



# ICGN

International Corporate Governance Network  
*Inspiring good governance & stewardship*

Mr. Mathias Cormann, Secretary-General  
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11 September 2023

Dear Secretary-General Cormann and Representatives of the Working Party,

**Subject: Draft Revisions to the OECD Guidelines on Corporate Governance of State-Owned Enterprises**

The International Corporate Governance Network (ICGN) welcomes the draft revisions to the OECD Guidelines on the Corporate Governance of State-Owned Enterprises (SOEs). The revisions bring about a needed alignment of SOE practices into global governance practices of non-SOE companies, which enhance the role and rights of investors, especially minority investors.

Led by investors responsible for assets under management of \$77 trillion, ICGN is an authority on global standards of corporate governance and investor stewardship. The ICGN Global Governance Principles, written from an investor perspective, are widely used by our members in their company assessments and voting decisions, and by regulators when developing corporate governance rules.

**Introductory chapter: Applicability and definitions**

**ICGN appreciates the effort by OECD to better define when a company that is not majority owned may be considered as “controlled” by the state.** ICGN agrees that when the “state holds the power to appoint a majority of the members of the board of directors, or equivalent management body, or have the powers to appoint the CEO, or is able to control the material decision-making of the enterprise through other means”, this is a means of exerting control even if ownership does not reflect majority status. The board of directors carries the responsibility for the long-term success of the company and any control over their appointment by the state should be taken into consideration. As the ICGN Global Governance Principles state: “Board leadership requires clarity and balance in board and executive roles and an integrity of *independent* process to protect the interests of shareholders and relevant stakeholders in promoting the long-term success of the company”.

ICGN also agrees that “control” may be exercised if the state maintains the rights to set or has control over the contracts that confer “decisive influence on the composition, voting or other commercial decisions of the undertaking; the ownership or right to use all or substantial parts of its assets”. We agree that the term “ownership” implies control. The challenge in any definition

is to capture enough guidance to establish “control” by the state which can change rapidly due to leadership, nationalism, and political activities.

We understand that different modes of exercising state control will give rise to different governance issues that will need to be addressed. To that end, ICGN members would find it useful for OECD to clarify the terms “state”, “government” and any other similar terms that are currently used interchangeably in the consultation document.

ICGN would appreciate the inclusion of the word, “Investors” in the definitions section. Their holdings in SOEs or controlled companies may be relevant to their treatment as minority shareholders, engagement towards a collaborative business environment and clear understanding of the rights and responsibilities that apply to their investments.

ICGN would like to suggest that the definition of “Public Officials” be clarified to explain in detail the ability of public officials to serve as board members, versus that of a politician. We noticed that the consultation document suggests a cooling off period for politicians and would like to see that added the definition section for clarity.

Additional considerations:

- It is possible that some entities may not meet the criteria for “state control” if the government holds a limited stake of less than 10% without a long-term interest in the company unless the state is using the ownership shares on its own or in concert with other shareholdings to exercise ownership over its SOE portfolio. In that situation, the entity would be exercising control and meet the criteria of a SOE. A state’s limited stake in an entity would not necessarily exempt it from the SOE criteria without further review.
- It is possible that entities which are owned or controlled by a government for a limited period of time from a bankruptcy proceeding, liquidation, conservatorship, or receivership, may not be considered SOEs, however, the resulting entity thereafter may meet the SOE criteria.
- Some state-owned parent companies may exercise full ownership rights over other entities and be considered the main SOEs, however, that may not be the case in all group structures. Investors would like to understand the entire group structure in case there are other entities that hold certain ownership rights through state-owned holding companies or legal entities. The parent structure alone would not necessarily mean that entities under the parent company are not SOEs.

## I. Rationales for state ownership

**ICGN would like to offer comments on the draft text regarding public policy objectives, the evaluation of their implementation and their disclosure to create a level playing field.**

Investors need to understand the entity’s public policy objectives to determine if they align with their own mandates. The objectives should transparently be made available in the public domain, through a website or available online source. We support the need for independence related to the SOE’s business activities from the actual owner’s public policy objectives. It would be important that the rationale for state ownership links to the SOE’s company purpose. Any commercial activities should relate to the social considerations of the state under its public service obligations.

Although the revised text calls for states to “publicly disclose” the rationales that justify state involvement and to act as “active owners”, we would like to see an explicit call for the development of a well-articulated and publicly disclosed owner strategy that provides clear

guidance to the board of directors and senior management, prevents ambiguity, and allows for effective oversight.

