Public Consultation on
Draft Revisions to the OECD Guidelines on Corporate Governance of State-Owned Enterprises

Public consultation end date: 11 September 2023

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Introduction

1. This document presents draft revisions to the OECD Guidelines on Corporate Governance of State-Owned Enterprises (hereafter, "SOE Guidelines")[1]. They are hereby submitted for public consultation. Interested organisations or individuals are invited to provide comments until the end of the public consultation on 11 September 2023.

2. These draft revisions are a work in progress and may differ from any final revisions agreed. The draft revisions have been prepared by the OECD Secretariat and discussed by the OECD's Working Party on State Ownership and Privatisation Practices (hereafter, "Working Party"),[2] which wishes to benefit from wider input from the public, relevant policy communities, and stakeholders at the present stage and before considering the revisions further.

3. All comments and input received in the present public consultation, as well as comments received from parallel consultations with other OECD Committees, will be taken into account by the Working Party in its discussions regarding revising the SOE Guidelines moving forward.

Terms of reference for the review

4. The Working Party, a subsidiary body of the OECD's Corporate Governance Committee[3], decided to embark on a revision of the SOE Guidelines in 2022. After agreeing to general directions for the review and revision of the SOE Guidelines in 2022, the Working Party formally commenced its review of the SOE Guidelines in 2023 which is expected to last through the first half of 2024 (see the summary timeline below for more detailed information). The SOE Guidelines' revision follows from the completed process of the revision of the G20/OECD Principles of Corporate Governance [OECD/LEGAL/0413] ("the Principles"), to which the SOE Guidelines are complementary and substantively interrelated. The revision process for the SOE Guidelines is underpinned by four main objectives:

- Ensuring that the SOE Guidelines and the Principles remain complementary, and reflecting new substantive changes introduced in the Principles (as relevant for SOEs), including a new Chapter on Sustainability
- Updating the SOE Guidelines to reflect relevant elements of the OECD Recommendation of the Council on Guidelines on Anti-Corruption and Integrity in SOEs [OECD/LEGAL/0451], adopted by OECD Council in 2019
- Strengthening provisions of the SOE Guidelines to reflect issues that have come up in the context of Adherents' efforts to implement the SOE Guidelines since 2015 and in connection with on-going work at the OECD more broadly
- Maintaining the SOE Guidelines high level of ambition and relevance, including through addressing current developments, areas for improvement and OECD research or new OECD legal instruments that have emerged since 2015.

[1] The SOE Guidelines are set out in the Appendix and form an integral part of the Recommendation on Guidelines on Corporate Governance of State-Owned Enterprises [OECD/LEGAL/0414] (the Recommendation).

[2] For more information on the Working Party on State Ownership and Privatisation Practices, including its membership, see: https://www.oecd.org/corporate/soe-working-party.htm

[3] For more information on the Corporate Governance Committee, see: https://www.oecd.org/corporate/ca/oecdcorporategovernancecommittee.htm

5. Table 1 outlines the main directions proposed for consideration in the review. The draft revisions and the new Chapter VII presented in this document address the priorities identified by the Working Party. The draft revisions are also informed by discussions of the Working Party.

