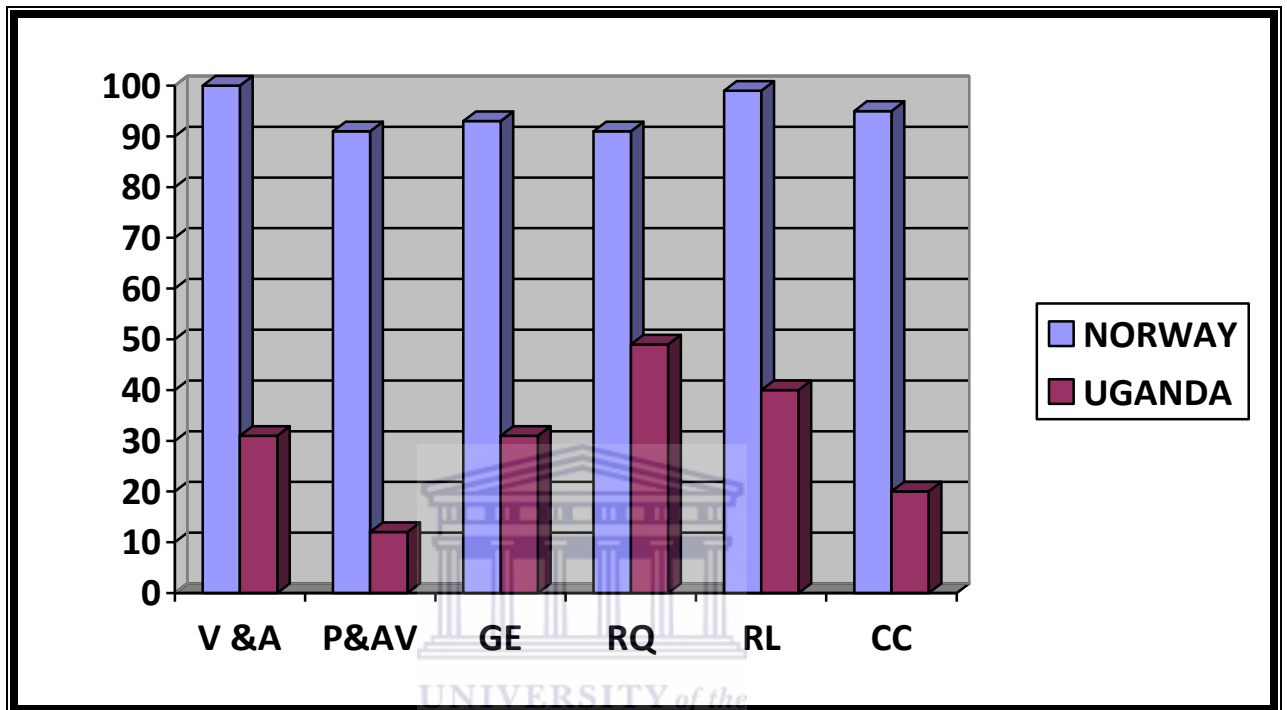
<sup>308</sup> Thurber M and Istad T B (2010) 5



(Graph 3.1) shows the percentile ranking of Norway in comparison to that of Uganda for 2009.

**Graph 3.1**

**Worldwide Governance Indicators: Performance of Norway and Uganda (2009)**



Source: See below<sup>309</sup>

The percentile ranking of Norway in the various governance indicators shows the country's stellar performance with an average rank above 90 per cent. On the other hand, Uganda appears to be struggling with an average percentile ranking of about 30 per cent. It can be argued that given the good governance record of Norway, its SOEs and NOC have a strong foundation for good corporate governance. Uganda needs to improve in terms of public governance, if it is to build a strong corporate governance framework. It is conceded that Uganda being a least developed country, will take time to achieve optimum good public governance, relative to that in Norway. However, an effort has to be made to kick-start the process. Commentators have argued that the success of

<sup>309</sup> Worldwide Governance Indicators Approximate figures from <http://info.worldbank.org/governance/wgi/pdf/c165.pdf> (accessed on 8 February 2011)

Norway's oil industry is attributed to the mature and open democracy which prevails in the country.<sup>310</sup>

It is also worth noting that good corporate governance may positively influence good public governance. Some commentators have opined that due to the centrality of the corporation today, the regulation of the corporation greatly influences society.<sup>311</sup> For example, if corporations in a country have good corporate governance structures and are properly governed, they are bound to operate more profitably and this has a positive effect on the economy of the country. Thus government receives sufficient resources to allocate to the different organs of government to ensure that they operate smoothly.

### 3.3 OECD Principles of Corporate Governance

The OECD principles of corporate governance, originally adopted in 1999 and revised in 2004,<sup>312</sup> have gained prominence as the standard measure for corporate governance the world over.<sup>313</sup> Though the principles are not binding on its members, they offer a standard of good practice. The principles have been recognised by the World Bank, International Monetary Fund, and non-OECD countries, among others.<sup>314</sup> While the principles are said to apply to mainly publicly traded companies, they are also a good guide to non-traded companies.<sup>315</sup> Arguments have recently emerged criticizing the principles. The nay-sayers are of the view that the principles may not be very effective in

---

<sup>310</sup> Thurber M and Istad T B (2010) 6

<sup>311</sup> O' Brien J 'Governing the Corporation: Regulation and Corporate Governance in an Age of Scandal and Global Markets' (2005) published in O' Brien J (ed) *Governing the Corporation* (2005) 13 (Hereafter cited as O' Brien J 2005)

<sup>312</sup> Jesover F and Kirkpatrick G 'The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries' (2005) Vol 13 Number 2 127 (Hereafter cited as Jesover F and Kirkpatrick G 2005)

<sup>313</sup> Organisation for Economic Co-operation and Development 'OECD Principals of Corporate Governance' (2004) 3 and 9 and Jesover F and Kirkpatrick G (2005) 128

<sup>314</sup> Feinerman J V 'New Hope for Corporate Governance in China?' (2007) *The China Quarterly*, 191 590-612, (Hereafter cited as Feinerman J V 2007), Jesover F and Kirkpatrick G (2005) 127 and Organisation for Economic Co-operation and Development (2004) 3 and 9

<sup>315</sup> Organisation for Economic Co-operation and Development (2004) 11

combating corporate governance problems in emerging economies.<sup>316</sup> However these arguments focus on particular issues, such as, controlling-shareholder expropriation,<sup>317</sup> needless to say, such arguments are too few and far between. The OECD principles are discussed below.

### 3.3.1 Ensuring the Basis for an Effective Corporate Governance Framework

The basis for an effective corporate governance framework has been fashioned in the following terms by the OECD:

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among the different supervisory, regulatory and enforcement authorities.<sup>318</sup>

It is clearly apparent from the forgoing that the first principle envisages a broad base for corporate governance: that is, that the economic system, the legal regime and the relevant institutions should be in sync with the corporate governance framework. This principle greatly relates to the nexus between public governance and corporate governance discussed above. This underpins the fact that corporate governance can only flourish in an economy with good public governance.<sup>319</sup> Transparent markets will only exist if there is transparency in the companies. Transparency is important in all corporate matters, especially the auditing process. A lot of people who invest in companies strongly rely on financial reports by, among others professionals and auditors.<sup>320</sup> Similarly rating

---

<sup>316</sup> Chen V Z et al 'Are OECD-Prescribed "Good Corporate Governance Practices" Really Good in an Emerging Economy?' (2011) *Asia Pacific Journal of Management* 115 (Hereafter cited as Chen V Z et al 2011)

<sup>317</sup> Controlling-shareholder expropriation refers to a situation where the controlling-shareholders pursue their self-interests at the expense of corporate performance and the interests of minority shareholders. See Classens S and Fan J P H Corporate Governance in Asia: A Survey *International Review of Finance*, 3(2) 71-103 cited in Chen V Z et al (2011) 116

<sup>318</sup> Organisation for Economic Co-operation and Development (2004) 17

<sup>319</sup> See argument on correlation between public governance and corporate governance discussed in section 3.2 above.

<sup>320</sup> Dobel J P 'Public Trusteeship: The Responsibilities of Transparency and Legacy' (2005) published in J O'Brien (ed) *Governing the Corporation* (2005) 319 (Hereafter cited as Dobel J P 2005)

organizations and bankers depend on accurate reporting.<sup>321</sup> Thus the auditing process and the information generated from the audit should not be tainted with fraud and there should be full disclosure.

### **3.3.2 The Rights of Shareholders and Key Ownership Functions**

This principle largely deals with protection of shareholders' rights and ensuring that a proper environment exists in the company for the exercise of these rights.

The corporate governance framework should protect and facilitate exercise of shareholders' rights.<sup>322</sup>

The shareholders contribute capital, monetary or otherwise, to the establishment of the company.<sup>323</sup> Thus they have a particular interest in the company and the way the business is run. Usually a company is managed in accordance with the Articles of Association and the Memorandum. All actions in the Articles that require approval by a vote of the shareholders in general meeting should be left for this august body. The board of directors should not be seen to usurp the powers of the shareholders. This may be done through availing all the necessary information to the shareholders in a timely fashion. The principles provide that shareholders should have the right to remove board members, and that they should participate in nominating directors.<sup>324</sup>

### **3.3.3. The Equitable Treatment of Shareholders**

In line with the above discussion, the importance of shareholders cannot be understated, both majority shareholders and all other shareholders. The OECD principles state thus:

---

<sup>321</sup> Dobel J P (2005) 319

<sup>322</sup> Organisation for Economic Co-operation and Development (2004) 18

<sup>323</sup> Gower L C B et al (1979) 214

<sup>324</sup> Jesover F and Kirkpatrick G (2005) 133

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.<sup>325</sup>

While shares may be divided into classes, all shares of a particular class should have the same rights and holders of shares in a certain class have to be treated equally.<sup>326</sup> Further, minority shareholders and foreign shareholders should be protected by the corporate governance framework.<sup>327</sup> Related to this discussion, the common law has come out strongly to protect minority shareholders.<sup>328</sup> In the absence of evidence to the contrary, the common law presumes that all shares confer equal rights and impose equal liabilities.<sup>329</sup> It is noted, that where minority shareholder protection is insufficient, controlling shareholders capture decision making and thus obtain the leverage to extract private benefits from the company.<sup>330</sup> This may in the long term also affect the controlling shareholders as it affects the company's access to capital.<sup>331</sup>

### 3.3.4 The Role for Stakeholders in Corporate Governance

Stakeholders play an important role in the ensuring the smooth running of business entities. The OECD principles state as follows:

The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.<sup>332</sup>

---

<sup>325</sup> Organisation for Economic Co-operation and Development (2004) 20

<sup>326</sup> Organisation for Economic Co-operation and Development (2004) 20

<sup>327</sup> Organisation for Economic Co-operation and Development (2004) 20

<sup>328</sup> *Brown V British Abrasive Wheel Co.* [1919] 1 Ch 290 and *Dafen Tinplate Co. Ltd V Llanelly Steel Co* [1920] 2 Ch 124

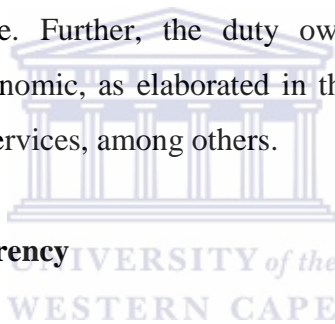
<sup>329</sup> Gower L C B et al (1979) 403

<sup>330</sup> Jesover F and Kirkpatrick G (2005) 132

<sup>331</sup> Jesover F and Kirkpatrick G (2005) 132

<sup>332</sup> Organisation for Economic Co-operation and Development (2004) 21

As elaborated in the discussion above on the stakeholder theory of corporate governance, consideration of the various stakeholders may determine the success of a business entity in the long run.<sup>333</sup> Gamble and Kelly, commenting on corporate social responsibility, are of the view that the company's 'licence to operate' is derived from the public interest.<sup>334</sup> Stakeholders in a company, especially an SOE, are quite diverse and may include the whole public or merely part of the public. It is noted, however, that the conceptualization of stakeholders by this principle is limited, as it only considers stakeholders established by law or mutual agreement. Various stakeholders may exist without any direct relationship to the company, as is envisaged by the principle. The company owes a duty to all these stakeholders as well and they should be included in the corporate governance framework of the company. An example is civil society groups and consumer groups which have interests in the operation of the company, yet there is no direct relationship as is envisaged by the principle. Further, the duty owed by the business entity to stakeholders is not always economic, as elaborated in the principle, but may be social, such as, education and health services, among others.



### 3.3.5 Disclosure and Transparency

Material information regarding financial and other aspects of management should be availed to all stakeholders in time.

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.<sup>335</sup>

The disclosure of material information to all stakeholders is a very important aspect of corporate governance.<sup>336</sup> This helps stakeholders make informed decisions<sup>337</sup> and to

---

<sup>333</sup> Kooskora M (2008) 198

<sup>334</sup> Gamble A and Kelly G 'The Politics of the Company' (2000) adapted from Gamble A and Kelly G (eds) *The Political Economy of the Company* 21 (Hereafter cited as Gamble A and Kelly G 2000)

<sup>335</sup> Organisation for Economic Co-operation and Development (2004) 22

<sup>336</sup> Dobel J P (2005) 319

<sup>337</sup> Dobel J P (2005) 319

query suspicious activities by the company. Appreciation of financial information is a dilemma to most stakeholders and presents a very serious problem in ensuring proper corporate governance. Sensitisation of stakeholder groups and the general public on financial reports is necessary if this information is to be understood and used productively. Related party transactions are also regulated by this principle.<sup>338</sup> It is necessary for a company to have independent directors who can evaluate, and where necessary block related party transactions.<sup>339</sup> Beneficiaries of such transactions should notify the board which should then disclose to the market the existence of such a transaction.<sup>340</sup>

### 3.3.6 The Responsibilities of the Board

The board which is in charge of the day to day supervision of management has a very big role to play in ensuring the successful operation of any corporation.<sup>341</sup> The OECD Principles state as follows:

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.<sup>342</sup>

The principle requires board members to act in good faith towards the company and the shareholders. It encourages Boards to take their fiduciary duties seriously.<sup>343</sup> The principle is limited, as it concentrates on shareholders and does not encourage the board to act with due regard to the interests of stakeholders.

---

<sup>338</sup> Jesover F and Kirkpatrick G (2005) 132

<sup>339</sup> Jesover F and Kirkpatrick G (2005) 132

<sup>340</sup> Jesover F and Kirkpatrick G (2005) 132

<sup>341</sup> Gevurtz F A 'The Historical and Political Origins of the Corporate Board of Directors (2004) *Hofstra Law Review*, 33 89-173

<sup>342</sup> Organisation for Economic Co-operation and Development (2004) 24

<sup>343</sup> Donaldson W Chairman of the Securities and Exchange Commission Speech at the London School of Economics, London 25 January 2005. See [www.sec.gov/new/speech/spch012505whd.htm](http://www.sec.gov/new/speech/spch012505whd.htm) cited by O'Brien J (ed) (2005) 16

The OECD Principles, as indicated above, have been lauded and followed by several notable organisations. They provide a good background for the development of a corporate governance regime. It is worth noting that the OECD Principles appear to focus more on shareholders as opposed to stakeholders and this has to be rectified to strengthen the Principles.