ICGN would expand the disclosure beyond financial materiality. We would add that where SOEs are required to pursue public policy objectives that may have a material effect on the company's performance, results and long-term viability and "are material to the market, the environment, and people", information about these objectives should be available to the public and non-state shareholders. We believe that all investors would find this information useful as they evaluate investment strategies in the SOE.

## **II. The state's role as an owner**

**ICGN agrees that the state should act as an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness.**

ICGN appreciates the draft text which supports the adoption by SOAs of governance structures that enable independent and accountable boards to function with fully operational autonomy. This is critical to foster clear roles and responsibilities between board members and the state to avoid undue influence and interference with the enterprise. A clear delegation of authority, including the role of the state, should be set out in the SOE's governance procedures, or adopted framework.

ICGN believes that international or national corporate governance codes should be adhered to by all listed and unlisted SOEs to the extent possible. A "comply or explain" standard should provide investors and relevant stakeholders with an understanding why a SOE is not able at the present time to comply with the relevant corporate governance code. The ICGN GGP are a reference point for entities and states to "inform governments on internationally accepted standards to help inspire the evolution of national corporate governance codes".<sup>1</sup>

ICGN has highlighted the responsibilities of the ownership entity that are of high importance to investors, including:

1. Being represented at the general shareholders meetings and effectively exercising voting rights;
2. Establishing and safeguarding well-structured, merit-based, and transparent board nomination processes in fully- or majority-owned SOEs, actively participating in the nomination of all SOEs' boards and contributing to gender and other forms of board diversity;
3. Setting and monitoring the implementation of broad mandates and objectives for SOEs, including financial targets, capital structure objectives and risk tolerance levels consistent with the state's rationales for ownership;
4. Setting up reporting systems that allow the ownership entity to regularly monitor audit activities, assess SOE performance, and oversee and monitor their compliance with applicable corporate governance standards, including by making use of digital technologies;
5. Developing a disclosure policy for SOEs that identifies what information should be publicly disclosed, the appropriate channels for disclosure, and mechanisms for ensuring the quality of information disclosed;

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<sup>1</sup> [ICGN Global Governance Principles 2021.pdf](#), p. 4.

6. Maintaining an appropriate relationship with external auditors and specific state entities;
7. Ensuring that ownership rights are exercised on a whole-of-government basis and preventing conflicts of interests amongst those with board and ownership responsibilities; and
8. Establishing a clear remuneration policy, set by SOE boards that fosters the long-term interest of the enterprise and incorporates necessary measures to incentivise sustainability-related actions to compensate senior leadership for added value creation.

### III. State-owned enterprises in the marketplace

**ICGN agrees that the state should not exempt SOEs from the application and enforcement of general laws, tax codes, regulations, and market-based mechanisms.** The state should also set out clear policies that call for the disclosure of tax and debt structures, and regulatory neutrality to prevent undue advantages for SOEs that will limit the information in the marketplace or harm their competitors. This will ensure a level playing field in the capital markets.

ICGN would add that it is important that SOEs, regardless of their industry, apply international standards related to the management and reporting of sustainability risks, responsible business conduct and the protection of human rights.

### IV. Equitable treatment of shareholders and other investors

**ICGN believes that listed or non-listed SOEs should recognize their investors, the rights of all shareholders and ensure shareholders' equitable treatment and equal access to corporate information.**

We agree that SOEs should comply fully with the G20/OECD Principles of Corporate Governance. We also recommend that they utilize the ICGN Global Governance Principles.<sup>2</sup>

In its revised Guidelines, ICGN would like to see the OECD explicitly refer to stewardship and ensure that SOEs facilitate a constructive dialogue with their investors. The shareholder rights that are of upmost importance for investors to exercise their stewardship rights and obligations include:

- The state and SOEs should ensure that all shareholders are treated equitably. This is important because investors may hold minority stakes in the enterprise, giving them less of an opportunity to use their voices for constructive dialogue and seeking changes from the majority shareholders or state.
- SOEs should observe a high degree of transparency, including equal and simultaneous disclosure of information for all shareholders, regardless of the ownership stake.
- SOEs should develop an active policy of communication and consultation with all shareholders. Investors are particularly keen to have an open and transparent dialogue with board members and senior leadership. A collaborative business environment may provide a board and minority shareholders the opportunity to foster relationships that bring about the alignment of mutual interests. This supports an active ownership role for the state and SOEs, which is the direction of engagement for listed companies and their investors.