Table 1. Main Directions of the Review of the SOE Guidelines

Section	Main proposed revisions to the SOE Guidelines
Introductory chapter: Applicability and definitions	• A more detailed discussion of when a company that is not majority owned may be considered as "controlled" by the state.
I: Rationales for state ownership	• More detailed recommendations regarding public policy objectives and the evaluation of their implementation and their intersection with a level playing field.
II: The state's role as an owner	• Clarifying and further developing the language about the role and functioning of centralised and coordinating ownership entities. • Adding language about the exercise of ownership within corporate groups and vis-à-vis subsidiaries of SOEs. • 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. • Additional references to the need for establishing a proper framework for communication between the ownership entity and the enterprise. • 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.
III: State-owned enterprises in the marketplace	• Broadening the range of identified practices that may unduly favour, either financially or regulatorily, SOEs. • Adding reference to the use of SOEs to subsidise or otherwise support other commercial entities.
IV: Equitable treatment of shareholders and other investors	• Adding reference to the use of virtual and other remote participation in shareholder meetings.
V: Disclosure and transparency	• Overall, expand on the language about quality financial and non-financial disclosure based on the Working Party's recent guide on aggregate reporting. • Adding language about disclosing the ownership structure, linkages to the ownership entity, subsidiaries and participation in joint ventures. • 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.
VI: The responsibilities of the boards of state-owned enterprises	• Adding language about the eligibility criteria for board members, including with regards to political affiliation and personal integrity. • Adding reference to the board's duty to take into account the interests of all stakeholders. • Adding language about the board's responsibility to ensure the effectiveness of the SOE's risk management, internal controls and internal audits. • Adding language about the board composition and fiduciary duties in SOEs that are part of a group structure. • Adding language about board remuneration, including considerations to offer competitive pay to board members. • Adding language about related party transactions, including recommendations on transparency and disclosure.

VII: State-owned enterprises and sustainability (integrating former Chapter V)	• 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.

Source: Directions for the review and revision of the SOE Guidelines

Commenting on the proposed revisions

6. Individuals or organisations interested in commenting on the draft revisions should submit their comments in writing by no later than **11 September 2023**. Comments should be sent by e-mail to CorporateGovernance&CorporateFinance@oecd.org.

7. All comments received, including the name of the individual and/or institution, will be made public on the OECD's webpage dedicated to the review of the SOE Guidelines (https://www.oecd.org/corporate/review-oecd-guidelines-corporate-governance-of-state-owned-enterprises.htm) following the consultation period, unless an explicit request not to make them public is made by the individual and/or institution.

Next steps after the consultation

8. Comments and input received on the draft revisions will be taken into account by the Working Party in its discussions regarding revising the SOE Guidelines moving forward.

9. The Working Party has set as a target to agree on final draft revisions to the SOE Guidelines in March 2024 for transmission to the OECD Council for adoption. (See the summary timeline below for more detailed information).

Summary timeline of the review

2022

- Working Party agreed to review the SOE Guidelines and on directions for the review and revision of the SOE Guidelines

2023

- April: Working Party discussions on draft revisions
- July-September: public consultation and consultations with other relevant OECD bodies on the draft revisions
- October**:** Working Party discussions on draft revisions and hybrid consultation with consultation partners and other relevant stakeholders as part of this meeting

2024 (tentative)

- March: Working Party discussions of final draft revisions and approval of draft revised SOE Guidelines by the Working Party and Corporate Governance Committee (parent committee)
- Q2: final draft revisions adopted by the OECD Council

Background documents

10. Background documentation informing the revision, which may prove useful for organisations and individuals interested in providing comments is available on the OECD's webpage dedicated to the review of the SOE Guidelines (https://www.oecd.org/corporate/review-oecd-guidelines-corporate-governance-of-state-owned-enterprises.htm). These include, *inter alia*:

11. **Studies on state ownership**

- Climate change and low-carbon transition policies in state-owned enterprises

- Safeguarding State-Owned Enterprises from Undue Influence
- Remuneration of Boards of Directors and Executive Management in State-Owned Enterprises
- Monitoring the Performance of State-Owned Enterprises: Good Practice Guide for Annual Aggregate Reporting
- Ownership and Governance of State-Owned Enterprises: A compendium of National Practices
- Implementing the OECD Guidelines on Corporate Governance of State-Owned Enterprises: Review of Recent Developments

12. **Studies on corporate governance**

- Climate Change and Corporate Governance
- Corporate ownership and concentration
- Gender diversity on company boards and in senior management
- Digitalisation and corporate governance
- Institutional investors and stewardship

13. **Studies on the level playing field**

- Government support in industrial sectors
- State-Owned Enterprise as Global Competitors: A challenge or an Opportunity?