### **3.4 OECD Guidelines for Corporate Governance in State Owned Enterprises**

Chapter 2, section 2.1.1 and Graph 2.1, highlighted the immense contribution of SOEs to the economies of various countries in the world. The OECD countries are no exception, and indeed it has been acknowledged that SOEs greatly contribute to the economic strength of the OECD countries.<sup>344</sup>

Against this background, the OECD Steering Group on Corporate Governance asked the Working Group on Privatisation and Corporate Governance of State Owned Assets to come up with Corporate Governance Guidelines for SOEs.<sup>345</sup> The Guidelines are custom made for SOEs and this makes them unique. It should be noted that these Guidelines are modeled along the OECD Corporate Governance Principles elaborated above.<sup>346</sup> The complex accounting system of SOEs which involves multiple actors, such as, government ministries, the board and other parties is one of the factors that distinguishes SOEs from other corporations.<sup>347</sup> The Guidelines are primarily intended for SOEs that are using a distinct legal form and are commercially active.<sup>348</sup> The Guidelines are also buttressed with sub guidelines which are discussed below where necessary.

---

<sup>344</sup> Organisation for Economic Co-operation and Development (2005) 181

<sup>345</sup> Organisation for Economic Co-operation and Development (2005) 181

<sup>346</sup> Organisation for Economic Co-operation and Development (2005) 181

<sup>347</sup> Organisation for Economic Co-operation and Development (2005) 182

<sup>348</sup> Organisation for Economic Co-operation and Development (2005) 182



### 3.4.1 Ensuring an Effective Legal and Regulatory Framework for State Owned Enterprises

This guideline builds on the first principle of the OECD Principles of Corporate Governance. It provides for transparency and consistency with the rule of law, among other factors, and ensuring that the corporate governance framework is compatible with the legal framework in place. The guideline provides as follows:

The legal and regulatory framework for state-owned enterprises should ensure a level-playing field in markets where state owned-enterprises and private sector companies compete in order to avoid market distortions. The framework should build on, and be fully compatible with, the OECD Principles of Corporate Governance.<sup>349</sup>

It has been argued that the complex legal and regulatory framework within which SOEs operate can be protected from abuse by among others, clear division of responsibility among authorities, streamlining of legal forms, and a coherent regulatory framework.<sup>350</sup> The author is of the opinion that the above is recommended to keep the arm of the state from interfering with the operations of SOEs. SOEs should operate on level terrain with other corporations; they should not be protected from proceedings by creditors.<sup>351</sup> Further, the guideline can also prevent the creation of monopolies by the state and encourage competition with the private sector. Monopolistic situations have been identified as one of the common weaknesses of governance and causes of compliance failure.<sup>352</sup>

---

<sup>349</sup> Organisation for Economic Co-operation and Development (2005) 185

<sup>350</sup> Organisation for Economic Co-operation and Development (2005) 186

<sup>351</sup> Organisation for Economic Co-operation and Development (2005) 187

<sup>352</sup> Buck N 'Corporate Governance-More than a State of Mind?'(2005) published in O' Brien J (ed) (2005) 288 (Hereafter cited as Buck N 2005)

### 3.4.2 The State Acting as Owner

The status of ownership by the state has to be clarified at the outset. The state merely plays the role of *owner*<sup>353</sup> of shares in a SOE; it holds the shares of the enterprise on behalf of the citizens who are the owners of the same. Against this background, the argument that the SOEs have numerous stakeholders stands firm. The OECD guideline is couched in the following terms:

The state should act as an informed and active owner and establish a clear and consistent ownership policy, ensuring that the governance of state owned-enterprises is carried out in a transparent and accountable manner, with the necessary degree of professionalism and accountability.<sup>354</sup>

The state should always act in the best interests of the stakeholders. The state should have a cogent ownership policy for SOEs; this should provide the objectives for SOEs and indicate the state's role in the corporate governance framework of SOEs.<sup>355</sup> Additionally, the state should also ensure that SOEs are autonomous and that boards of SOEs operate in an independent atmosphere.<sup>356</sup> Independence of the boards is necessary to efficiently supervise management and deal satisfactorily with conflicts of interests, such as, remuneration.<sup>357</sup> Further, the entity that exercises the ownership function of the state should be clearly spelt out.<sup>358</sup> The ownership entity should be accountable to another body such as parliament, to create checks and balances.<sup>359</sup> The lack of accountability may lead

---

<sup>353</sup> The state merely plays a role. In reality the shares are actually owned by the citizens of the State. The State's ownership of shares is similar to the position of a nominee shareholder. The mandate to hold the shares on behalf of the citizens is ceded to the government when the citizens vote or allow a particular government to rule over them.

<sup>354</sup> Organisation for Economic Co-operation and Development (2005) 191

<sup>355</sup> Organisation for Economic Co-operation and Development (2005) 191

<sup>356</sup> Organisation for Economic Co-operation and Development (2005) 191

<sup>357</sup> Schaub A A 'European Responses to Corporate Governance Challenges' (2005) published in O'Brien J (ed) (2005) 63 (Hereafter cited as Schaub A A 2005)

<sup>358</sup> Organisation for Economic Co-operation and Development (2005) 191

<sup>359</sup> Organisation for Economic Co-operation and Development (2005) 191

to loss of investor confidence and public trust.<sup>360</sup> The state should also fully exercise its rights as a shareholder; such as, participating in shareholder meetings.<sup>361</sup>

### 3.4.3 Equitable Treatment of Shareholders

This guideline is modeled on the same terms as the OECD Principles of Corporate Governance albeit with a slight modification to accommodate SOEs. The guideline provides for the equal treatment of all shareholders who hold the same class of shares, and for non-discrimination in providing information to shareholders.

The state and state-owned enterprises should recognise the rights of all shareholders and in accordance with the OECD Principles of Corporate Governance ensure their equitable treatment and equal access to corporate information.<sup>362</sup>

This is meant to ensure that all shareholders are treated equally in accordance with the rights attending the different classes of shares that they hold.<sup>363</sup> Information should also be provided to all shareholders on time. Participation in company meetings, especially voting, should be done with due regard to the rights and interests of all shareholders.<sup>364</sup> Similarly to the Scandinavian countries, the equitable treatment of shareholders is greatly revered in the common law jurisdictions and it is for this reason, among others, that voting at company general meetings is primarily conducted by show of hands,<sup>365</sup> that is, each shareholder has one vote irrespective of the number of shares held.<sup>366</sup> Protection of minority and foreign shareholders is also necessary, as highlighted

---

<sup>360</sup> Walker D M 'Restoring Trust After Recent Accountability Failures' (2005) published in O' Brien J (ed) (2005) 21 (Hereafter cited as Walker D M 2005)

<sup>361</sup> Organisation for Economic Co-operation and Development (2005) 191

<sup>362</sup> Organisation for Economic Co-operation and Development (2005) 201

<sup>363</sup> Organisation for Economic Co-operation and Development (2004) 20

<sup>364</sup> Organisation for Economic Co-operation and Development (2005) 201

<sup>365</sup> Gower L C B et al (1979) 403

<sup>366</sup> Gower L C B et al (1979) 403 It should be noted that shareholders can vote by poll, taking into account the number of shares held by the different shareholders, however, the general rule is that shareholders vote by show of hands representing one shareholder per vote without necessarily considering the shares held by the shareholder.

in the foregoing discussion on equitable treatment of shareholders under the OECD Principles.<sup>367</sup>

#### 3.4.4 Relations with Stakeholders

This guideline is similar to the OECD Principles on Corporate Governance.<sup>368</sup> It is particularly relevant to SOEs as they tend to engage with more stakeholders in comparison to other companies. The guideline provides that:

The state ownership policy should fully recognise the state-owned enterprises' responsibilities towards stakeholders and request that they report on their relations with stakeholders.<sup>369</sup>

This language used seems very weak and does not compel states and SOEs to give the guideline the priority it deserves. The use of the terms 'recognise' and 'request' is very lenient. The sub-guidelines however use the term 'should'<sup>370</sup> in relation to reporting; this is the preferred language and should be adopted in the main guideline to avoid ambiguity. The guidelines generally appear to place a far greater emphasis on the protection of shareholders as opposed to stakeholders. Thus there is a need to magnify the status of stakeholders in the guidelines generally, and in this particular guideline, by the use of stronger language. As noted in the general Principles above,<sup>371</sup> the guideline also focuses on stakeholders recognised by law or mutual agreement.<sup>372</sup> This construction is quite narrow. The guideline should provide for all stakeholders. Lastly the guideline provides that boards of SOEs should be required to develop and communicate compliance mechanisms for internal codes of ethics.<sup>373</sup> These codes will enhance the conduct of boards of SOEs and instil discipline in the board members and management. The stakeholders will then be able to monitor and challenge the actions of board members and

---

<sup>367</sup> Organisation for Economic Co-operation and Development (2004) 20

<sup>368</sup> Organisation for Economic Co-operation and Development (2004) 21

<sup>369</sup> Organisation for Economic Co-operation and Development (2005) 205

<sup>370</sup> Organisation for Economic Co-operation and Development (2005) 205

<sup>371</sup> See section 3.3 of chapter 3 of the thesis

<sup>372</sup> Organisation for Economic Co-operation and Development (2005) 205

<sup>373</sup> Organisation for Economic Co-operation and Development (2005) 205

other officers of the company. Stakeholders greatly determine the performance of an SOE.<sup>374</sup>

### **3.4.5 Transparency and Disclosure**

In line with the OECD Principles of Corporate Governance, the guidelines provide as follows;

State-owned enterprises should observe high standards of transparency in accordance with the OECD Principles of Corporate Governance.<sup>375</sup>

This mainly relates to the practice of sound accounting procedures and conducting of internal and external audits of SOEs.<sup>376</sup> The results of these audits should also be published and made available to the stakeholders on time.<sup>377</sup> Information regarding management of the SOE should also be availed to the public.<sup>378</sup> Auditors should carefully evaluate a company's internal control in greater depth as part of the financial statement audit.<sup>379</sup> As discussed above, there is a need to sensitize the public on the interpretation and analysis of financial statements and other similar reports, if their disclosure is to yield fruit and encourage debate on the management of SOEs. Transparency and total disclosure helps interested parties, such as investors, make informed decisions.<sup>380</sup>

### **3.4.6 The Responsibilities of the Boards of State Owned Enterprises**

This guideline is consistent with the OECD Principles elaborated above.<sup>381</sup> As mentioned earlier, the board plays a pivotal role in running any corporation.<sup>382</sup> As such, the board is

---

<sup>374</sup> Gamble A and Kelly G (2000) 21

<sup>375</sup> Organisation for Economic Co-operation and Development (2005) 211

<sup>376</sup> Organisation for Economic Co-operation and Development (2005) 211

<sup>377</sup> Organisation for Economic Co-operation and Development (2005) 211

<sup>378</sup> Organisation for Economic Co-operation and Development (2005) 211

<sup>379</sup> Walker D M (2005) 24

<sup>380</sup> Dobel J P (2005) 319

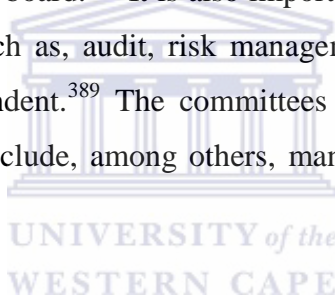
<sup>381</sup> See section 3.3 of chapter 3 of the thesis

<sup>382</sup> Gevurtz F A (2004) 89-173

enjoined to act in good faith and in the best interest of the company. The guideline states that:

The boards of state-owned enterprises should have the necessary authority, competencies and objectivity to carry out their function of guidance and monitoring of management. They should act with integrity and be held accountable for their actions.<sup>383</sup>

The above guideline is self-explanatory. The board should have autonomy to act without undue influence of the state.<sup>384</sup> The composition of the board should include non-executive members to provide independent judgement and competent opinions to the board.<sup>385</sup> The selection of the board members is very important and this should be done in a transparent manner to attract and appoint the best candidates.<sup>386</sup> The selection of suitable candidates helps build a strong board.<sup>387</sup> It is also important that committees be set up to guide the board on issues, such as, audit, risk management, and remuneration.<sup>388</sup> The committees should be independent.<sup>389</sup> The committees make it easy for the board to perform its functions which include, among others, managing risk and giving strategic advice to management.<sup>390</sup>



The OECD Guidelines are tailored to provide a model for the corporate governance regime of SOEs. The guidelines, if adopted, provide a very good model which ensures profitable management of a SOE. It is noted that in some cases the guidelines have loopholes which require bolstering, such as, regarding relations with stakeholders and transparency and disclosure. However on the whole they are quite comprehensive.

---

<sup>383</sup> Organisation for Economic Co-operation and Development (2005) 219

<sup>384</sup> Organisation for Economic Co-operation and Development (2005) 220-221

<sup>385</sup> Organisation for Economic Co-operation and Development (2005) 222

<sup>386</sup> Organisation for Economic Co-operation and Development (2005) 222

<sup>387</sup> Walker D M (2005) 27

<sup>388</sup> Organisation for Economic Co-operation and Development (2005) 224

<sup>389</sup> Walker D M (2005) 27

<sup>390</sup> Walker D M (2005) 27

### **3.5 An Overview of the Corporate Governance Framework for SOEs in Norway**

The OECD Guidelines discussed above underscore the need for a corporate governance framework dedicated to SOEs. The corporate governance framework for SOEs in Norway has been reduced into administrative policies for the ministry in charge of state ownership in Norway.<sup>391</sup> These policies were made subsequent to a Government White Paper<sup>392</sup> which identified the 10 major principles on which administration of state ownership in individual companies should be based.<sup>393</sup> The principles,<sup>394</sup> together with other materials form the core of these policies. The principles are discussed below.

#### **3.5.1 All Shareholders shall be Treated Equally.<sup>395</sup>**

This is quite similar to the OECD Principles and Guidelines on Corporate Governance elaborated above.<sup>396</sup> Equitable treatment of shareholders is a basic tenet of corporate governance. As explained above, this involves the treatment of all shareholders with the same class of shares equally, and equal treatment in the distribution of material information to the shareholders.<sup>397</sup> Minority shareholders and foreign shareholders should not be discriminated against.<sup>398</sup> The requirement of equal treatment of shareholders is also reiterated in the Norwegian Code of Practice for Corporate Governance 2009.<sup>399</sup>

#### **3.5.2 There shall be Transparency in the State's Ownership of Companies.<sup>400</sup>**

This is also discussed in the OECD Guidelines examined in the preceding section.<sup>401</sup> Transparency, as explained above, relates to the use of sound accounting methods and

---

<sup>391</sup> White Paper No. 22 (2001-2002) On Reduced and Improved State Ownership and M Kallevig (2005) 5

<sup>392</sup> White Paper No. 22 (2001-2002)

<sup>393</sup> White Paper No. 22 (2001-2002) and Kallevig M (2005) 5

<sup>394</sup> Kallevig M (2005) 5

<sup>395</sup> White Paper No. 22 (2001-2002)

<sup>396</sup> See sections 3.3 and 3.4 of chapter 3 of the thesis

<sup>397</sup> Organisation for Economic Co-operation and Development (2004) 20

<sup>398</sup> Organisation for Economic Co-operation and Development (2004) 20

<sup>399</sup> Norwegian Code of Practice for Corporate Governance 2009

<sup>400</sup> White Paper No. 22 (2001-2002)

<sup>401</sup> See section 3.4 of chapter 3 of the thesis

conducting of internal and external audits, as well as availing financial information and management to the various stakeholders.<sup>402</sup> Financial reports and documents that are generated after audits should be accurate to provide a clear unbiased picture to interested parties.<sup>403</sup> In light of the foregoing discussion, it is worth noting that the state (Department of Ownership) publishes an Annual Ownership Report, with results of the State Owned Companies and the names of members of the different boards of directors.<sup>404</sup>

### **3.5.3 Ownership Decisions and Resolutions shall be made at the General Meeting.**<sup>405</sup>

This Principle underscores the fact that protection of shareholders interest is very important.<sup>406</sup> It also relates to the foregoing principle on transparency. The Code provides that steps should be taken to ensure that the majority of shareholders attend the general meeting.<sup>407</sup> The board can ensure that a general meeting is attended by giving the committee members sufficient details and timely notice of the meeting.<sup>408</sup>

### **3.5.4 The State may set Performance Targets for Each Company Together with other Owners. The Board is Responsible for Meeting these Targets.**<sup>409</sup>

The state is enjoined to ensure that companies remain relevant to the objectives for which they were established. To this end, performance targets serve as a very important tool for measuring relevance and whether the different companies are meeting the goals and objectives for which they were established. The board which is in charge of day-to-day supervision of the management of the company is in position to ensure that the targets are met. The state is able to monitor the different companies through their performance targets.