<sup>2</sup> Please see [ICGN Global Governance Principles 2021.pdf](#), Principle 9, Shareholder rights, p. 33.

- The participation of all shareholders in AGMs and special meetings should be facilitated through in-person or if necessary, hybrid meetings. A key shareholder right is the opportunity to participate in voting on corporate decisions such as board elections, management and shareholder proposals, and key policies such as remuneration and the ratification of the auditor, as they can at listed companies. ICGN developed a Statement on the use of hybrid meetings to ensure that shareholders have equal access to information and opportunities for participation on all matters on the agenda, which supports shareholder rights.<sup>3</sup>
- Transactions between the state and SOEs should take place within market consistent terms to level the playing field and limit disadvantaging investors in other companies that do not have state backing.

## V. Disclosure and transparency

**ICGN firmly agrees that state-owned enterprises should observe high standards of transparency, accountability and integrity and be subject to the same high-quality accounting, disclosure, compliance, and auditing standards as listed companies.** We agree that SOEs should report on financial and non-financial information. As part of their sustainability reporting, ICGN recommends that SOEs report financially material information in line with the ISSB standards, and report information regarding their impact on society and the environment in line with the GRI (the double materiality approach) .

From the list of disclosure examples, ICGN would highlight the following as highly important for investors. This is important as OECD considers Section VII for newly created Sustainability reporting which we believe could also be integrated into that Section. Many of these disclosures are provided in the ICGN GGP:

- Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public policy objectives. ICGN supports the requirement for consistent and comprehensive reporting by SOEs, which emphasizes responsible business conduct.
- The governance, ownership, legal and voting structure of the enterprise, including the compliance with any corporate governance code or policy and implementation processes;
- The remuneration of board members and key executives. ICGN would like to see remuneration packages tied to KPIs and metrics for financial-related and sustainability goals and measures that are clearly described and publicised;
- Board selection processes and diversity policies, as well as individual board member qualifications, selection process, including board diversity policies, roles on other company boards or in the state and clear statements whether they are considered as independent, not just by the SOE board but by standards establishing independence. ICGN also would recommend that the diversity include individuals from different genders, age, ethnicities, nationalities, social and economic origins, professional skills, and personal attributes, as provided in the ICGN GGP <sup>4</sup>;
- Any material and non-material foreseeable risk factors, measures taken to manage such risks and full disclosure of risks to investors and stakeholders.
- Control systems, including the establishment of an internal audit function and oversight of a risk management system are fundamental functions for non-SOE companies. SOEs

<sup>3</sup> [ICGN Statement on Post Covid AGM Practices and Shareholder Rights | ICGN](#), 19 April 2023.

<sup>4</sup> [ICGN Global Governance Principles 2021.pdf](#), p. 15.

should be required to establish risk management systems to identify, manage, control and report on risks. Risk management systems should include a comprehensive set of internal controls, requirements for ethics policies, the disclosure of conflicts or potential conflicts of interest and compliance programmes;

- Any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE, including contractual commitments and liabilities arising from public-private partnerships or participation in joint ventures. This would ensure that conflicts of interest are disclosed and assist investors in their assessment of financial viability beyond the state's contributions;
- Any transactions with the state and other related entities including state-owned financial institutions, whether material or include impacts on aspect of sustainability, including environmental, social and governance factors;
- Any relevant issues, matters and objectives relating to employees, society and the environment, and other stakeholder relations;
- SOEs' annual financial statements should be subject to an independent external audit based on high-quality, independent standards. An annual external audit should be conducted by an independent and qualified auditor in accordance with internationally recognised auditing, ethical and independence standards in order to provide reasonable assurance to the board and shareholders whether the SOEs' financial statements are prepared in accordance with an applicable financial reporting framework. Specific state control procedures should not be substituted for an independent external audit;
- Annual assurance attestations should be adopted by an independent and qualified attestation service provider, in accordance with internationally recognised assurance standards; and
- SOEs should develop internal audit procedures and establish a well-functioning internal audit function that has the resource capacity, autonomy and professionalism needed to fulfil its function. The Internal Auditor (or similar classification) should be evaluated by and report directly to the board chair and to the audit committee or the equivalent corporate entity.