Data protection rights

14. Any data provided as part of this consultation will be protected consistent with the OECD Personal Data Protection Rules. Under the Rules, respondents have rights to access and rectify their personal data, as well as to object to its processing, request erasure, and obtain data portability in certain circumstances. To exercise these rights in connection with the consultation, please contact CorporateGovernance&CorporateFinance@oecd.org. If you have further queries or complaints related to the processing of your personal data, please contact the Data Protection Officer. If you need further assistance in resolving claims related to personal data protection you can contact the Data Protection Commissioner.

Applicability and definitions

Text in green is from the ***2015 version of the SOE Guidelines*** *moved to a different section.*
Blue track-changes are the **first draft revisions** and the **second draft revisions**.

(*Revisions to the introductory text of this section and the "About the Guidelines" section will be considered once discussion on draft revisions has advanced*.)

Defining an SOE. Countries differ with respect to the range of institutions that they consider as state-owned enterprises. For the purpose of the Guidelines, any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership or control, should be considered as an SOE. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover, statutory corporations, with their legal personality established through specific legislation, should be considered as SOEs if their purpose and activities, or parts of their activities, are of an ~~largely~~ economic nature.

Ownership and control. The Guidelines apply to enterprises that are ~~under the control of~~ owned by the state, with the term "ownership" understood to imply direct or indirect control. In the case of statutory corporations, the state's control is conferred by the legislative provisions pertaining to the corporations. Otherwise control can be exercised ~~either~~ by the state either

- directly or indirectly holding the majority of the share capital,
- directly or indirectly holding the largest number of shares where those shares provide control
- being the ultimate beneficiary owner of the majority of voting ~~shares~~ rights, or
- otherwise exercising an equivalent degree of direct or indirect control.

~~Examples of a~~An equivalent degree of control may derive from various legal or factual arrangements such as ~~would include, for instance, cases where~~ legal stipulations, ~~or~~ corporate articles of association or arrangements under private or public law which ensure continued state control over an enterprise ~~or its board of directors in which it holds a minority stake~~. This can be the case 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. Control may also be exercised through rights or contracts conferring 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.

Whether the state exercises such decisive influence may ~~Some borderline cases~~ need to be addressed on a case-by-case basis, taking into account all circumstances of the specific case. For example, whether a "golden share" amounts to control depends on the extent of the powers it confers on the state. Also, minority ownership by the state can be considered as covered by the Guidelines if corporate or shareholding structures confer effective controlling influence on the state (e.g. through shareholders' agreements). Monopoly rights or other privileges granted by the state to an enterprise may in some cases result in a de facto control by the state. Conversely, state influence over corporate decisions exercised via *bona fide* regulation would normally not be considered as control.

Entities not covered by the above criteria, and in which the government holds equity stakes of *less* than ten percent that do not confer control and do not necessarily imply a long-term interest in the target company, held indirectly via ~~independent~~ asset managers or institutional investors such as pension funds or sovereign wealth funds, would also not be considered as SOEs, unless the state uses these ownership shares – in isolation or in concert with other directly or indirectly held shareholdings to exercise ownership over its SOE portfolio. For the purpose of these Guidelines, entities which are owned or controlled by a government for a limited duration arising out of bankruptcy, liquidation, conservatorship or receivership, would normally not be considered as SOEs. Different modes of exercising state control will also give rise to different governance issues. ~~Throughout the Guidelines, the term "ownership" is understood to imply control.~~

Corporate group structures. SOEs can also be owned indirectly by the state through corporate group structures such as parent SOEs or a similar legal entity or holding company that is state-owned. In such cases the parent company will generally be considered to exercise the ownership rights. However, some provisions in these Guidelines concerning "ownership entities" do not apply equally to parent companies. *This is in each case indicated in the annotations.*

Economic activities*.* For the purpose of these Guidelines, an economic activity is one that involves offering goods or services on a given market and which could, at least in principle, be carried out by a private operator in order to make profits. The market structure (e.g. whether or not it is characterised by competition, oligopoly or monopoly) is not decisive for determining whether an activity is economic. Mandatory user fees imposed by the government should normally not be considered as a sale of goods and services in the marketplace. Economic activities mostly take place in markets where competition with other enterprises already occurs or where competition given existent laws and regulations could occur. SOEs' operations may include economic activities or a mix of economic and non-economic activities.