---

<sup>402</sup> Organisation for Economic Co-operation and Development (2005) 211

<sup>403</sup> Dobel J P (2005) 319

<sup>404</sup> Kallevig M (2005) 5

<sup>405</sup> White Paper No. 22 (2001-2002)

<sup>406</sup> O' Brien J (ed) (2005) 14

<sup>407</sup> Norwegian Code of Practice for Corporate Governance 2009

<sup>408</sup> Norwegian Code of Practice for Corporate Governance 2009

<sup>409</sup> White Paper No. 22 (2001-2002)



### **3.5.5 The Capital Structure of the Company shall be Consistent with the Objective of the Ownership and the Company's Situation.<sup>410</sup>**

Related to the foregoing Principle, performance targets help highlight the company's situation and whether the company is meeting its objectives. Thus pegging capital structure against its objectives and its situation ensures that the company delivers and motivates the board of the company to perform.

### **3.5.6 The Composition of the Board shall be Characterised by Competence, Capacity and Diversity and shall Reflect the Distinctive Characteristics of Each Company.<sup>411</sup>**

The OECD Guidelines discussed above provide for the responsibilities of the board and also highlight the necessity of a competent board.<sup>412</sup> It is interesting to note that the competence of the board is also discussed in the Norwegian Code. As discussed earlier, the importance of the board cannot be understated.<sup>413</sup> It has been noted that Norwegian SOE boards have the overall responsibility for decisions of a commercial nature, including long-term strategic planning and budget supervision.<sup>414</sup> Thus the competence of the board cannot be compromised.<sup>415</sup> It has also been highlighted that the ministry in charge of SOEs participates in the nomination of board members as part of the nomination committee which is elected by the Annual General Assembly.<sup>416</sup> The main task of the nomination committee is to find qualified persons with varied experience in the field in which they operate.<sup>417</sup> Thus this complements the above Principle.

---

<sup>410</sup> White Paper No 22 (2001-2002)

<sup>411</sup> White Paper No 22 (2001-2002)

<sup>412</sup> See section 3.4 of chapter 3 of the thesis

<sup>413</sup> Gevurtz F A (2004) 89-173

<sup>414</sup> Kallevig M (2005) 6

<sup>415</sup> O' Brien J (ed) (2005) 27

<sup>416</sup> Kallevig M (2005) 6

<sup>417</sup> Kallevig M (2005) 6

### **3.5.7 Compensation and Incentive Systems shall Promote the Creation of Value in the Companies and shall be Generally Regarded as Reasonable.<sup>418</sup>**

The above Principle relates to regulation of the remuneration of board members. While board members should be allowed to receive reasonable remuneration, there should be a separate committee of the board, comprised of non-executive directors, which determines matters to do with remuneration.<sup>419</sup> The remuneration should be such as to motivate the directors and encourage them to comfortably perform their duties. The above Principle is in line with the OECD Principles which indicate that there is a link between performance and remuneration.<sup>420</sup>

### **3.5.8 The Board shall Exercise an Independent Control of the Company's Management on Behalf of the Owners.<sup>421</sup>**

The board is the company organ at the core of the daily running of any company.<sup>422</sup> Management interacts more with the board than with the shareholders or owners. Thus, for the board to effectively perform its role, it should be able to do so with minimal interruption of its mandate. The state as a shareholder or an owner of a SOE is bound to interfere with the running of the entity. This should be discouraged as it affects the running of the company. In Norway, line ministry officials, Members of Parliament, Ministers and State Secretaries are not allowed to sit on the board of directors of any SOE.<sup>423</sup>

---

<sup>418</sup> White Paper No 22 (2001-2002)

<sup>419</sup> Schaub A A (2005) 66-67

<sup>420</sup> Jesover F and Kirkpatrick G (2005) 133

<sup>421</sup> White Paper No 22 (2001-2002)

<sup>422</sup> O' Brien J (ed) (2005) 27

<sup>423</sup> Kallevig M (2005) 6

**3.5.9 The Board shall Adopt a Plan for its Own Work and shall Work Actively with Development of its Own Competence. The Board’s Activities shall be Assessed.**<sup>424</sup>

Similar to the above Principle at 3.5.3, which requires the state to set performance targets for each company. The board of directors is also enjoined to adopt a plan for its own work. Naturally, the plan of work should be consistent with the performance targets enshrined in the above mentioned Principle. Sufficient diligence should be undertaken in the selection of board members; this will decrease the burden of development of competence.<sup>425</sup> Norway has institutions in place which ensure the selection of the most competent board members.<sup>426</sup> The existence of a Nominations committee elected at the Annual General Meeting ensures that qualified board members are selected.<sup>427</sup>

**3.5.10 The Company shall Recognise its Responsibilities to all Shareholders and Stakeholders in the Company.**<sup>428</sup>

This Principle attempts to cover all bases. Companies ought to benefit the shareholders who are their main benefactors; to this end they have an obligation to the shareholders. On the other hand, the contribution of stakeholders is not as explicit, save for employees who work in the company. Thus the responsibilities to the stakeholders are often ignored. There is a need to borrow from the OECD Guidelines and protect the stakeholders’ rights by demanding that companies publish reports on their relationships with stakeholders.<sup>429</sup> This helps the stakeholders to keep track of the company’s performance. It is worth noting that this Principle is in tandem with the OECD Guidelines on relations with stakeholders, which enjoin the state and state-owned enterprises to recognise responsibilities to stakeholders. As suggested earlier,<sup>430</sup> both the OECD guidelines and

---

<sup>424</sup> White Paper No. 22 (2001-2002)

<sup>425</sup> Walker D M (2005) 27

<sup>426</sup> See subsections 4.2.3 and 4.2.4 of chapter 4, on the discussion of the corporate assembly and the nomination committee

<sup>427</sup> Kallevig M (2005) 6

<sup>428</sup> White Paper No. 22 (2001-2002)


<sup>429</sup> Organisation for Economic Co-operation and Development (2005) 205

<sup>430</sup> See conclusion of section 3.4 of chapter 3 of the thesis

the Norwegian Principles of corporate governance for SOEs, have to bolster the protection of stakeholders.

The Principles elucidated in this section underpin the Norwegian corporate governance framework for SOEs. The Principles are in very many ways similar to the OECD Guidelines discussed in the preceding section. The fact that Norway is one of the OECD countries is a plausible reason to explain the similarity. The Principles discussed in this section just like the OECD principles concentrate on shareholders as opposed to stakeholders, yet they deal with SOEs. There is need to involve and cater for stakeholders' interests in policies related to SOEs.

### **3.6 An Overview of the Corporate Governance Framework for SOEs in Uganda; Proposals for Reform**



Uganda does not have a distinct corporate governance framework dedicated to SOEs, as exists in Norway. Prior to the Companies Bill 2009, corporate governance matters were to a large extent a preserve of financial institutions and listed companies.<sup>431</sup> This reason and the fact that the Companies Act Cap 110 has no corporate governance code, make the examination of corporate governance using the Companies Act Cap 110 complicated. The Companies Bill 2009 attempts to introduce the concept of corporate governance in all companies and not just the entities mentioned above. Thus the Corporate Governance Code that is annexed to the Companies Bill in the Second Schedule (table F) is the most appropriate instrument to be used in examining the corporate governance framework for SOEs in Uganda. It should be noted that SOEs are comprised of various entities and most of these are not listed companies. On 18 November 2009, the first reading of the Companies Bill 2009 took place, whereupon it was referred to the relevant parliamentary committee for scrutiny.<sup>432</sup>

---

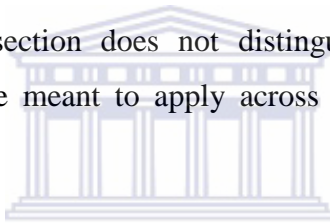
<sup>431</sup> The Financial Institutions Act 2004 and the Capital Markets Authority (Corporate Governance Guidelines) 2003

<sup>432</sup> Parliament of Uganda eNews letter See: <http://www.parliament.go.ug/enewsletter/index.php/home/view/49/> (accessed on 16 February 2011)

Section 14 of the Companies Bill provides as follows:

- (1). A public company shall at the time of registration of its articles and memorandum of association or subsequently, adopt and incorporate into its articles all or any part of the provisions of the code of good corporate governance contained in table F set out in the 2<sup>nd</sup> Schedule.
- (2). A private company may at the time of registration of its articles or subsequently, adopt and incorporate into its articles all or any of the provisions of the code of good corporate governance contained in table F.
- (3). Where a company adopts all or any part of the codes in table F, a printed copy of that table shall be annexed to or incorporated in each copy of its articles of association.

It is worth noting that the section does not distinguish between SOEs and other companies; thus the Codes are meant to apply across the board, ignoring the unique structure of SOEs.



These Principles are also optional for private companies and may be adopted at the instance of the company. In light of the foregoing lacuna, Uganda should adopt the approach of ‘apply or explain’ which is used in the King III Report on corporate governance.<sup>433</sup> The language used in the Companies Bill 2009 does not denote any intention to seriously engage with corporate governance issues in Uganda.

The Corporate Governance Code has nine principles. Some of the principles that have a strong bearing on SOEs are discussed below.

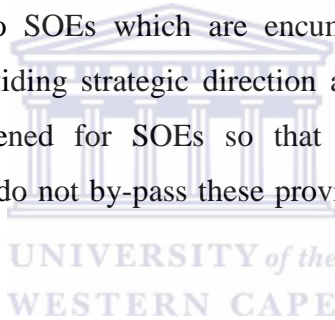
---

<sup>433</sup> See subsection 3.1.1.1 on King III Report on corporate governance in South Africa

### 3.6.1 Board and Directors<sup>434</sup>

This is a very broad principle touching on quite a number of board matters. These include: the responsibilities and powers of the board, board composition, remuneration of directors, the necessity for board committees, and board and director evaluation.<sup>435</sup> The board is enjoined to act in good faith and is accountable for the performance of the company.<sup>436</sup>

Additionally, the board is supposed to provide strategic direction, retain full and effective control, identify and monitor key performance areas, and create a board charter.<sup>437</sup> All these responsibilities and powers are relevant for both SOEs and other corporations. However, it may be easy for the boards of non-SOE corporations to fulfil these responsibilities, as opposed to SOEs which are encumbered with state interference. Responsibilities, such as, providing strategic direction and retaining full and effective control, need to be strengthened for SOEs so that the line ministries and other government regulatory bodies do not by-pass these provisos to hijack the powers of the board.



The Code provides that the board is to be composed of both executive and non-executive directors.<sup>438</sup> Further, that the board should have a majority of non-executive directors and these are supposed to be independent.<sup>439</sup> The principles on board composition, contained in the Code, are quite comprehensive for both SOEs and other corporations. The Code is however silent on whether government officials can be members of boards of SOEs. This is very significant in ensuring the independence of the board of an SOE. Uganda should borrow from Norway's SOE corporate governance framework, which prohibits Ministers, Members of Parliament and State Secretaries from sitting on SOE boards.<sup>440</sup>

---

<sup>434</sup> The Companies Bill 2009 clause 1 to clause 9

<sup>435</sup> The Companies Bill 2009 clause 8

<sup>436</sup> The Companies Bill 2009 clause 1

<sup>437</sup> The Companies Bill 2009 clause 1

<sup>438</sup> The Companies Bill 2009 clause 2

<sup>439</sup> The Companies Bill 2009 clause 2 See also Gower L and Davies (2008) 362 Non-executive directors are those managers in the company who are not voted as 'directors' by the shareholders.

<sup>440</sup> Kallevig M (2005) 6

Remuneration of directors is also addressed by the Code.<sup>441</sup> It is important to pay directors reasonably well so that the company can attract and maintain qualified persons to guide the company.<sup>442</sup> The Code recommends that the board should have a remuneration committee made up of non-executive directors to determine executive directors' payments.<sup>443</sup> The issue of directors' remuneration is also discussed in the Norwegian Principles on Corporate Governance for SOEs. It is very important that directors of SOEs are not paid from government coffers or from the national budget as this will compromise their independence.

The Code also provides for board committees.<sup>444</sup> Companies are encouraged to have at least an audit committee and a remuneration committee, headed by non-executive directors.<sup>445</sup> These committees are supposed to obtain full information from the board and they should be independent.<sup>446</sup> This is an interesting provision in light of the requirements for SOEs in Uganda to be subject to audits by the Office of the Auditor-General.<sup>447</sup> To enhance the existing legal regime, it is important that SOE audit committees be required to furnish an annual report to the Office of the Auditor-General; this will amplify the effect of audits of SOEs.

Board and director evaluation is another tenet covered by the Code.<sup>448</sup> Companies should ensure that their boards evaluate their performance. This may be done through board committees.<sup>449</sup> The evaluation suggested is self-evaluation by the directors.<sup>450</sup> The evaluation suggested should be done once a year.<sup>451</sup>

---

<sup>441</sup> The Companies Bill 2009 clause 5

<sup>442</sup> The Companies Bill 2009 clause 5

<sup>443</sup> The Companies Bill 2009 and Schaub A A (2005) 66-67

<sup>444</sup> The Companies Bill 2009 clause 7

<sup>445</sup> The Companies Bill 2009 clause 7

<sup>446</sup> The Companies Bill 2009 clause 7

<sup>447</sup> The National Audit Act, Section 17

<sup>448</sup> The Companies Bill 2009 clause 8

<sup>449</sup> The Companies Bill 2009 clause 8

<sup>450</sup> The Companies Bill 2009, Peer reviews for the board have also been suggested. See Isaksson M and Kirkpatrick G 'Corporate Governance Lessons from The Financial Crisis' (2009) *OECD Observer* No 273 12 (Hereafter cited as Isaksson M and Kirkpatrick G 2009)

<sup>451</sup> The Companies Bill 2009 clause 8

Directors duties suggested in the code are quite timely; very many SOEs in Uganda have been operating without boards. Additionally, some of the SOEs with boards have been operating in utter disregard of good corporate practice.<sup>452</sup> The Table below (Table 3.2) reflects the state in which some SOEs operate in Uganda.

**Table 3.2**

**Status and Operation of Boards of Directors for Select SOEs in Uganda**

Uganda National Council of Science and Technology	Absence of board of directors
Uganda Air Cargo Corporation	Absence of board of directors
Uganda Broadcasting Corporation	No approval of board remuneration
National Enterprise Corporation	Absence of board of directors
Mandela National Stadium	Unsigned board minutes
Kilembe Mines Ltd	Absence of board of directors
Civil Aviation Authority	Absence of board of directors

Source: See below<sup>453</sup>



The number of SOEs represented above is small compared to the total number of SOEs in Uganda; nevertheless it points to the adverse effects of managing SOEs without a corporate governance framework in place.

