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IBGC Comments to the Public Consultation on the review of the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*

Dear Mr. Di Noia,

Thank you for the opportunity to comment on the public consultation on revisions to the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*. This review is important to ensure that the Guidelines continue to serve their purpose of supporting policymakers and regulators in improving legal, regulatory and institutional corporate governance frameworks. The Guidelines have also supported the work of organizations like the Brazilian Institute of Corporate Governance (IBGC) in developing and propagating good practices.

State-owned companies are a significant part of the economy and promoters of quality of life for the population. This makes the adoption, in this sector, even more urgent of a governance model based on principles and good practices, immune to partisan interests, electoral or personal. Corporate governance practices in state-owned companies guarantee more security for investors, appreciation of the state-owned company, efficiency in resource allocation, serving public interests and competitiveness.

Therefore, IBGC welcomes the opportunity to provide comments for this important global consultation. After considering the reviews with the support of the IBGC technical team, we forwarded the following suggestions:

Yours sincerely,

Danilo Gregório and Renan Perondi
Public Affairs Team
IBGC

Original version	IBGC suggestion	Comments
<p>p.9</p> <p>Broadly speaking, independent board members are understood to mean individuals free of any material interests (including remuneration) or relationships with the enterprise (non-executive board members), the state (neither civil servants, public officials, nor elected officials), its management, and other major shareholders, as well as with institutions and interest groups with a direct interest in the operations of the SOE that could jeopardise their exercise of objective judgement. Independent board members should be in possession of an independent</p>	<p>p.9</p> <p>Broadly speaking, independent board members are understood to mean individuals free of any material interests (including remuneration, comercial contracts, family ties, and commitment to elections and political parties) or relationships with the enterprise (non-executive board members), the state (neither civil servants, public officials, nor elected officials), its management, and other major shareholders, as well as with institutions and interest groups with a direct interest in the operations of the SOE that could jeopardise their exercise of objective</p>	<p>When defining independent advisors: reinforce the need, for absence of comercial contracts, family ties, and commitment to elections and political parties interests, in accordance with the chapter VI. <i>The composition and responsibilities of the boards of state-owned enterprises.</i></p> <p>In the sixth edition of the <i>Code of Best Corporate Governance Practices</i>, the IBGC defined an independent advisor as one who does not have a family, company or any other type of relationship with controlling shareholders: <i>“Independent: external directors who do not have family, business, or any other type of relationship with controlling shareholders, controlling groups, executives, service providers or non-profit entities that influence or may influence, in a significant manner, their judgments, opinions, decisions, or compromise their actions in the best interest of the organization”.</i></p> <p>According to the Brazilian National SOE Law (Law 13,303/2016), an independent diretor shall not:</p>

<p>mindset and sufficient competencies to carry out the board duties.</p>	<p>judgement. Independent board members should be in possession of an independent mindset and sufficient competencies to carry out the board duties.</p>	<p>I – have any link with the state-owned enterprise or mixed-capital company, except for an equity interest; II – be a spouse or relative up to three times, of the head of the Executive Branch, the Minister of State, the Secretary of State or Municipality or the administrator of the state-owned enterprise; III – have had any link with the state-owned enterprise, the mixed-capital company or its controllers which might compromise their independence in the last 3 (three) years; IV – be or have been an employee or director of the state-owned enterprise in the last 3 (three) years, unless the link is exclusively with public education or research institutions; V – be a direct or indirect supplier or buyer of services or products of the state-owned enterprise to the extent that would indicate a loss of independence; VI – be an employee or administrator of a company or entity that is offering or procuring services or products to or from the state-owned enterprise to the extent that would imply loss of independence; VII – receive any other compensation from the state-owned enterprise beyond the compensation received for their work as a director, not including cash earnings from equity interests</p>
<p>p. 12 2. Establishing and safeguarding well-structured, merit-based and transparent board nomination processes in fully- or majority-owned SOEs,</p>	<p>p. 12 2. Establishing and safeguarding well-structured, merit-based and transparent board nomination processes in fully- or majority-owned SOEs,</p>	<p>The State's only motivations for appointing members of the board of directors must be the independence, technical qualifications and unblemished reputation of those chosen. The State should appoint board members through formal structured and transparent processes, considering the results of the performance evaluation, the variety of</p>

<p>actively participating in the nomination of all SOEs' boards and contributing to gender and other forms of board diversity.</p>	<p>actively participating in the nomination of all SOEs' boards, and contributing to gender and other forms of board diversity, considering the results of the board's performance evaluation, and avoiding personal, electoral and political motivations</p>	<p>required and desirable skills, the strategic plan, as well as avoiding personal interests, electoral, partisan or in conflict with company interests</p>
<p>p. 16</p> <p>IV. Equitable treatment of shareholders and other investors</p>	<p>p. 16</p> <p>E. Strengthen mechanisms that inhibit public agents from making statements or disclosing information with an impact on the trading of shares in state-owned companies listed on the stock exchange without prior authorization from the company's administrators and in disagreement with regulatory standards.</p>	<p>Public authorities or those holding elected positions often face the risk of making public statements or revealing material information without prior authorization from the SOE management, which ends up having an unexpected influence on market valuation.</p>
<p>p. 18</p> <p>V. Disclosure, transparency and accountability</p>	<p>p. 18</p> <p>F. State-owned companies must create a code of conduct/ethics and a reporting channel.</p>	<p>The code on conduct or ethics and the reporting channel are essential to promote integrity and an ethical environment.</p>
<p>p. 20</p>	<p>p. 20</p>	<p>Serving on a board of directors requires dedication time for reading and analyzing documentation before the meetings. Upon assuming the role, the board director must observe</p>

VI. The composition and responsibilities of the boards of state-owned enterprises	L. To carry out his role, the board member must have time availability, and must be constantly attentive to the issues of the organization and the organization's sector of activity.	fiduciary duties towards the organization, as well as seek constant development of technical and behavioral skills.
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