Commercial considerations. Commercial considerations means considerations of price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise in the relevant business or industry.

Public policy objectives. For the purpose of ~~this document~~ these Guidelines, public policy objectives are those benefitting the ~~general~~ public interest within the ~~SOEs own~~ jurisdiction concerned. ~~. They are implemented as specific performance requirements imposed on SOEs and/or private enterprises other than the maximisation of profits and shareholder value~~. These could include the delivery of public services obligations~~, such as postal services,~~ as well as other special obligations undertaken in the public interest which can be set in addition to or instead of financial performance objectives. In many cases, public policy objectives might otherwise be achieved via government agencies, but have been assigned to an SOE for efficiency or other reasons. Public policy objectives' public interest should be made clear and decided transparently before the objectives are formulated. ~~Ad-hoc interventions by governments in the actions of SOEs should normally not be considered as part of an enterprise's public policy objectives. Public policy objectives may can either be pursued separately from, or in combination with, at the same time amount to or include economic activities.~~

Public service obligations (PSO). PSOs are obligations placed upon, SOEs in order to ensure all consumers an appropriate access to essential services, which would not be provided by the market under commercial considerations, on the condition that the SOEs purchases and sales are not discriminatory. They may for example consist of universal service and/or affordability requirements imposed on providers of public services.

The governing bodies of SOEs. Some SOEs have two-tier boards that separate the supervisory (non-executive) and management function into different bodies. Others only have one-tier boards, which may or may not include executive (managing) directors. In the context of this document "board" refers to the corporate body charged with the functions of governing the enterprise and monitoring management, typically referring the supervisory board in a two-tier system. Many ~~governments~~ boards include "independent" members ~~in the boards of SOEs,~~ but the scope and definition of independence varies considerably according to national legal context and codes of corporate governance. 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 mindset and sufficient competencies to carry out the board duties. A Chief Executive Officer (CEO), generally, is the enterprise's highest ranking executive officer, responsible for managing its operations and implementing corporate strategy. The CEO ~~is~~ should be accountable to the board.

Listed SOEs. Some parts of the Guidelines are specifically oriented towards "listed SOEs". For the purpose of these Guidelines ~~this document~~, "listed SOEs" refers to SOEs whose shares are publicly traded. In some jurisdictions SOEs that have issued preference shares, exchange-traded debt securities and/or similar financial instruments may also be considered as listed.

Ownership entity. The ownership entity is the part of the state responsible for the ownership function, or the exercise of ownership rights in, or control over, the SOEs. "Ownership entity" can be understood to mean either a single state ownership agency, a co-ordinating agency, ~~or~~ a government ministry or another public body responsible for exercising state ownership. States can moreover exercise their ownership or control through corporate structures, such as state-owned holding companies (SOHCs).

Throughout the Guidelines and Annotations, the term "O~~o~~wnership entity" is used without prejudice to the choice of ownership model. Not all Adherents to the Guidelines have necessarily assigned a government institution or SOHC to play a predominant ownership role, and this needs not affect the implementation of the remainder of the recommendations, unless otherwise indicated.

Stakeholders. The term stakeholders, for the purpose of these Guidelines, generally refers to persons or groups, or their legitimate representatives, who have rights or interests related to the matters of the Guidelines that are or could be impacted by the enterprise's activities.

Sustainability. Sustainability, for the purpose of these Guidelines, refers to the attainment of sustainable development as generally embodied in the United Nations Sustainable Development Goals (SDGs).

Level playing field. The term level playing field, for the purposes of these Guidelines, relates to competitive neutrality, a principle according to which all enterprises are provided a level playing field with respect to a state's (including central, regional, federal, provincial, county, or municipal levels of the state) ownership, regulation or activity in the market.