**3.6.2 Risk Management<sup>454</sup>**

Under the Code, the board should be responsible for the total process of risk management in a corporation.<sup>455</sup> Management should assist the board in this regard.<sup>456</sup> The board working together with management should set risk management policies and should

<sup>452</sup> Office of the Auditor General (2009) 13

<sup>453</sup> Office of the Auditor General (2009) 13

<sup>454</sup> The Companies Bill 2009 clauses 11 to 12

<sup>455</sup> The Companies Bill 2009 clause 11

<sup>456</sup> The Companies Bill 2009 clause 11



ensure that these are communicated to the employees and implemented.<sup>457</sup> Risk management should be undertaken by a special board committee.<sup>458</sup>

Further, risk should be monitored in a continuous manner and management should report to the board on risk.<sup>459</sup> Key risk areas should be identified by the board.<sup>460</sup> Controls should be put in place to respond to risk and protect stakeholders.<sup>461</sup> The board should also disclose that it is in charge of risk management.<sup>462</sup> Commentators, such as David M Walker, have emphasised the role that the board has to play in averting and controlling risk in a company.<sup>463</sup>

Risk management for SOEs is more involved than that of other business entities because of the players involved. The state will always seek to interfere in risk control in SOEs. This makes the SOE boards reluctant to address risk situations as they are aware that the state will bail them out. It is important that the state distance itself from risk management in SOEs for optimal performance of the risk management function by the board. In Norway the board is in charge of creating its own plan of work.<sup>464</sup> This also involves creating strategies to combat risk.



### **3.6.3 Relations with Shareholders<sup>465</sup>**

The Code also deals with relations with shareholders.<sup>466</sup> The Code provides for: dialogue with institutional investors to understand objectives, timely and detailed notices for general meetings, as well as the use of voting at general meetings to arrive at a consensus on contentious issues.<sup>467</sup> This Principle is devoid of detail and ignores issues, such as,

---

<sup>457</sup> The Companies Bill 2009 clause 11

<sup>458</sup> The Companies Bill 2009 clause 11

<sup>459</sup> The Companies Bill 2009 clause 12

<sup>460</sup> The Companies Bill 2009 clause 12

<sup>461</sup> The Companies Bill 2009 clause 12

<sup>462</sup> The Companies Bill 2009 clause 12

<sup>463</sup> Walker D M (2005) 27

<sup>464</sup> Kallevig M (2005) 5

<sup>465</sup> The Companies Bill 2009 clause 20

<sup>466</sup> The Companies Bill 2009 clause 20

<sup>467</sup> The Companies Bill 2009 clause 20

equitable treatment of shareholders.<sup>468</sup> It actually focuses on institutional investors as opposed to all shareholders. The equitable treatment of shareholders is of particular importance to SOEs as they have the state as a shareholder. The state often uses its special status to prevail over the board and to dictate company policy. It is therefore important that the Code provide for equal treatment of all shareholders. The Principle does not provide for companies' responsibilities to stakeholders and for the treatment of stakeholders. This is important for SOEs as they have numerous stakeholders. The Ugandan Code provides a very narrow conceptualization of the relations with shareholders, compared to the OECD principles and the corporate governance framework of Norway.

The Companies Bill 2009 and the Corporate Governance Code annexed thereto should be re-visited to provide for SOEs and to address the corporate governance needs of SOEs. Important issues that are addressed in the corporate governance framework of SOEs in Norway, such as, transparency in state ownership and aligning the capital structure of the corporation to the objectives, should be addressed. The Ugandan Code is clearly not meant for SOEs. In lieu of redefining the Code along the terms suggested above, a separate Code for SOEs should be created to address the corporate governance needs of SOEs.

### **3.7 Conclusion**

This chapter set out to engage with the following issues: the concept of corporate governance, theories of corporate governance, and the relationship between corporate governance and public governance among others. The OECD Principles and Guidelines of Corporate Governance were used as a benchmark to evaluate the corporate governance framework of Norway and Uganda. A comparison of the corporate governance of SOEs in Norway and Uganda was also undertaken.

---

<sup>468</sup> Organisation for Economic Co-operation and Development (2005) 201 and Kallevig M (2005) 5

The chapter has shown that there are many definitions of corporate governance. These definitions have a link to the difference in opinion regarding the origin of the concept of corporate governance. The definitions also have a direct relationship with the theories of corporate governance. The stakeholder theory of corporate governance stands out as the most relevant theory with regard to the corporate governance framework for SOEs. It takes into account the fact that SOEs have numerous players. The Agency theory, on the other hand, is limited to the shareholder and director relationship and ignores the various stakeholders associated with SOEs. Suffice it to note, that from a legal perspective, it appears to be resting on uneven ground.

The chapter has also underscored the close relationship between corporate governance and public governance. The public governance environment has to be conducive for the germination and nurturing of good corporate governance principles. This is evident in Norway as shown by the worldwide governance indicators.

The OECD Principles and Guidelines on Corporate Governance were used as a criterion for best practice against which the corporate governance frameworks in Norway and Uganda were evaluated. The corporate governance framework in Norway is quite similar to the OECD Principles and Guidelines. Norway has also developed a comprehensive corporate governance framework for SOEs. The similarity can be explained by the fact that Norway is one of the OECD countries. It has however been noted that the Norwegian corporate governance framework does not give sufficient coverage to stakeholders and this should be addressed.

Currently, Uganda does not have a corporate governance framework that applies to all companies. Corporate governance has been left to listed companies and financial institutions. The Companies Bill 2009 which is before Parliament intends to rectify this anomaly. The Companies Bill 2009 provides for a Code on corporate governance. The Code is however best suited for other companies as opposed to SOEs. The Code is not alive to SOE corporate governance needs. Thus there is a need to redesign the code or to put in place a special Code for SOEs.

It is very difficult for Ugandan SOEs to perform optimally if there is no corporate governance framework within which they can be protected against undue influence by the state. There is a need for corporate governance structures to insulate SOEs from unhealthy corporate practices and to prepare them for privatisation where necessary. Against this background, the success of the proposed NOC greatly depends on steps being taken to provide corporate governance structures for SOEs in the Ugandan legal regime.

The next chapter discusses corporate governance structures in the Norwegian State Oil Company and seeks to elicit lessons for the proposed National Oil Company of Uganda.



## CHAPTER 4

### CORPORATE GOVERNANCE STRUCTURES IN THE NORWEGIAN STATE OIL COMPANY (STATOIL); LESSONS FOR THE PROPOSED NATIONAL OIL COMPANY OF UGANDA

#### 4.1 Introduction

This chapter analyses the corporate governance framework of the Norwegian State Oil Company and extracts lessons for the proposed National Oil Company of Uganda. It reduces the corporate governance discourse presented in chapter 3 to National Oil Companies (NOCs). Before delving into the corporate governance debate, it is imperative to take a trip down history lane and trace the growth of the Norwegian State Oil Company, also known as Statoil.

Norway had the advantage of starting its oil industry against the backdrop of a highly competent bureaucracy that was skilled in, among other things, regulation of natural resource industries, like hydropower and mining.<sup>469</sup> It should also be noted that Norway's policy goal was geared towards maintaining control over the oil sector and not revenue maximization.<sup>470</sup> The country was greatly concerned with the negative effects of oil wealth; it was believed that a NOC would regulate the pace of the development of the oil industry and protect the economy from the black gold curse.<sup>471</sup>

The Norwegian State Oil Company was established by a decision of the Norwegian Parliament in 1972.<sup>472</sup> The company's role was to manage the commercial interest of the government in the development of the oil and gas industry in Norway.<sup>473</sup> The company

---

<sup>469</sup> Thurber M and Istad T B (2010) 10

<sup>470</sup> Thurber M and Istad T B (2010) 6

<sup>471</sup> Thurber M and Istad T B (2010) 7

<sup>472</sup> Statoil (2006) 10

<sup>473</sup> Statoil (2006) 10

has grown with the Norwegian oil and gas industry.<sup>474</sup> Statoil was the first Norwegian company to be given operator responsibility for an oil field in Norway.<sup>475</sup> Statoil has continued to grow and in 2001 it was partially privatized.<sup>476</sup> The Figure below (Figure 4.1) represents the milestones in the history of the Norwegian State Oil Company.



---

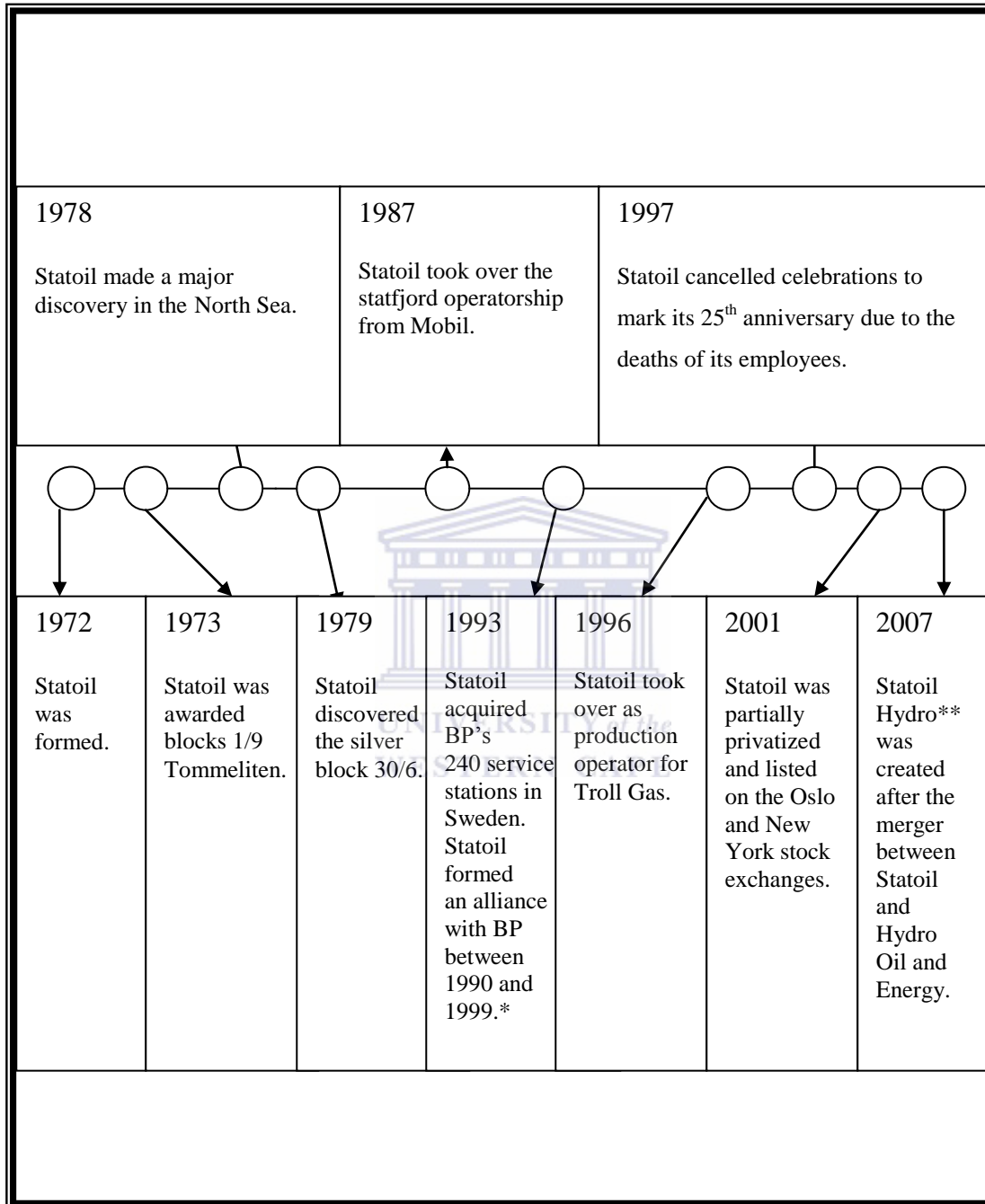
<sup>474</sup> History of Statoil See <http://www.statoil.com/en/About/History/Pages/default3.aspx> (accessed on 3 March 2011)

<sup>475</sup> History of Statoil See <http://www.statoil.com/en/About/History/Pages/default3.aspx> (accessed on 3 March 2011)

<sup>476</sup> Thurber M and Istad T B (2010) 5

**Figure 4.1**

**Major Milestones in the History of the Norwegian State Oil Company (Statoil)**



Source: See below<sup>477</sup>

<sup>477</sup> Forty Years of Norwegian Oil See: <http://www.statoil.com/en/about/history/oilnorway40years/pages/default.aspx> (accessed on 3 March 2011)

\*The alliance established some significant international operations, e.g. Angola. \*\*The name was later changed back to Statoil in 2009.

It is interesting to note that even prior to its partial privatization in 2001, the company was making major oil discoveries and expanding business. Additionally, the company's loyalty to its stakeholders is clearly depicted by the 1997 incident which led to the cancellation of the anniversary celebrations.

Partial privatization is bound to open up the company to more business opportunities, as demonstrated by the merger with Hydro Oil and Energy in 2007. However, it took 29 years before the company could be partially privatized. There was ample time for the state to nurture the company and the industry.<sup>478</sup>

## 4.2 Company Organs and Corporate Governance in Statoil

Statoil is organized under the Norwegian Public Limited Liability Companies Act No. 45 of 13 June 1997. The Act applies to public limited liability companies. These are companies where none of the members have personal liability for the obligations of the company, the company is designated a public limited company in its Articles of Association, and it is registered as a Public limited company in the Register of Business Enterprises.<sup>479</sup>

Norwegian company law provides for the following organs of the company: the general meeting,<sup>480</sup> the board of directors,<sup>481</sup> the corporate assembly,<sup>482</sup> the nomination committee,<sup>483</sup> and board committees, e.g. the audit committee.<sup>484</sup> These organs are all present in the Norwegian State Oil Company.<sup>485</sup>

---

<sup>478</sup> Thurber M and Istad T B (2010) 5

<sup>479</sup> Norwegian Public Limited Liability Companies Act Section 1-1 (2)

<sup>480</sup> Norwegian Public Limited Liability Companies Act Section 5-1

<sup>481</sup> Norwegian Public Limited Liability Companies Act Section 6-1

<sup>482</sup> Norwegian Public Limited Liability Companies Act Section 6-35

<sup>483</sup> The Norwegian Code of Practice for Corporate Governance principle 7

<sup>484</sup> Norwegian Public Limited Liability Companies Act Section 6-41

<sup>485</sup> Governing Bodies in Statoil

See: <http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/Pages/GoverningBodies.aspx> (accessed on 7 March 2011)



#### 4.2.1 Shareholders in General Meeting

The shareholders in general meeting are said to exercise supreme authority in the company.<sup>486</sup> Be that as it may, the powers of the shareholders are guided by the law. For example, resolutions of the corporate assembly and the board of directors under section 6-37 may not be reviewed by the general meeting except where the King grants individual exceptions.<sup>487</sup> Companies in Norway are bound by law to hold an ordinary general meeting within six months from the end of each financial year.<sup>488</sup> This meeting deals with adoption of the annual financial statement and annual report, fixing remuneration for directors and other senior executives, the distribution of dividends, as well as other matters which by law or the Articles of Association pertain to the general meeting.<sup>489</sup> Additionally, the board of directors, corporate assembly or chairman of the corporate assembly may decide to call an extraordinary general meeting.<sup>490</sup>

In line with the corporate governance framework of companies with state ownership, all shareholders have to be treated equally, as discussed above.<sup>491</sup> Additionally, all owner decisions and formal resolutions have to be made at the general meeting.<sup>492</sup>

Statoil's Articles of Association and the above provisions of the Norwegian Public Limited Liability Act provide for the functions of the general meeting.<sup>493</sup> Article 9 of the company's Articles of Association provides the following as the major functions of the general meeting.

