



Introductory comments by Alissa Kole, Managing Director, Govern Center

We thank you for the opportunity to provide comments on the revision of the OECD Guidelines on Corporate Governance of State-Owned Enterprises.

Over the past years, Govern Center has supported governments all over the world in restructuring legal and regulatory frameworks underpinning the ownership, management and governance of state-owned enterprises.

The following observations are based on our experience working with governments in supporting the development of effective ownership and governance frameworks as well as with partially/fully state-owned companies in implementing them.

Please do not hesitate to contact us for any additional clarifications and aspects that require further reflection in which we would be pleased to participate.

Main proposed revisions to the SOE Corporate Governance Guidelines by the OECD

- *A more detailed discussion of when a company that is not majority owned may be considered as “controlled” by the state.*

We support this orientation and would suggest specifying that in many instances, companies have multiple stakes from government or government-controlled investors (i.e. state pension funds) which result in a higher overall state ownership.

We would also consider it of value to add additional discussion on the transfer of state-owned investors (SOEs) to Sovereign Wealth Funds and implications thereof as this is an important trend in many emerging markets, including in geographical areas such as the Middle East and Africa.

- *More detailed recommendations regarding public policy objectives and the evaluation of their implementation and their intersection with a level playing field.*

We agree with this recommendation and suggest that the rationale for state ownership be outlined in either the SOE law (if such a law exists) or else in the ownership policy or equivalent. There rationale for state ownership is often not outlined as there is often a lack of clarity as to what entity should be responsible for developing this rationale and in what policy document it is to be outlined.

We would suggest that in the annotations the OECD clarify/provide examples of key criteria that can support the identification of state ownership rationale, notably in strategic enterprises. Likewise, the definition of strategic enterprises/sectors is also important.

Some projects (i.e. the launch of cities in specific emerging markets), merits recognition in the Guidelines along with the acknowledgement that projects of this caliber have features of a territorial entity, a regulatory authority and an SOE at once. They may have boards nominated through a mechanism that operates outside the prevailing SOE legal framework.



GOVERN

ECONOMIC AND CORPORATE GOVERNANCE CENTER

- *Clarifying and further developing the language about the role and functioning of centralised and coordinating ownership entities.*

We agree that this would be useful, notably with respect to the role of sovereign wealth funds and their role in channeling revenues (i.e. SOE dividends) towards either support to state budget, creation of other SOEs, support of innovation or other public policy objectives.

The Guidelines could also highlight practical mechanisms to be put in place to coordinate ownership responsibilities between, typically, the Ministry of Finance and sectoral Ministries in countries where decentralized ownership models prevail. This remains a significant challenge in many countries.

- *Adding language about the exercise of ownership within corporate groups and vis-à-vis subsidiaries of SOEs.*

We agree that aspects raised in the latest revision of the OECD Principles with respect to corporate groups are also relevant to the Guidelines.

- *Adding language about the involvement of institutional investors in the ownership structure of SOEs, including entities (e.g. sovereign wealth funds, development banks and pension funds) controlled or influenced by the state.*

We agree and this is highlighted in our above comments.

- *Additional references to the need for establishing a proper framework for communication between the ownership entity and the enterprise.*

We believe these aspects are already clear in the previous version of the Guidelines.

- *Adding language about the chances and risks regarding the greater use of digital technologies in the supervision and implementation of corporate governance regulatory requirements and practices.*

We agree that the language used in the revision of the OECD Corporate Governance Principles is also relevant to SOEs.

- *Broadening the range of identified practices that may unduly favour, either financially or regulatorily, SOEs.*

Please refer to our comments above.

- *Adding a reference to the use of SOEs to subsidise or otherwise support other commercial entities.*

We concur that this practice prevails in SOEs and in SWFs. It is important to acknowledge the scope of state support which is not limited to subsidiaries (this is often publicly acknowledged in SOE offering documents when they are listed).

On the other hand, it is also important to refer to situations where the state may place public policy objectives on SOEs which are not appropriately planned by the board and are hence not funded. Such situations may result in instances where boards of SOEs are held responsible for corporate performance which is in important part outside their control.

- *Adding reference to the use of virtual and other remote participation in shareholder meetings.*

The wording of the Principles in this area could be reflected here although this issue is typically less relevant to SOEs unless they are listed (in which case, they would fall under the scope of the OECD Principles of Corporate Governance).

- *Overall, expand on the language about quality financial and non-financial disclosure based on the Working Party's recent guide on aggregate reporting.*

We agree with this recommendation, notably stressing the importance of separate management discussion and analysis and a board report. It appears also relevant to mention that assurance of ESG data by a third-party provider can give greater confidence in data accuracy, even if this data is not required by the prevailing regulatory framework.

- *Adding language about disclosing the ownership structure, linkages to the ownership entity, subsidiaries and participation in joint ventures.*

We believe these issues are adequately covered in the existing version of the Guidelines.

- *Further developing and clarifying the existent language about bodies involved in the auditing of SOEs, including the respective roles of external, internal and state auditors.*

This would be useful, especially considering that the scope of audit by these entities is currently not clear in many jurisdictions.

Notably, in some countries SAIs audit SOEs only from a financial integrity and compliance perspectives, whereas in others they are also involved in assessing their governance.

In many emerging market countries, regulators have rightfully limited the type of audit firms that can audit SOE accounts given that the entire population of audit firms are not all necessarily fit to do so.

- *Adding language about the eligibility criteria for board members, including with regards to political affiliation and personal integrity.*

We would support a revision in that sense.

- *Adding reference to the board's duty to take into account the interests of all stakeholders.*

We would support a revision in that sense.

- *Adding language about the board's responsibility to ensure the effectiveness of the SOE's risk management, internal controls and internal audits.*

To our understanding, the Guidelines already address these issues.

- *Adding language about the board composition and fiduciary duties in SOEs that are part of a group structure.*

Relevant as per the amendments adopted to the OECD Principles.

- *Adding language about board remuneration, including considerations to offer competitive pay to board members.*

It is important to mention that SOE board remuneration is often capped by laws applying to public salary scales. In practice, this may render SOE board remuneration uncompetitive.

- *Adding language about related party transactions, including recommendations on transparency and disclosure.*

We support this as per amendments to the OECD Principles.

- *An adaptation of the new Chapter VI in the G20/OECD Principles, providing recommendations on:*

- *The state owners' role in setting sustainability expectations for the SOEs;*
- *Transparency and disclosure regarding sustainability;*
- *The role of boards of directors in setting sustainability objectives and overseeing implementation;*
- *Stakeholder relations and responsible business conduct.*

We support this as per amendments to the OECD Principles.