Applicability. The Guidelines are applicable to all SOEs pursuing economic activities, either exclusively or together with the pursuit of public policy objectives ~~or the exercise of governmental~~

~~authority or a governmental function~~, including state-owned financial institutions. ~~Whether other units of government should adhere to the Guidelines depends in part on the extent to which they undertake economic activities.~~ The Guidelines are generally not ~~intended to apply~~ fully applied to entities ~~or activities~~ whose ~~primary~~ purpose is to carry out a ~~public policy~~ function usually attributed to general government (e.g. central banks; regulatory agencies), even if the entities concerned have the legal form of an enterprise. Entities solely carrying out a public service obligation should only be expected to apply relevant provisions of the Guidelines, particularly with regards to governance, sustainability, integrity and transparency. As a guiding principle, those entities responsible for the ownership functions of enterprises held at sub-national levels of government should seek to implement as many of the recommendations in the Guidelines as applicable, especially with regards to maintaining a level playing field.

I. Rationales for state ownership

The state exercises the ownership of SOEs in the interest of the general public. It should carefully evaluate and disclose the ~~objectives~~ rationales that justify state ownership and subject these to a recurrent review.

A. The ultimate purpose of state ownership of enterprises should be to maximise long-term value for society, ~~through~~ in an efficient and sustainable manner ~~allocation of resources~~.

B. The government should develop an ownership policy. The policy should *inter alia* define the overall rationales for state ownership, the state's role in the governance of SOEs, how the state will implement its ownership policy, and the respective roles and responsibilities of those government offices involved in its implementation.

C. The ownership policy should be subject to appropriate procedures of ~~political~~ accountability and disclosed to the general public. The government should review at regular intervals its ownership policy and evaluate its implementation.

D. The state should define the rationales for owning individual SOEs and subject these to recurrent review. The rationales for ownership, and ~~A~~any public policy objectives that individual SOEs, or groups of SOEs, are required to achieve should be clearly linked to their primary functions, mandated by the relevant authorities and publicly disclosed.

II. The state's role as an owner

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.

A. Governments should simplify and standardise the legal forms under which SOEs operate. Their operational practices should follow commonly accepted corporate norms.

B. The government should allow SOEs full operational autonomy to achieve their defined objectives and refrain from unduly intervening in the ~~SOE~~ management of SOEs. The government as a shareholder should avoid redefining SOE objectives in a non-transparent manner and only in cases where there has been a fundamental change of mission.

C. The state should let SOE boards exercise their responsibilities and should respect their independence. The ownership entity should establish and maintain appropriate frameworks for communication with SOEs highest governing body, typically through the Chair.

D. The exercise of ownership rights should be clearly identified within the state administration~~. The exercise of ownership rights should be~~ and centralised in a single ownership entity. ~~or, i~~If this is not possible, relevant ownership functions should be carried out by a co-ordinating body with a clear mandate to act on a whole of government basis.~~ This "ownership entity" should have the capacity and competencies to effectively carry out its duties.~~

E. The ownership entity should have the capacity and competencies to effectively carry out its duties~~,~~ and be held accountable to the relevant representative bodies. It should ~~and~~ have clearly defined relationships with relevant public bodies~~, including the state supreme audit institutions~~.

F. The state should act as an informed and active owner and should exercise its ownership rights according to the legal structure of each enterprise and depending on its respective degree of ownership and control. ~~Its~~P~~p~~rime responsibilities of the ownership entity include:

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~~ and 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 quality of information;
6. ~~When appropriate and permitted by the legal system and the state's level of ownership, m~~Maintaining, as appropriate, continuous dialogue with external auditors and specific state control organs;
7. Ensuring that ownership rights are exercised on a whole-of-government basis, while

preventing conflicts of interests in the exercise of its responsibilities, when other public sector entities exercise ownership rights;

8. Establishing a clear overarching remuneration policy for SOE boards that fosters the long- and medium-term interest of the enterprise and can attract and motivate qualified professionals.

III. State-owned enterprises in the marketplace

Consistent with the rationale for state ownership, the legal, ~~and~~ regulatory and policy framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs ~~undertake~~ engage in economic activities.

A. There should be a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation and policy making.

B. All ~~S~~stakeholders ~~and other interested parties, including creditors and competitors,~~ should have access to efficient redress through unbiased legal or arbitration processes when they consider that their rights have been violated. SOEs' legal form should allow creditors to press their claims and to initiate insolvency procedures.