The annual general meeting shall address and decide the following matters:

1. Adoption of the annual report and accounts, including the declaration of dividends.

---

<sup>486</sup> Norwegian Public Limited Liability Companies Act Section 5-1(1)

<sup>487</sup> Norwegian Public Limited Liability Companies Act Section 5-1(2)

<sup>488</sup> Norwegian Public Limited Liability Companies Act Section 5-6(1)

<sup>489</sup> Norwegian Public Limited Liability Companies Act Section 5-6(2) and (3)

<sup>490</sup> Norwegian Public Limited Liability Companies Act Section 5-7

<sup>491</sup> White Paper No. 22 (2001-2002)

<sup>492</sup> White Paper No. 22 (2001-2002)

<sup>493</sup> Annual General Meeting Statoil

See: <http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/AnnualGeneralMeeting/Pages/default.aspx> (accessed on 7 March 2011)

2. Any other matters which are referred to the annual general meeting by statute law or the articles of association.<sup>494</sup>

This broad mandate is supplemented by other functions provided in the Articles of Association, such as, making decisions on marketing and sale of petroleum,<sup>495</sup> deciding on remuneration of members of the nomination committee,<sup>496</sup> and election of shareholder elected members to the corporate assembly.<sup>497</sup> Statoil has one class of shares and all shareholders enjoy an equal right to vote at the general meeting.<sup>498</sup> The Norwegian state holds 67% of the shares in the company.<sup>499</sup> Despite its status as the state and majority shareholder, it is committed to good corporate governance.<sup>500</sup>

#### 4.2.2 Board of Directors

Section 6-1 of the Norwegian Public Limited Liability Companies Act provides for the election of members of the board. Where the company has a corporate assembly, the company should have at least five board members.<sup>501</sup> As mentioned above, Statoil has a corporate assembly; thus it cannot have less than five board members.<sup>502</sup> The board of directors may be elected by the shareholders in general meeting, the employees of the company under section 6-4, or the corporate assembly under section 6-37.<sup>503</sup> The

---

<sup>494</sup>Articles of Association Statoil

See:<http://www.statoil.com/en/about/corporategovernance/articlesofassociation/pages/default.aspx> (accessed on 7 March 2011)

<sup>495</sup> Article 10 of the Articles of Association

<sup>496</sup> Article 11 of the Articles of Association

<sup>497</sup> Article 11 of the Articles of Association

<sup>498</sup> Shareholders in Statoil See:

<http://www.statoil.com/en/about/corporategovernance/shareholder/pages/default.aspx> (accessed on 7 March 2011)

<sup>499</sup>The Norwegian State as Shareholder in Statoil

See:<http://www.statoil.com/en/about/corporategovernance/shareholder/pages/thenorwegianstateasshareholder.aspx> (accessed on 7 March 2011)

<sup>500</sup>The Norwegian State as Shareholder in Statoil

See:<http://www.statoil.com/en/about/corporategovernance/shareholder/pages/thenorwegianstateasshareholder.aspx> (accessed on 7 March 2011)

<sup>501</sup> Norwegian Public Limited Liability Companies Act Section 6-1(1)

<sup>502</sup>Governing Bodies in Statoil

See:<http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/Pages/GoverningBodies.aspx> (accessed on 7 March 2011)

<sup>503</sup> Norwegian Public Limited Liability Companies Act Section 6-1(2)

remuneration of members of the board of directors is fixed by the general meeting.<sup>504</sup> The law also provides for gender equality in representation on the board of directors.<sup>505</sup> The board of directors in Norway is vested with the responsibility of managing the company.<sup>506</sup> This includes organizing the business and drawing up plans and budgets for the business among others.<sup>507</sup> The board is also vested with supervisory responsibility, that is, supervising day-to-day management.<sup>508</sup> Additionally, the board represents the company in its dealings with external parties and has the powers to sign on behalf of and bind the company.<sup>509</sup>

The board is encouraged to help set and achieve performance targets for the company, develop a plan for its work, and exercise independent control of management.<sup>510</sup> The corporate governance framework for State Owned Enterprises (SOEs) thus requires that the board be composed of competent people.<sup>511</sup> This is necessary in light of the onerous tasks the board has to perform. The corporate governance principles for companies with state ownership also require that the company take note of its responsibilities to society at large.<sup>512</sup> Thus the board in the performance of its duties and management of the company should take note of the different stakeholders.

Broadly, the Statoil board is in charge of managing and supervising the daily operations of the company.<sup>513</sup> The mandate of the board of Statoil is founded on legislation and the rules of procedure for the board.<sup>514</sup> The rules of procedure detail the following as the basis for the Statoil board mandate:

---

<sup>504</sup> Norwegian Public Limited Liability Companies Act Section 6-10

<sup>505</sup> Norwegian Public Limited Liability Companies Act Section 6-11

<sup>506</sup> Norwegian Public Limited Liability Companies Act Section 6-12

<sup>507</sup> Norwegian Public Limited Liability Companies Act Section 6-12

<sup>508</sup> Norwegian Public Limited Liability Companies Act Section 6-13

<sup>509</sup> Norwegian Public Limited Liability Companies Act Section 6-30

<sup>510</sup> White Paper No. 22 (2001-2002)

<sup>511</sup> White Paper No. 22 (2001-2002)

<sup>512</sup> White Paper No. 22 (2001-2002)

<sup>513</sup> Governing Bodies in Statoil

See: <http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/Board/Pages/default.aspx> (accessed on 8 March 2011) and StatoilHydro *The StatoilHydro Book* (2008) 8

<sup>514</sup> Governing Bodies in Statoil

See: <http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/Board/Pages/default.aspx> (accessed on 8 March 2011)

The rights and obligations of the board of directors are listed in the Norwegian companies' legislation, the Norwegian Accounting Act and the Norwegian Stock Exchange Act, the company's articles of association, the decisions of the annual general meeting, these instructions for the board of directors and decisions otherwise adopted at the board meetings.<sup>515</sup>

The board of Statoil is subjected to quite a large amount of regulation. This may suffocate the board and limit its creativity. On the other hand, it can be argued that these regulations have kept Statoil on the straight and narrow to good corporate governance.

### 4.2.3 Corporate Assembly

Section 6-35 of the Norwegian Public Limited Liability Companies Act provides that where a company has more than 200 employees, it has to provide for the election of a corporate assembly. The corporate assembly should have at least 12 members, but the number of members should be divisible by 3.<sup>516</sup> The election of two thirds of the corporate assembly may be undertaken by the general assembly or the employees.<sup>517</sup> Directors cannot be members of the corporate assembly unless an exception is made by the King.<sup>518</sup> The corporate assembly mainly deals with the election of directors and the chairman of the board by employees.<sup>519</sup> The corporate assembly also supervises the board of directors and the general manager's administration of the company.<sup>520</sup> This supervision is necessary in view of the numerous duties that the board has to perform.

---

<sup>515</sup> Rules of Procedure for the Board of Directors of Statoil ASA Rule 1(2) (The rules are made pursuant to section 6-23 of the Norwegian Public Limited Liability Companies Act. They apply to companies which have employees represented on the board.)

See: <http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/Board/Downloads/Rules%20of%20procedure%20for%20the%20board%20of%20directors%2010Feb2010.pdf> (accessed on 8 March 2011)

<sup>516</sup> Norwegian Public Limited Liability Companies Act Section 6-35 (1)

<sup>517</sup> Norwegian Public Limited Liability Companies Act Section 6-35 (2)

<sup>518</sup> Norwegian Public Limited Liability Companies Act Section 6-36

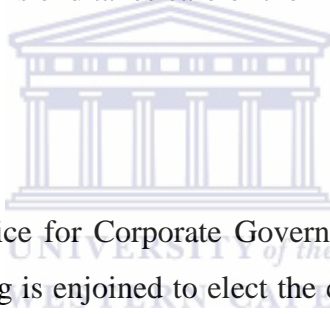
<sup>519</sup> Norwegian Public Limited Liability Companies Act Section 6-37

<sup>520</sup> Norwegian Public Limited Liability Companies Act Section 6-37

Statoil has a corporate assembly composed of members elected by the general meeting and others elected from and by the employees.<sup>521</sup> The major functions of the corporate assembly in Statoil are stated as follows:

The most important duties of the corporate assembly are to elect the board of directors, to oversee the board and CEO's management of the company, to make decisions on investments of considerable magnitude in relation to the company's resources and to make decisions involving the rationalisation or reorganisation of operations that will entail major changes in or reallocation of the workforce.<sup>522</sup>

The corporate assembly makes decisions on the matters stated above after receiving proposals from the board of directors. The corporate assembly is mainly focused on the interests of employees, and to this end takes care of the interests of stakeholders.



#### **4.2.4 Nomination Committee**

The Norwegian Code of Practice for Corporate Governance provides for a nomination committee. The general meeting is enjoined to elect the chairperson of the committee.<sup>523</sup> The Code further provides that the nomination committee should be provided for in the company's Articles of Association.<sup>524</sup> The nomination committee is independent of both the board and management of the company.<sup>525</sup> The committee should be selected to take into account the interests of all shareholders.<sup>526</sup> The main duty of the nomination committee is to propose candidates for election to the corporate assembly and the board

---

<sup>521</sup>Corporate Assembly

See: <http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/CorporateAssembly/Pages/default.aspx> (accessed on 8 March 2011)

<sup>522</sup>Corporate Assembly

See: <http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/CorporateAssembly/Pages/default.aspx> (accessed on 8 March 2011)

<sup>523</sup> The Norwegian Code of Practice for Corporate Governance principle 7

<sup>524</sup> The Norwegian Code of Practice for Corporate Governance principle 7

<sup>525</sup>Nomination Committee

See: <http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/ElectionCommittee/Pages/default.aspx> (accessed on 8 March 2011) and The Norwegian Code of Practice for Corporate Governance principle 7 and 8

<sup>526</sup> The Norwegian Code of Practice for Corporate Governance principle 7

of directors.<sup>527</sup> It also helps to determine the remuneration of the members of these bodies.<sup>528</sup>

Members of the Statoil nomination committee serve a term of two years.<sup>529</sup> The duties of the Statoil nomination committee are detailed below:<sup>530</sup>

1. To present a recommendation to the AGM regarding the election of shareholder elected members to the corporate assembly.
2. To present a recommendation to the corporate assembly regarding the election of shareholder elected members to the board of directors.
3. To present a proposal for the remuneration of members of the board of directors and the corporate assembly.

The nomination committee leans more towards assisting shareholders. The Statoil nomination Committee is elected in terms of article 11 of its Articles of Association.<sup>531</sup>



#### 4.2.5 Audit Committee

The audit committee is one of the committees established by the board. The audit committee is a creature of section 6-41 of the Norwegian Public Limited Liability Companies Act. The committee is mandatory for all companies with securities listed on a regulated market.<sup>532</sup> The committee is elected from the board members.<sup>533</sup> One of the members of the committee should not be a company employee, but should be competent

---

<sup>527</sup> The Norwegian Code of Practice for Corporate Governance principle 7

<sup>528</sup> The Norwegian Code of Practice for Corporate Governance principle 7

<sup>529</sup> Nomination Committee

See: <http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/ElectionCommittee/Pages/default.aspx> (accessed on 8 March 2011)

<sup>530</sup> Instructions for the Nomination Committee

<http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/ElectionCommittee/Pages/default.aspx> (accessed on 8 March 2011) See: Statoil 'Instructions for the Nomination Committee Statoil ASA' (2010)

<sup>531</sup> Statoil 'Instructions for the Nomination Committee Statoil ASA' (2010)

<sup>532</sup> Norwegian Public Limited Liability Companies Act Section 6-41

<sup>533</sup> Norwegian Public Limited Liability Companies Act Section 6-42

in accounting or auditing.<sup>534</sup> Section 6-43<sup>535</sup> provides for the tasks of the audit committee, and these include:

- (a) Prepare the follow-up of the financial reporting process for the board of directors.
- (b) Monitor the systems for internal control and risk management including the internal audit of the company to the extent such function is established.
- (c) Have continuous contact with the appointed auditor of the company regarding the auditing of the annual accounts.
- (d) Review and monitor the independence of the auditor, cf. the Auditing Act chapter 4, including in particular to which extent other services than audit services having been rendered by the auditor or the audit firm represents a threat against the independence of the auditor.

The corporate governance framework for SOEs in Norway requires that there must be transparency in the company.<sup>536</sup> As discussed earlier, ensuring transparency is a duty which squarely falls on the shoulders of the auditors and accountants, as they generate financial reports which are relied upon by interested parties. Thus the audit committee which monitors the company auditors should take note of this mandate.

WESTERN CAPE

The main duty of the Statoil audit committee is to keep in contact with the auditors of Statoil concerning auditing of the company's accounts.<sup>537</sup> The committee also supervises compliance with the company's ethical guidelines on financial reporting.<sup>538</sup>

The Figure below (Figure 4.2) represents the hierarchy of the different organs of Statoil and the linkages between them.

---

<sup>534</sup> Norwegian Public Limited Liability Companies Act Section 6-42

<sup>535</sup> Statoil 'Instructions for the Board of Directors Audit Committee' (2010)

<sup>536</sup> White Paper No. 22 (2001-2002)

<sup>537</sup> Audit Committee:

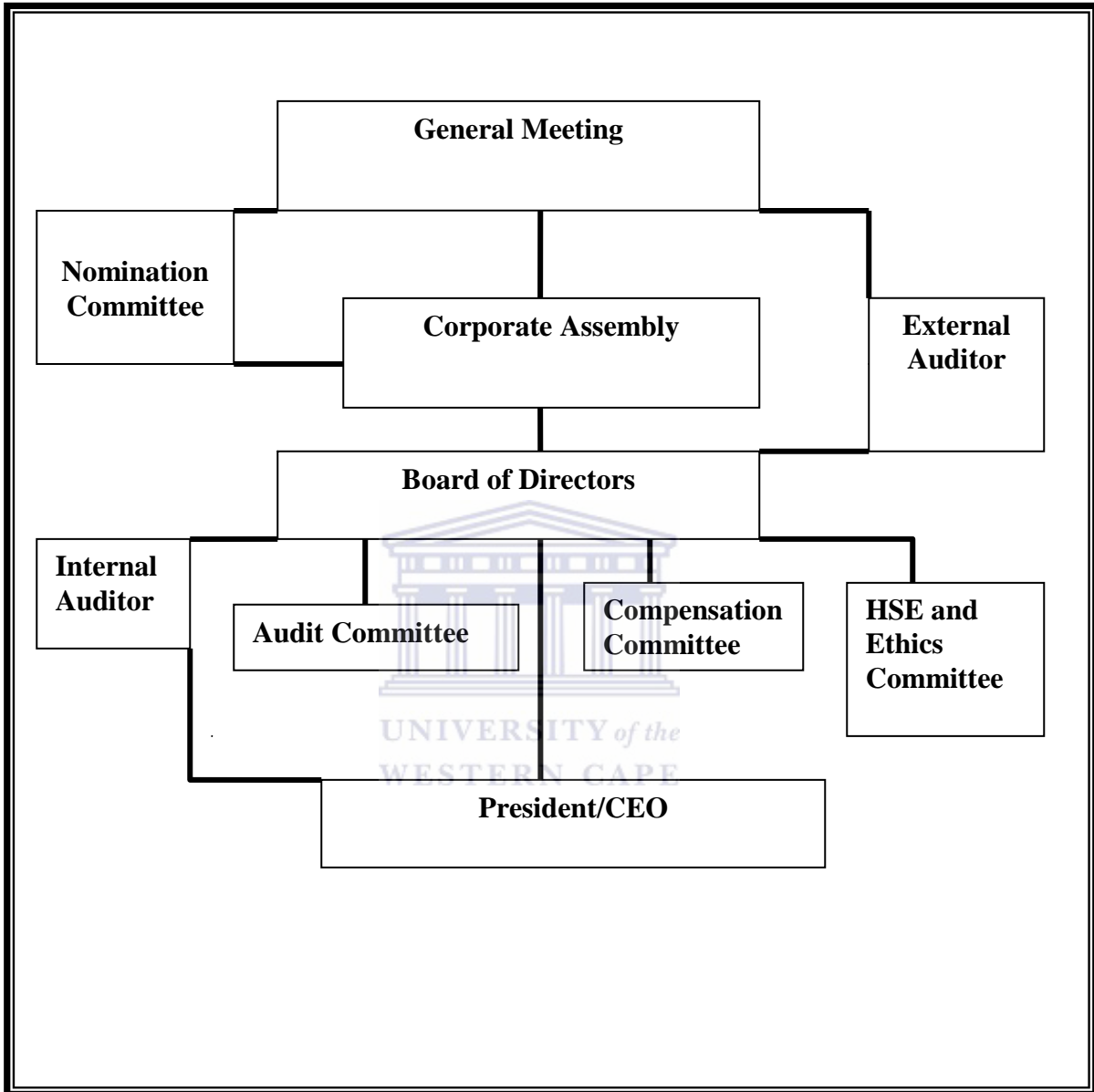
See: <http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/AuditCommittee/Pages/default.aspx> (accessed 8 March 2011)

<sup>538</sup> Audit Committee

See: <http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/AuditCommittee/Pages/default.aspx> (accessed 8 March 2011)

Figure 4.2

Company Organs in Statoil



Source: See below<sup>539</sup>

<sup>539</sup> Governing Bodies:  
<http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/Pages/GoverningBodies.aspx>  
(accessed 8 March 2011)



#### 4.2.6 Statoil's Corporate Governance Principles

The principles upon which the corporate governance framework of the company is based are quite few. However, that does not jeopardize the corporate governance framework of the company, because corporate legislation and the broad corporate governance framework for SOEs in Norway<sup>540</sup> cover all stops. This is evident in the discussion in chapter 3. The major principles are:<sup>541</sup>

1. All shareholders will be treated equally
2. Statoil will ensure that all shareholders have access to up-to-date, reliable and relevant information about the company's activities
3. Statoil will have a board of directors that is independent of the group's management. In accordance with our ethical guidelines, the board focuses on there not being any conflicts of interest between owners, the board of directors and the company's management.
4. The board of directors will base its practical work on the principles for good corporate governance applicable at all times.