## VI. The responsibility of the boards of state-owned enterprises

**ICGN firmly agrees that the state should provide SOE boards with the ability to exercise their responsibilities, respect their independence and refrain from unduly influencing the enterprise.** The ownership entity should establish and maintain appropriate frameworks for communication with SOEs highest governing body, typically through the board chair.

ICGN agrees that board members should have an independent mindset and requisite competencies to carry out their board and specific committee duties. We appreciate that OECD has clarified the language about the role and functioning of both centralised and coordinating ownership entities.

We suggest that the definition of “**independent board members**” include the language in italics, providing that individuals that are “free of any material *or important non-material interests related to sustainability or ESG matters that would be important to disclose to investors and stakeholders*, 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”. The definition would be reflected in the Introductory section and within Section IV.

We also appreciate the additional language that political affiliation should not alter the duty of board members to act independently. State ownership entities, their board members and leadership should ensure high standards of integrity and to avoid the use of SOEs as conduits for political purpose, financial gain and arrangements, patronage positions or personal or related-party enrichment.

ICGN has long recognized that the chair of the board should be independent and handle the role separate from the responsibilities of the Chief Executive Officer (CEO). With that separation in mind, we agree that the CEO is then the enterprise's highest ranking executive officer, responsible for managing its operations and implementing the corporate strategy upon direction from the board. ICGN has clearly stated in the ICGN GGP<sup>5</sup> that the CEO should be hired by and accountable to the board and subject to replacement at the direction of the board, and in this case, not the state.

ICGN agrees that boards of SOEs should effectively carry out their duties for setting the long-term strategy and supervising leadership, based on any objectives from the state that are clearly disclosed. In the ICGN GGP, ICGN has recommended that boards consider setting up committees, composed of independent and qualified members, to support the full board's work, for example,

- An audit committee to oversee disclosure, internal controls, and audit-related matters, including assurance;
- A remuneration committee to set executive remuneration packages that incentivise managers to act consistent with the long-term interest of the enterprise and its shareholders;
- A nomination committee to ensure that a source of independent and qualified candidates is available for the board, to support succession planning for key individuals like the CEO, and to avoid undue influence from the state. In some cases, ICGN is aware that there are board members who are appointed to represent the employees of the enterprise and as such, a process for selection should be created; and
- Any ad-hoc committees or newly established committees to cover sustainability issues and risk assessment, management, and disclosure.

ICGN also has called for boards to maintain a schedule of evaluations to review their performance and efficiency, and assess whether they possess the right mix of background and competences on the board. We recommend that the board conduct an objective evaluation of the board chair, the board as a whole, its committees and individual directors on an annual basis, including an external review at least once every three years.<sup>6</sup>

## **VII. State-owned enterprises and sustainability (integrating former Chapter V)**

### **ICGN supports the content of the new chapter, State-owned enterprises and sustainability.**

Investors increasingly expect companies - including SOEs - to integrate sustainability considerations into governance, strategy, risk management and reporting.

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<sup>5</sup> [ICGN Global Governance Principles 2021.pdf](#), p. 9.

<sup>6</sup> [ICGN Global Governance Principles 2021.pdf](#), Principle 1 Board roles and responsibilities, p. 9.

In its Guidelines, the OECD could encourage all SOE board members, more than just the boards that have introduced specific remuneration schemes, to ensure that remuneration packages for senior executives are tied to sustainability metrics and balanced, to reward leadership for approaching long-term value creation with an understanding of the risks that every company is facing. According to the ICGN Global Governance Principles, in addition to financial performance metrics, quantifiable indicators that are material to the company's sustainable value creation and preservation, such as human capital and natural capital, should be considered. Metrics guiding performance grants should be based on audited financial data, and, where possible, assured sustainability indicators.<sup>7</sup>

In conclusion, ICGN expresses our appreciation for the opportunity to respond to this consultation. We congratulate the OECD on the new draft text and the significant changes it embodies. Should you have any questions around our letter, please contact Severine Neervoort, Global Policy Director ([severine.neervoort@icgn.org](mailto:severine.neervoort@icgn.org)) or Carol Nolan Drake, Senior Policy Manager ([carol.nolandrake@icgn.org](mailto:carol.nolandrake@icgn.org)).

Yours faithfully,



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Cc: Cristina Ungureanu, Chair, ICGN Global Governance Committee  
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<sup>7</sup> [ICGN Global Governance Principles 2021.pdf](#), Principle 5.3, Performance measures, p. 21.