C. Where SOEs engage in ~~combine~~ economic activities and fulfil public policy objectives, ~~high standards of transparency and disclosure regarding their cost and revenue structures must be maintained~~ the latter should be transparently and specifically identified, allowing for an attribution to main activity areas. In particular:

1. ~~H~~high standards of transparency and disclosure regarding their cost and revenue structures must be maintained;
2. Net ~~C~~costs related to ~~fulfilling~~ achieving public ~~policy objective~~ service obligations should be separately funded~~by the state~~, proportionate and disclosed, ~~allowing for an attribution to main activity areas.~~ ensuring that compensation is not used for cross-subsidisation;
3. As a general rule, state-owned enterprises should not be used to subsidise or grant advantages or to cause unfair disadvantages to other commercial entities. If this does occur, care should be taken to ensure that: (i) support measures are consistent with applicable competition, trade and investment rules; and (ii) the support measures and their funding are clearly defined and publicly disclosed.

D. ~~As a guiding principle,~~ The state should not exempt SOEs, when ~~undertaking~~ engaging in economic activities ~~should not be exempt,~~ from the application and enforcement of ~~general~~ laws, ~~tax codes and~~ regulations and market-based mechanisms and should ensure tax, debt and regulatory neutrality to prevent undue discrimination between SOEs and their competitors. ~~Laws and regulations should not unduly discriminate between SOEs and their market competitors. SOEs' legal form should allow creditors to press their claims and to initiate insolvency procedures.~~

E. SOEs' economic activities should face market consistent conditions ~~regarding access~~ including with regard to debt and equity finance. In particular:

1. All business relations of SOEs', including ~~relations~~ with ~~all~~ financial institutions, ~~as well non-financial SOEs~~ should be based on purely commercial grounds;~~.~~
2. SOEs' economic activities should not benefit from or provide any direct or indirect financial support that confers an advantage over private competitors, such as preferential debt or equity financing, guarantees, tax arrears or preferential trade credits from other SOEs~~.~~ ~~SOEs' economic activities should not receive inputs (such as energy, water or land) at prices or conditions more favourable than those available to private competitors~~;~~.~~

3. SOEs' economic activities should not receive or provide in-kind inputs ~~(~~such as goods, energy, water, real estate, data access, land or labour~~)~~ nor at prices or conditions more favourable than those available to privately owned competitors;~~.~~
4. SOEs' economic activities should be required to earn rates of return that are~~, taking into account their operational conditions,~~ consistent with those obtained by competing private enterprises.

F. When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be open, competitive, non-discriminatory, promote supplier diversity and safeguarded by appropriate standards of integrity and transparency, ensuring that SOEs and its potential suppliers are not subject to undue advantages or disadvantages.

G. In addition to the above, when SOEs engage in economic activities, and whose activities could affect trade and competition they should:

1. Conduct all business, other than carrying out public service obligations, in accordance with commercial considerations and high standards of responsible business conduct;
2. Avoid activities that directly or indirectly discriminate, on the basis of nationality, against competitors, goods and services.

IV. Equitable treatment of shareholders and other investors

Where SOEs are listed or otherwise include non-state investors among their owners, the state and the enterprises should recognise the rights of all shareholders and ensure shareholders' equitable treatment and equal access to corporate information.

A. The state should strive toward full implementation of the G20/OECD Principles of Corporate Governance when it is not the sole owner of SOEs, and of all relevant sections when it is the sole owner of SOEs. Concerning shareholder protection this includes:

1. The state and SOEs should ensure that all shareholders are treated equitably.
2. SOEs should observe a high degree of transparency, including ~~as a general rule~~ equal and simultaneous disclosure of information, towards all shareholders.
3. SOEs should develop an active policy of communication and consultation with all shareholders.
4. The participation of minority shareholders in shareholder meetings should be facilitated so they can take part in fundamental corporate decisions such as board election. When necessitated, remote participation should be conducted in a manner that ensures equal access to information and opportunities for participation of all shareholders.
5. Transactions between the state and SOEs, and between SOEs, should take place on market consistent terms.