In addition to the above principles, the company as a listed entity has endorsed the Norwegian Code of Practice for Corporate Governance.<sup>542</sup> The Statoil corporate governance principles are in line with the broad principles for corporate governance in SOEs in Norway.

The Statoil company organs are quite elaborate and interrelated. The bodies work together and there is ample supervision. This may create duplication of roles and may be costly to maintain. However the basic roles of the different organs provide very good examples for organization of a company. The oversight functions of the corporate assembly and the nomination committee rein in the board of directors. As is apparent

---

<sup>540</sup> White Paper No. 22 (2001-2002)

<sup>541</sup> Corporate Governance in Statoil See:

<http://www.statoil.com/en/about/corporategovernance/norwegiancodeofpractice/Pages/default.aspx>  
(accessed 8 March 2011)

<sup>542</sup> Corporate Governance in Statoil See:

<http://www.statoil.com/en/about/corporategovernance/norwegiancodeofpractice/Pages/default.aspx>  
(accessed 8 March 2011)

from the above discussion, all the organs of the company are in accordance with Norwegian corporate law. The organization of the company and the strict compliance with the law are strong indications of the company's commitment to good corporate governance. The different company organs and the Statoil corporate governance principles are in sync with the corporate governance framework for SOEs in Norway.

### **4.3 Corporate Structure for the Proposed National Oil Company of Uganda**

The Petroleum Bill 2010 provides for the creation of a National Oil Company in Uganda.<sup>543</sup> The Bill does not provide for any corporate governance framework nor does it detail the corporate structure of the NOC. This section provides a structure for the NOC modelled on the corporate structure of Statoil but with special regard to Ugandan legislation.



#### **4.3.1 Shareholders in General Meeting**

The Petroleum Bill 2010 provides that the NOC shall be established under the Companies Act.<sup>544</sup> The Companies Act of Uganda Cap 110 provides that registered companies should hold an annual general meeting in addition to other meetings.<sup>545</sup> The notices should specify the meeting as such. The Companies Act provides as follows:

Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next; except that so long as a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

---

<sup>543</sup> The Petroleum (Exploration, Development, Production, and Value Addition) Bill 2010 clause 42

<sup>544</sup> The Petroleum (Exploration, Development, Production, and Value Addition) Bill 2010 clause 42

<sup>545</sup> The Companies Act Cap 110 Section 131

If default is made in holding a meeting of the company in accordance with subsection (1), the registrar may, on the application of any member of the company, call or direct the calling of a general meeting of the company and give such ancillary or consequential directions as the registrar thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conducting of the meeting, the operation of the company's articles; and it is declared that the directions that may be given under this subsection include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

A general meeting held under subsection (2) shall, subject to any directions of the registrar, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated.

In Uganda, public companies limited by shares may adopt the template for Articles of Association, referred to as Table A.<sup>546</sup> This Table provides for the details regarding general meetings. A general meeting cannot commence unless a quorum is present.<sup>547</sup> Further, the general meeting deals with very important matters, such as, the election of directors<sup>548</sup> and dealing with reports of the auditors and accountants.<sup>549</sup> In Uganda, the shareholders in general meeting perform duties dictated by the Companies Act and the Articles of Association. Thus the proposed National Oil Company of Uganda is enjoined under the law to hold general meetings. This is a platform for shareholders to perform their duties. The general meeting retains ultimate control of the company.<sup>550</sup>

Currently, the general meeting in Uganda, unlike in Norway performs its duties independently. There is no corporate assembly, nor a nomination committee to assist the shareholders. The Companies Bill 2009 and the Corporate Governance Code have

---

<sup>546</sup> The Companies Act Cap 110 Section 10

<sup>547</sup> The Companies Act Table A

<sup>548</sup> The Companies Act Cap 110 Section 184

<sup>549</sup> The Companies Act Cap 110 Section 156

<sup>550</sup> Gower L C B et al (1979) 152

introduced the concept of the nomination committee.<sup>551</sup> However, the committee has a very limited mandate, which is primarily board evaluation.<sup>552</sup> The absence of a nomination committee puts shareholders at risk. In situations where the shareholders are neither informed nor astute, they risk making erroneous decisions. There is need for the Companies Act to provide for a nomination committee similar to the nomination committee in Norway to assist shareholders especially in SOEs.

### 4.3.2 Board of Directors

Section 177 of the Companies Act Cap 110 provides that every company should have at least two directors.<sup>553</sup> The directors form the board of directors. The directors are elected by the shareholders in general meeting.<sup>554</sup> Directors of public companies should be at least 21 years old and should not exceed 70 years.<sup>555</sup> Undischarged bankrupts cannot be appointed directors.<sup>556</sup> Directors are in charge of the management of the company and they perform their duties in terms of Table A, or the Articles of Association.<sup>557</sup> Thus the board of directors is another body that has to be established for the proposed National Oil Company of Uganda. Table A provides the duties of directors, which include:

The business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and registering the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting, subject, nevertheless, to any of these regulations, to the provisions of the Act and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

---

<sup>551</sup> The Companies Bill 2009 clause 8

<sup>552</sup> The Companies Bill 2009 clause 8

<sup>553</sup> The Companies Act Cap 110

<sup>554</sup> The Companies Act Cap 110 Section 184

<sup>555</sup> The Companies Act Cap 110 Section 186

<sup>556</sup> The Companies Act Cap 110 Section 188

<sup>557</sup> *Alexander Ward and Co. V Samyang Navigation Co.* [1975] 1 WLR 673

The board of directors in Uganda is not supervised by the corporate assembly. In lieu of that, the board of the proposed National Oil Company of Uganda should have a considerable number of competent non-executive directors, to create checks and balances and monitor the board. The Companies Bill 2009 and the Corporate Governance Code annexed thereto provide for executive and non-executive directors.<sup>558</sup> This is an indication that Uganda is headed in the right direction.

### **4.3.3 Audit Committee**

The Companies Act Cap 110 does not provide for audit committees. However, the Companies Bill 2009 and the Corporate Governance Code provide for audit committees.<sup>559</sup> Board committees under the Companies Bill 2009 are supposed to assist the board in the performance of its duties.<sup>560</sup> The board remains responsible for its functions but may delegate to the committees. The Companies Bill 2009 provides that every company should at least have an audit committee and a remuneration committee; these should consist mainly of non-executive directors.<sup>561</sup> As discussed above, the audit committee is responsible for supervising the company auditors. The audit committee should liaise with the office of the Auditor-General during the auditing process.<sup>562</sup>

The Figure below (Figure 4.3) summarises the proposed board structure of the proposed NOC of Uganda.

---

<sup>558</sup> The Companies Bill 2009 clause 2

<sup>559</sup> The Companies Bill 2009 clause 7

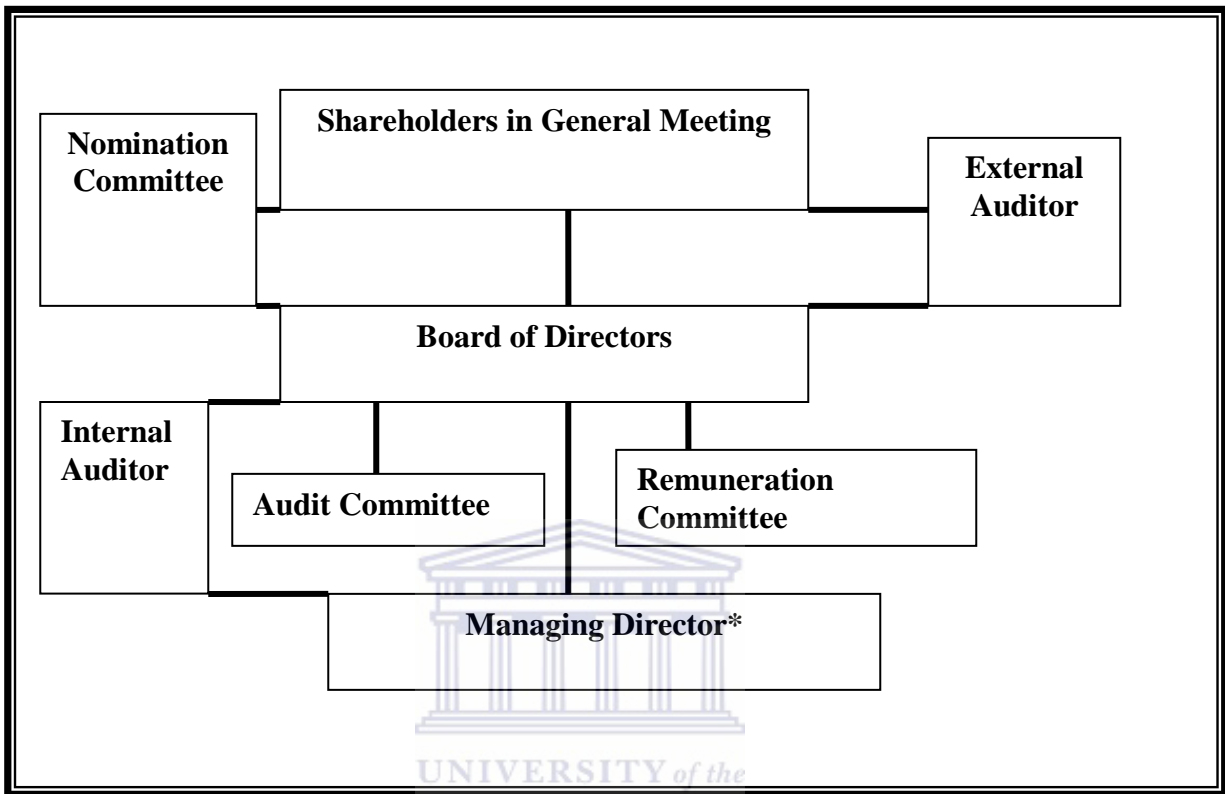
<sup>560</sup> The Companies Bill 2009 clause 7

<sup>561</sup> The Companies Bill 2009 clause 7

<sup>562</sup> The National Audit Act, Section 17

**Figure 4.3**

**Proposed Company Organs of the Proposed National Oil Company of Uganda**



\* The position of Managing Director is provided for in Table A of the Companies Act Cap 110

#### **4.3.4 Corporate Governance Principles for the Proposed NOC of Uganda**

As indicated in chapter 1, section 1.1, the Petroleum Bill 2010 which provides for the proposed NOC, does not provide for any corporate governance structures.<sup>563</sup> The Companies Act Cap 110 does not provide for a Corporate Governance Code.<sup>564</sup> The Companies Bill 2009, which provides for a Corporate Governance Code, does not provide for substantive corporate governance structures for SOEs.<sup>565</sup> Thus the recommendation to amend the Corporate Governance Code to provide for SOEs or to formulate another Corporate Governance Code dedicated only to SOEs is very timely.<sup>566</sup> The Norwegian State Oil Company has its own corporate governance principles, in addition to the general corporate governance framework for SOEs in Norway.<sup>567</sup> These principles supplement the broad corporate governance framework. Nonetheless, a broad corporate governance framework for SOEs is more important than a company specific corporate governance framework. The company specific corporate governance framework for the NOC can be created after the broad framework is in place. The emphasis should be on formulating a broad corporate governance framework, as discussed in chapter 3, section 3.6 above.

#### **4.4 Conclusion**

The Norwegian State Oil Company made substantial progress prior to partial privatization. As noted above, the company expanded business prior to privatization in 2001. Thus, even as a fully fledged SOE the company was making progress. The company has continued growing. The merger with Hydro Oil and Gas in 2007 is one of the developments that have emerged after privatisation.

---

<sup>563</sup> The Petroleum (Exploration, Development, Production, and Value Addition) Bill 2010 clause 42

<sup>564</sup> Refer generally to chapter 1 and 3 of the thesis

<sup>565</sup> Refer generally to chapter 1 and 3 of the thesis

<sup>566</sup> Refer generally to chapter 3, especially the conclusion

<sup>567</sup> Refer to the discussion in subsection 4.2.6, of chapter 4 of the thesis

The general meeting of Statoil is supported by two organs: that is the nomination committee and the corporate assembly, which help the shareholders perform some of their duties, such as, election of directors, and also help keep the board in check. All major decisions of the company are performed by the general meeting.

The board of directors is in charge of day to day operations of the company and supervision of management. The board is supervised by the corporate assembly. The board of Statoil is enjoined to consider the interests of other stakeholders in the company.

The corporate assembly helps to ensure that the interests of the employees are catered for, by means of representation on the board of directors. The corporate assembly also helps supervise the board of directors. The corporate assembly also makes decisions on large investments. This organ highlights the extent to which stakeholders' interests in Statoil and Norway at large are valued.

The nomination committee, as discussed above, assists the general meeting in the selection of directors and members of the corporate assembly; this is done through making recommendations of suitable members. This helps the general assembly make informed decisions.

The audit committee supervises the auditors of the company, that is, the internal and external auditors. The committee is elected from the board of directors. The committee also ensures that company ethics are complied with and that the financial reports of the company are in order.

The Norwegian State Oil Company is well organized with various organs which are interlinked. These organs exist against the backdrop of a comprehensive corporate governance framework for SOEs. The different organs support the general meeting and ensure the smooth running of the company. These organs are established by legislation.



The Petroleum Bill 2010 does not provide for a corporate structure for the proposed National Oil Company of Uganda. It only provides that the company will be established under the Companies Act Cap 110. The corporate structure proposed above is a reflection of the corporate structure of Statoil. It should be noted that the corporate structure is proposed against the background that Ugandan legislation is different. This is noted and catered for in the proposed reform.

The general meeting is provided for in the Companies Act Cap 110; thus all companies registered under the Act have to provide for general meetings for the shareholders. This provides a forum for shareholders to make decisions affecting the company. Currently, Ugandan legislation does not provide for a nomination committee. This puts the shareholders at risk of making erroneous decisions. Thus it is proposed that the Companies Act be amended to provide for a nomination committee that can perform functions similar to those of the nomination committee in Norway; this will assist shareholders in general meeting.

The board of directors is another organ that is established by the Companies Act Cap 110. The board of directors is charged with the supervision of management and monitors the day-to-day running of the company. Thus the proposed National Oil Company of Uganda has to provide for this organ. As noted above, Ugandan legislation does not provide for the corporate assembly to supervise the board. However, the Companies Bill provides that the board of a company should have executive and non-executive directors. The non-executive directors can check the executive directors and perform some of the functions performed by the corporate assembly.

The audit committee is another organ that has been created by the Companies Bill 2009. This committee supervises the auditors of the company. Given the unique structure of Ugandan legislation, which subjects SOEs to auditing by the office of the Auditor - General, the audit committee of the proposed National Oil Company of Uganda should work closely with the Office of the Auditor-General.

The proposed National Oil Company of Uganda is a feasible proposal if the legislation establishing the company is buttressed with a worthwhile corporate governance framework. The Norwegian State Oil Company has been successful due to the corporate governance structures and the different organs which work very closely but independently.

The next chapter examines recommendations for state intervention, corporate governance of SOEs generally, and the proposed NOC in Uganda in particular. These recommendations are drawn from the discussion generated in chapters 2 to 4. The chapter also provides the conclusion of the research.



## CHAPTER 5

### CONCLUSION AND SUMMARY OF RECOMMENDATIONS

#### 5.1 Introduction

The chapter provides a conclusion and a summary of all the recommendations arising out of the substantive chapters, that is, chapters 2 to 4. It amalgamates all the recommendations therein, to provide a unified proposal on the way forward; that is, the inclusion of corporate governance in the discourse on State Owned Enterprises (SOEs) and the proposed National Oil Company of Uganda. The recommendations are made against the background of the discussion of Norway and the Norwegian State Oil Company in the above-mentioned chapters.

#### 5.2 Conclusion

Corporate governance is very important in ensuring the profitable management of a corporation. This statement is of particular relevance to Uganda which has recently discovered commercially viable deposits of oil and which is in the process of enacting legislation to regulate the oil and gas industry. The legislation provides for the establishment of a National Oil Company. It is interesting to note that the legislation does not provide for any corporate governance structures for the proposed National Oil Company (NOC). Additionally, the Companies Act Cap 110, under which the NOC is supposed to be established, does not have a Corporate Governance Code. The Companies Bill 2009 which is currently before Parliament provides for a Code of Corporate Governance. However, the Code does not sufficiently provide for the corporate governance needs of State Owned Enterprises.

Norway which has been very successful in the management of its oil and gas industry has done so through, among other institutions, a National Oil Company. The Norwegian State

Oil Company has been the beneficiary of good corporate governance structures in Norway. Against this background, this research has compared in the two countries, the concept of state intervention, SOEs and the Corporate Governance framework for SOEs. The corporate governance structures of the Norwegian State Oil Company have also been examined and a corporate governance structure for the proposed National Oil Company of Uganda has been advanced.

The broad comparison indicates that state intervention in the economy is justified in some key sectors, such as the oil and gas industry. This is evident from the early involvement of the state in the management of oil in Norway. The involvement of the state should be born out of a deliberate economic policy and not as a crisis management tool. Uganda should not shy away from involving the state in the management of this important natural resource if it can work towards improving the governance framework at both the public sector level and the corporate level.

The research also shows that SOEs exist in key sectors of state economies. This allows the state to keep abreast with all developments in these critical sectors. SOEs and the private sector can co-exist. Uganda should establish a strong corporate governance framework for its State Owned Enterprises. The unfortunate experience with some SOEs in Uganda has been attributed to poor corporate governance structures.

NOCs remain relevant in many countries. They allow the government to keep watch over the oil industry given its importance to the GDPs of many oil exporting countries. NOCs also help oil exporting countries with insufficient regulatory capacity to regulate the industry. Though it has been noted that Uganda has a shaky history with regards to SOEs, this should not prevent the country from establishing a NOC to deal with the commercial aspects of its oil sector.

There are several definitions of corporate governance. However, the research relied on the definitions which have a bearing on SOEs. The definition by Adrian Cadbury was found most relevant in this regard. Additionally, the stakeholder theory of corporate

governance has distinguished itself as the most relevant theory with regard to the corporate governance framework for SOEs. Corporate governance and public governance are quite inter-linked; they support each other. This is evident in Norway, as shown by the worldwide governance indicators.

The OECD Principles and Guidelines on corporate governance are lauded as best practice for the establishment of a comprehensive corporate governance framework. They provide for corporate governance structures for SOEs, among others. Norway's corporate governance framework is to a large extent similar to the above-mentioned Principles and Guidelines. It has however been noted that the OECD Principles and Guidelines and the Norwegian corporate governance framework do not give sufficient coverage to stakeholders.

The fact that Ugandan SOEs do not have a corporate governance framework makes it very difficult for the entities to perform optimally. There is need for corporate governance structures to insulate SOEs from unhealthy corporate practices and to prepare them for privatisation where necessary. The success of the proposed NOC greatly depends on steps being taken to provide corporate governance structures for SOEs in the Ugandan legal regime.

It is apparent from the research that the Norwegian State Oil Company, due to the presence of good corporate governance structures, made substantial progress even before its partial privatization. Privatization has to an extent facilitated the continued expansion of the company. The merger with Hydro Oil and Gas in 2007 is one of the developments that have emerged after privatisation. This should not however sway the debate; the fact remains that the State Owned Enterprise was performing well even before privatisation.

The presence of unique institutions in Norwegian corporate legislation, and the Norwegian State Oil Company have also contributed to the excellent management of the company. Institutions, such as, the corporate assembly, which supervises the board, and the nomination committee which helps the shareholders make credible decisions,

especially with regard to the selection of board members, reduce the burden of the board and the shareholders. These institutions should be introduced in Uganda; the non-executive directors can play the role of the corporate assembly, while a new committee, the nomination committee, should be introduced in the Ugandan companies' legislation.

As indicated above, the corporate governance structures in the Norwegian State Oil Company provide a very good example against which the corporate governance structure of the proposed NOC of Uganda can be modelled. This will greatly contribute to the efficient and profitable management of the proposed NOC of Uganda and minimize corruption.

### **5.3 State Intervention, SOEs and NOCs: Broad Recommendations**

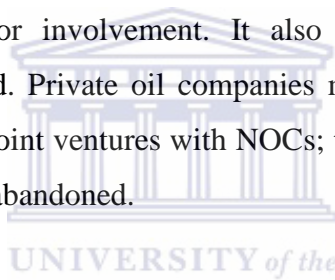
The discussion in chapter 2 indicates that SOEs in Uganda arose out of crisis and were, largely, never a result of deliberate economic policy. As indicated, this is especially true for the period between 1970 and 1979. In contrast, Norway presents a more organized system where SOEs and state intervention arose out of deliberate economic planning. This may be one of the reasons why SOEs in Norway have been successful. Against this background, it is proposed that a proper legal and institutional framework be created for SOEs in Uganda. This will competently deal with institutions like the NSSF and also provide a firm background for the establishment of the NOC in Uganda.

Corporatisation, which appears to be the current trend for SOEs in Norway, is ideal for SOEs. This allows the SOEs to ably compete with the private sector. Corporatisation makes it easier to implement corporate governance in SOEs. Uganda is following the same trend and it has been proposed that the NOC of Uganda should be an incorporated entity. This trend should be implemented for all SOEs in Uganda.

The chapter also demonstrates that NOCs have re-emerged despite the rampant privatisation of various NOCs that occurred in the 1980s. It has been noted that state participation has recently gained a stronghold. Uganda should not shy away from

establishing its NOC despite the shaky relationship it has had with SOEs in the past. This relationship can be improved through a strong corporate governance framework. The reasons cited for the re-emergence of NOCs are mainly based on the failure of market forces, the inconsistency of the international financial system, and the recent upsurge in oil and gas prices.

The reasons advanced for the establishment of NOCs strongly indicate that state intervention is necessary in the management of the oil sector. Nevertheless, there are also reasons against the establishment of a NOC. This calls for a delicate balance in the establishment of the NOC as a purely state enterprise. It is recommended that the private sector be involved to some extent. Norway has recently partially privatized its NOC. This allows the private sector to get involved, and creates a nice balance between state intervention and private sector involvement. It also allows the NOC to keep its commercial objectives onboard. Private oil companies may also be involved, either as shareholders or through loose joint ventures with NOCs; this ensures that the commercial functions of the NOCs are not abandoned.



#### **5.4 Recommendations on Corporate Governance for SOEs in Uganda**

The stakeholder theory as opposed to the Agency and Stewardship theories, is best suited for the analysis of corporate governance in SOEs, This is because of its comprehensive approach in considering all stakeholders. Due to the nature of SOEs, the public has a keen interest in the way SOEs operate, irrespective of the fact that members of the public may not be direct shareholders but merely stakeholders.

A correlation has been established between corporate governance and public governance. The concept of corporate governance is greatly influenced by public governance. Good public governance is a prerequisite for the establishment of a good corporate governance framework for SOEs and NOCs. The worldwide governance indicators show that Norway is performing quite well in terms of governance, as opposed to Uganda which still has to improve its public governance. The corporate governance framework in Norway is

founded on good public governance. Uganda has to improve its public governance; this will form a firm foundation for the proposed corporate governance framework for the SOE.

The OECD Principles on Corporate Governance are a very good standard for establishing a good corporate governance framework. As discussed above, they have been recommended by several notable organisations, for example, the World Bank. They provide a good background for the development of a corporate governance regime. However the principles can further be improved by integrating stronger structures for the protection of stakeholders and not just shareholders. Uganda's corporate governance framework in the Companies Bill 2009 to some extent is in accordance with the OECD Principles on Corporate Governance, though it has not integrated the Guidelines for State Owned Enterprises.

The OECD Guidelines for Corporate Governance in State Owned Enterprises are tailored to provide a model for the corporate governance regime of SOEs. The Guidelines provide a good model which ensures profitable management of an SOE. However, the Guidelines have some loopholes which require to be closed, such as, relations with stakeholders, transparency and disclosure. Similarly, Norway has established a corporate governance regime for SOEs. The Norwegian Principles are in very many ways similar to the OECD Guidelines, discussed above. The Norwegian Principles, just like the OECD Principles and Guidelines concentrate on shareholders as opposed to stakeholders, yet they deal with SOEs. There is a need to involve and cater for stakeholders' interests in policies related to SOEs. The Companies Bill 2009 and the Corporate Governance Code should be re-visited to provide for SOEs and to address the corporate governance needs of SOEs. The Ugandan Code is clearly not meant for SOEs. The Ugandan corporate governance regime should include corporate governance needs for SOEs; this can be done by including them in the Code or by drafting a corporate governance framework dedicated to SOEs.



## **5.5 Corporate Governance Structures in the Norwegian State Oil Company; Lessons for the Proposed NOC of Uganda**

The general meeting in Uganda, unlike in Norway, performs its duties independently. There is no corporate assembly, nor a nomination committee, to assist the shareholders, as is the case in Statoil and Norway generally. These institutions help shareholders make informed decisions. There is a need for the Companies Act to provide for a nomination committee, similar to the nomination committee in Norway, to assist shareholders especially in SOEs. The Companies Bill 2009 provides for a nomination committee, however, its mandate should be expanded and its role clearly outlined.

The board of directors in Norway is supervised by the corporate assembly. This helps keep the board in check. The institution is quite relevant, but may be very expensive to establish in Uganda. In lieu of this body, the board of the proposed National Oil Company of Uganda should have a considerable number of competent non-executive directors, to create checks and balances and to monitor the board. The Companies Bill 2009 and the Corporate Governance Code annexed thereto provide for executive and non-executive directors. The distinction should be maintained in the Companies Bill 2009.

Unlike Norway, audit committees are not provided for in Uganda's Companies Act Cap 110. However, the committees have been provided for in the Companies Bill 2009 and the Corporate Governance Code. The Companies Bill 2009 provides that every company should have at least an audit committee and a remuneration committee; these should be made up of mainly of non-executive directors. As discussed above, the audit committee is responsible for supervising the company auditors. It is proposed that the audit committees be established and that the audit committees of SOEs should liaise with the Office of the Auditor-General during the auditing process.

As seen in Norway, corporate governance is central to the effective and profitable management of all corporations including SOEs. State intervention, SOEs and NOCs are relevant in the management of natural resources. The inefficiency and poor management

that have characterised SOEs can be cured by a strong corporate governance framework. The Petroleum Bill 2010 and the Companies Bill 2009 of Uganda do not provide a sufficient corporate governance framework for SOEs. This is bound to create inefficiency and corruption in the management of the oil sector in Uganda. A basic corporate governance structure for SOEs in Uganda and the proposed NOC of Uganda has been advanced in this study. A NOC with a strong corporate governance framework will generate revenue from the oil sector and foster development in Uganda.



## BIBLIOGRAPHY

### BOOKS:

- Aras G and Crowther D (eds) *Global Perspectives on Corporate Governance and CSR* (2009) Aldershot: Gower
- Ferreir RW and Forsenko A (eds) *Oil in the World Economy* (1989) London: Routledge
- Gamble A and Kelly G (eds) *The Political Economy of the Company* (2000) London: Hart Publishing.
- Gower L C B et al *Gower's Principles of Modern Company Law* 4<sup>th</sup> Ed (1979) London: Stevens & Sons.
- Gower L and Davies *The Principles of Modern Company Law* 8<sup>th</sup> Ed (2008) London: Sweet & Maxwell Ltd.
- Hahn-Pedersen M A P *Møller and the Danish Oil* (1999) Copenhagen: Schultz Forlag.
- Jørgensen J J *Uganda: A modern History* (1981) London: Croom Helm Ltd
- Katz A W *Foundations of the Economic Approach to Law* (1998) New York: Oxford University Press.
- Museveni Y *What is Africa's Problem?* (1992) Kampala: NRM Publications.
- Mutibwa P *Uganda Since Independence: A Story of Unfulfilled Hopes* (1992) London: Hurst and Company.
- Naidoo R *Corporate Governance An Essential Guide for South African Companies* (2002) Cape Town: Double Storey Books.
- Naidoo R *Corporate Governance An Essential Guide for South African Companies* 2<sup>nd</sup> Ed (2009) Durban: Lexis Nexis.
- O' Brien J *Governing the Corporation* (2005) Chichester: John Wiley & Sons
- Organisation for Economic Co-operation and Development *Corporate Governance of State Owned Enterprises: A Survey of OECD Countries* (2005) Paris: OECD Publishing.

Ramanadhan V V (ed) *Privatisation: A Global Perspective* (1993) London: Routledge

StatoilHydro *The StatoilHydro Book* (2008) Stavanger: Leader for corporate management system unit, Statoil

Taylor A *Laissez-faire and State Intervention in Nineteenth-Century Britain* (1972) Studies in Economic and Social History London: Macmillan Publishers Ltd.

The Committee on Financial Aspects of Corporate Governance *Report of the Committee on Financial Aspects of Corporate Governance* (1992) London: Gee and Co Ltd.

Treitel G *The Law of Contract* 11<sup>th</sup> Ed (2003) London: Sweet and Maxwell

Wood J C (ed) *Adam Smith Critical Assessments* (1984) Kent: Croom Helm Ltd

#### **JOURNAL ARTICLES:**

Chen V Z et al 'Are OECD-Prescribed "Good Corporate Governance Practices" Really Good in an Emerging Economy?' (2011) *Asia Pacific Journal of Management*

Chun L 'Challenging Privatization: A Conceptual and Theoretical Argument' (2009) *Journal of Chinese Political Science* 2009 14

Fama E F and Jensen M C 'Separation of Ownership and Control' (1983) *Journal of Law and Economics* 26

Feinerman J V 'New Hope for Corporate Governance in China?' (2007) *The China Quarterly*, 191

Gillian S L and Starks L T 'A Survey of Shareholder Activism: Motivation and Empirical Evidence' (1998) *Contemporary Finance Digest* 2(3)

Gevurtz F A 'The Historical and Political Origins of the Corporate Board of Directors' (2004) *Hofstra Law Review*, 33

Jackling B and Johl S 'Board Structure and Firm Performance: Evidence from India's Top Companies' (2009) *Corporate Governance: An International Review* 17(4)

Kooskora M 'Corporate Governance from the Stakeholder Perspective, in the Context of Estonian Business Organisations' (2008) *Baltic Journal of Management* Vol 3 No. 2

Lan L and Heracleous L 'Rethinking Agency Theory: The View from Law' (2010) *Academy of Management Review* Vol 35 No. 2

Reaz M and Hossain M 'Corporate Governance around the World: An Investigation' (2007) *Journal of American Academy of Business*, Cambridge

Shleifer A and Vishny R 'A Survey of Corporate Governance' (1997) *Journal of Finance* 52

Slutsky B 'The Relationship between the Board of Directors and the Shareholders in General Meeting' (1967-1969) *3U Brit Colum L Rev*

### **WORKING PAPERS AND REPORTS:**

Department of Public Enterprises 'Protocol on Corporate Governance in the Public Sector' (2002) <http://www.dpe.gov.za/res/DPEProtocolBooklet.pdf> (accessed on 8 May 2011)

Foss M and Wainberg M F 'CEE's Research on National Oil Companies' (2008) Research Note, Centre for Energy Economics.

Goldsmith A 'Perceptions of Business and Governance in Africa: A survey of Eight Countries' (2001) African Economic Policy Discussion paper number 82 [http://pdf.usaid.gov/pdf\\_docs/PNACM787.pdf](http://pdf.usaid.gov/pdf_docs/PNACM787.pdf) (accessed on 3 March 2011)

International Monetary Fund 'Oil Market Developments and Issues' (2005) International Monetary Fund Policy Development and Review Department

Isaksson M and Kirkpatrick G 'Corporate Governance Lessons from The Financial Crisis' (2009) OECD Observer No 273

Jesover F and Kirkpatrick G 'The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries' (2005) Vol 13 No 2

Kallevig M 'Ownership Function of the Norwegian State' (2005) OECD Russian Corporate Governance Roundtable meeting <http://www.oecd.org/dataoecd/10/21/35175246.pdf> (accessed on 5 December 2010)

Le Breton-Miller I and Miller D 'Agency V Stewardship in Public Family Firms: A Social Embeddedness Reconciliation' (2009) Entrepreneurship, Theory and Practice Baylor University

Mugisha S and Berg S ‘State Owned Enterprises in Uganda: NWSA’s Turn Around’ (2008) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1317890](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1317890) (accessed on 11 January 2011)

Office of the Auditor General ‘Annual Report of the Auditor General on the Financial Statements of Statutory Authorities and State Enterprises for the Year ended 30<sup>th</sup> June 2009’ (2009) [http://www.oag.go.ug/uploaded\\_files/1271768253Vol4%202008-2009%20Statutory%20Corporations.pdf](http://www.oag.go.ug/uploaded_files/1271768253Vol4%202008-2009%20Statutory%20Corporations.pdf) (accessed on 4 February 2011)

Organisation for Economic Co-operation and Development ‘Regulatory Reform in Norway Marketisation of Government Services- State Owned Enterprises’ (2003) <http://www.oecd.org/dataoecd/28/28/32682052.pdf> (accessed on 16 January 2011)

Organisation for Economic Co-operation and Development ‘Reforming Public Enterprises Case studies: Norway’ (1998)

Robinett D ‘Held By The Invisible Hand, The Challenge of SOE Corporate Governance for Emerging Markets’ (2006) The World Bank Corporate Governance Department <http://rru.worldbank.org/Documents/Other/CorpGovSOEs.pdf> (accessed on 20 November 2011)

Statoil ‘Mastering Challenges’ (2006) Statoil and Sustainable Development [http://www.statoil.com/en/EnvironmentSociety/Sustainability/Downloads/Sustainability\\_report\\_2006.pdf](http://www.statoil.com/en/EnvironmentSociety/Sustainability/Downloads/Sustainability_report_2006.pdf) (accessed on 5 April 2011)

Stevens P ‘National Oil Companies: Good or Bad? - A Literature Survey’ (2003) National Oil Companies Workshop presentation, World Bank.

Tordo S ‘Overview of the Most Salient Advances in the Research on National Oil Companies’ (2008) The World Bank (Draft paper)

The White Paper No. 22 (2001-2002) On Reduced and Improved State Ownership. Norway

The World Bank ‘Overview of the Political and Economic Arguments in Favor of and Against the Establishment of a NOC’ (2009) (Working Draft of Chapter 2 of the Study on National Oil Companies and Value Creation).

Thurber M et al 'The Limits of Institutional Design in Oil Sector Governance: Exporting the Norwegian Model' (2010) ISA Annual Convention, Program on Energy and Sustainable Development.

Thurber M and Istad T B 'Norway's Evolving Champion: Statoil and the Politics of State Enterprise.' (2010) Working Paper 92, Program on Energy and Sustainable Development.

Wainberg M F et al 'Commercial Frameworks for National Oil Companies' (2007) Working Paper, Center for Energy Economics.

Wolf C 'Overview of the Political and Economic Arguments in Favour of and Against the Establishment of a NOC' (2009) The World Bank (Draft paper)

#### **DISSERTATIONS:**

Wicaksono A 'Corporate Governance of State-Owned Enterprises: Investment Holding Structure of Government-linked Companies in Singapore and Malaysia and Applicability for Indonesian State-Owned Enterprises' (2008) unpublished PhD thesis, University of St Gallen .



#### **LEGISLATION-UGANDA:**

The Capital Markets Authority (Corporate Governance Guidelines) 2003

The Constitution of the Republic of Uganda 1995

The Companies Act Cap 110

The Companies Bill 2009

The Expropriated Properties Act Cap 87

The Financial Institutions Act 2004

The Judicature Act Cap 13

The National Audit Act 2008

National Social Security Fund Act Cap 222

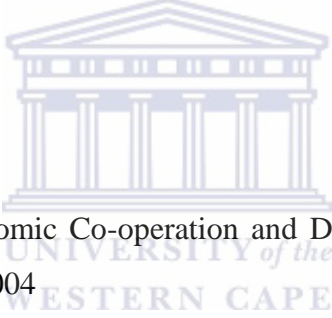
The Petroleum (Exploration, Development, Production, and Value Addition) Bill 2010

The Petroleum (Exploration and Production) Act 7 of 1985  
The Public Enterprises Divestiture Act Cap 98  
The Public Finance and Accountability Act 6 of 2003

**LEGISLATION-NORWAY:**

The Business Enterprise Registration Act No. 59  
The Constitution of Norway of 1814  
The Norwegian Code of Practice for Corporate Governance  
The Norwegian Public Limited Liability Companies Act No. 45  
The Petroleum Activities Act 29  
The State Owned Enterprises Act No. 71

**CODES:**



The Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance 2004  
The Organisation for Economic Co-operation and Development Guidelines on Corporate Governance of State Owned Enterprises 2005

**CASE LAW:**

*Alexander Ward and Co. V Samyang Navigation Co.* [1975] 1 WLR 673  
*Automatic Self-Cleansing Filter Syndicate Co. Ltd V Cunnigham* [1906] 2 Ch 34 (C  
A)  
*Brown V British Abrasive Wheel Co.* [1919] 1 Ch 290  
*Dafen Tinsplate Co. Ltd V Llanelly Steel Co* [1920] 2 Ch 124  
*Foss V Harbottle* 67 ER 189 (Ch 1843)  
*Gramophone & Typewriter Ltd V Stanley* [1908] 2 KB 89  
*Isle of Wight Railway Co. V Tahourdin* (1883) 25 Ch. D 320 (CA)



*Marshall's Valve Gear Co V Manning Wardle & Co* [1909] 1 Ch 267

*Salomon V Salomon* [1897] AC 22

*Scott V Scott* [1943] 1 All E. R. 582

*Shaw & Sons (Salford) Ltd V Shaw* [1935] 2 KB 113

*Quin and Axtens V Salmon* [1909] 1 Ch 311 (CA)

## **GENERAL INTERNET SOURCES:**

Advertisement Calling for Transaction Advisor on the Divestiture of Kilembe Mines

[http://www.perds.go.ug/opportunities\\_minig.htm](http://www.perds.go.ug/opportunities_minig.htm) (accessed on 11 April 2011)

Articles of Association Statoil

<http://www.statoil.com/en/about/corporategovernance/articlesofassociation/pages/default.aspx> (accessed on 7 March 2011)

Annual General Meeting Statoil

<http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/AnnualGeneralMeeting/Pages/default.aspx> (accessed on 7 March 2011)

Audit Committee in Statoil

<http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/AuditCommittee/Pages/default.aspx> (accessed on 8 March 2011)

Brief Information About the Norwegian Legal System

[http://www.norlag.ge/index.php?option=com\\_content&view=article&id=63&Itemid=37&lang=en](http://www.norlag.ge/index.php?option=com_content&view=article&id=63&Itemid=37&lang=en) (accessed on 3 February 2011)

China Still a Developing Country

[http://www.chinadaily.com.cn/china/201008/17/content\\_11164512.htm](http://www.chinadaily.com.cn/china/201008/17/content_11164512.htm) (accessed on 3 February 2011)

Composition of Macro Geographical (continental) Regions, Geographical Sub-regions, and Selected Economic and Other Groupings

<http://unstats.un.org/unsd/methods/m49/m49regin.htm#developed> (accessed on 17 February 2011)

Corporate Assembly in Statoil

<http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/CorporateAssembly/Pages/default.aspx> (accessed on 8 March 2011)

Corporate Governance in Statoil

<http://www.statoil.com/en/about/corporategovernance/norwegiancodeofpractice/Pages/default.aspx> (accessed on 8 March 2011)

Corporate Scandals Exposed <http://www.corporatenarc.com/> (accessed on 21 February 2011)

Deviations from Expected Stakeholder Management, Firm Value, and Corporate Governance <http://69.175.2.130/~finman/Publications/FM/Forthcoming/Benson.pdf> (accessed on 5 May 2011)

Forty Years of Norwegian Oil

<http://www.statoil.com/en/about/history/oilnorway40years/pages/default.aspx> (accessed on 3 March 2011)

Global Corporate Governance Forum (2000) World Bank

<http://www.corpgov.net/library/definitions.html> (accessed on 2 February 2011)

Governing Bodies in Statoil

<http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/Pages/GoverningBodies.aspx> (accessed on 7 March 2011)

History of Statoil <http://www.statoil.com/en/About/History/Pages/default3.aspx> (accessed on 3 March 2011)

Instructions for the Nomination Committee in Statoil

<http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/ElectionCommittee/Pages/default.aspx> (accessed on 8 March 2011)

Is China a Developing Country? <http://opinionasia.com/ChinaDeveloping> (accessed on 3 February 2011)

Laissez Faire Versus Government Intervention

[http://economics.about.com/od/governmenttheeconomy/a/laissez\\_faire.htm](http://economics.about.com/od/governmenttheeconomy/a/laissez_faire.htm) (accessed on 15 January 2011)

Market Economy <http://www.investopedia.com/terms/m/marketecconomy.asp>

(accessed on 2 May 2011) and <http://www.economywatch.com/market-economy> (accessed on 2 May 2011)

Ministry of Trade and Industry State Ownership in Norway

<http://www.regjeringen.no/en/dep/nhd/selectedtopics/ownership.html?id=1336>

(accessed on 16 February 2011).

Norway Helps Ghana Prepare for the Oil Age

[http://www.embnorway.com.ng/News\\_and\\_events/development/Norway\\_Ghana\\_oil\\_cooperation/](http://www.embnorway.com.ng/News_and_events/development/Norway_Ghana_oil_cooperation/) (accessed on 11 April 2011)

Nomination Committee in Statoil

<http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/ElectionCommittee/Pages/default.aspx> (accessed on 8 March 2011)

Parliament of Uganda eNews letter

<http://www.parliament.go.ug/enewsletter/index.php/home/view/49/> (accessed on 16 February 2011)

Pressure mounts to make Public, Oil Agreements

<http://ipsnews.net/news.asp?idnews=50548> (accessed on 2 November 2010)

Public Governance: It's Meaning and Importance for the Public Sector and Audit

<http://www.audit.sa.gov.au/98-99/a3/meaning.htm> (accessed on 8 February 2011)

Ranking the World's Oil Companies' (2005)

[http://www.energyintel.com/PublicationHomePage.asp?publication\\_id=4](http://www.energyintel.com/PublicationHomePage.asp?publication_id=4) (accessed on 4 January 2011)

Rules of Procedure for the Board of Directors of Statoil

<http://www.statoil.com/en/About/CorporateGovernance/GoverningBodies/Board/Downloads/Rules%20of%20procedure%20for%20the%20board%20of%20directors%2010Feb2010.pdf> (accessed on 8 March 2011)

Shareholders in Statoil

<http://www.statoil.com/en/about/corporategovernance/shareholder/pages/default.aspx>

(accessed on 7 March 2011)

Snapshot of the Uganda Country Profile

<http://www.business-anti-corruption.com/country-profiles/sub-saharan-africa/uganda/snapshot/> (accessed on 21 February 2011)

South Sea Company

<http://www.infoplease.com/ce6/history/A0846104.html> (accessed on 5 May 2011)

Temangalo Scandal Consumes Nation (2008)

<http://www.independent.co.ug/index.php/news/436-temangalo-scandal-consumes-nation> (accessed on 13 January 2011)

The Capital Markets Corporate Governance Guidelines (2003)

[http://www.cmauganda.co.ug/onlinefiles/uploads/CMA/Downloads/laws\\_&\\_regulations\\_guidelines\\_CorporateGovernanceGuidelines.pdf](http://www.cmauganda.co.ug/onlinefiles/uploads/CMA/Downloads/laws_&_regulations_guidelines_CorporateGovernanceGuidelines.pdf) (accessed on 2 February 2011)

The End of Laissez-faire

(1926):<http://www.panarchy.org/keynes/laissezfaire.1926.html> (accessed on 13 March 2011)

The Institute of Corporate Governance of Uganda

[http://www.icgu.or.ug/index.php?option=com\\_content&task=view&id=35&Itemid=79](http://www.icgu.or.ug/index.php?option=com_content&task=view&id=35&Itemid=79) (accessed on 18 September 2010)

The Norwegian State as Shareholder in Statoil

<http://www.statoil.com/en/about/corporategovernance/shareholder/pages/thenorwegianstateasshareholder.aspx> (accessed on 7 March 2011)

Uganda's Oil Industry

<http://uk.reuters.com/article/2010/03/27/uganda-oil-investments-idUKLDE62N1I820100327> (accessed on 24 August 2010)

University of Hull Business School Efficient Markets Hypothesis (2002/2003) 6

<http://www.e-m-h.org/FM08.pdf> (accessed on 12 April 2011)

Wenar L 'Clean Trade' Draft (2009)

[http://politicalscience.stanford.edu/politicaltheoryworkshop/0910pages/CT-Academics\\_9-09.pdf](http://politicalscience.stanford.edu/politicaltheoryworkshop/0910pages/CT-Academics_9-09.pdf) (accessed on 5 May 2011)

What Oil Production will mean for Uganda's economy?

<http://www.howwemadeitinafrica.com> (accessed on 8 October 2010)

Worldwide Governance Indicators

<http://info.worldbank.org/governance/wgi/pdf/c165.pdf> (accessed on 8 February 2011)