B. National corporate governance codes should be adhered to by all listed, and ~~where practical,~~ unlisted SOEs to the extent possible.

C. Where SOEs are required to pursue public policy objectives that may have a material effect on the company's performance, results and viability, adequate information about these should be available to the public and non-state shareholders at all times.

D. When SOEs engage in co-operative projects such as joint ventures and public-private partnerships, the contracting parties~~y~~ should ensure that contractual rights and obligations are upheld and that disputes are addressed in a timely and objective manner.

V. Disclosure, ~~and~~ transparency and accountability

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.

A. SOEs should report all material ~~financial and non-financial~~ information on the enterprise in line with high-quality internationally recognised standards of corporate disclosure, ~~and~~ including areas of significant concern for the state as an owner and the general public. ~~This includes in particular SOE activities that are carried out in the public interest.~~ With due regard to enterprise capacity and size, ~~examples of~~ such information should include:

1. A clear statement to the public of enterprise objectives and their fulfilment, ~~(for fully-owned SOEs this would~~ includ~~e~~ing any mandate elaborated by the state ownership entity~~)~~;
2. Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public service obligations ~~policy objectives~~;
3. The governance, ownership, and legal and voting structure of the enterprise or group, including the content of any corporate governance code or policy and implementation processes;
4. The remuneration of board members and key executives;
5. 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, if applicable, classification ~~whether they are considered~~ as independent ~~by the SOE board~~;
6. Any material foreseeable risk factors and measures taken to manage such risks;
7. 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;
8. Any material transactions with the state and other related entities including state-owned financial institutions;
9. Relevant liabilities such as debt contracts, including the risk of non-compliance with covenants;
10. Any relevant ~~issues~~ matters and objectives relating to ~~employees~~ sustainability and ~~other~~ stakeholder~~s~~ relations.

B. ~~SOEs' annual financial statements should be subject to an independent external audit based on high-quality standards~~. An annual external audit should be conducted by an independent, competent and qualified auditor in accordance with internationally recognised auditing, ethical and independence standards in order to provide reasonable assurance to the board and shareholders on whether the SOEs' financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework. Specific state control procedures do not substitute for an independent external audit.

C. SOEs should ~~develop efficient internal audit procedures and~~ establish an internal audit function that has the capacity, autonomy and professionalism needed to duly fulfil its function. It should be ~~that is~~ monitored by and report~~s~~ directly to the board and to the audit committee or the equivalent corporate organ.

D. SOEs should have risk management systems to identify, manage, control and report on risks. Risk management systems should be treated as integral to the achievement of objectives and thus embody a coherent and comprehensive set of internal controls, ethics and compliance programmes or measures.

E. The ownership entity should develop consistent reporting on SOEs and publish annually an aggregate report on SOEs, including on financial performance and non-financial performance, such as information related to sustainability, governance aspects, as well as on the achievement of public policy objectives. ~~Good practice calls for the use of web-based~~ The information should give a full, clear and reliable picture of the SOE portfolio and be ~~of~~ high quality, comparable, concise and accessible to stakeholders and the public including through digital communications ~~to facilitate access by the general public~~.

VI. The composition and responsibilities of the boards of state-owned enterprises

The state should ensure that t~~T~~he boards of SOEs should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance, risk management and monitoring of management. They should act with integrity and be held accountable for their actions.

A. The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the enterprise's performance. The role of SOE boards should be clearly defined in legislation, preferably according to company law. The board should be fully accountable to the owners, act in the best interest of the enterprise, taking into account the interests of stakeholders, and treat all shareholders equitably.

B. SOE boards should effectively carry out their functions of setting strategy and supervising management, based on broad mandates and objectives set by the ~~government~~ shareholders. They should have the power to appoint and remove the CEO. They should set executive remuneration levels that ~~are in~~ incentivise managers to act consistent with the long-term interest of the enterprise and its shareholders.

C. SOE board composition should allow the exercise of objective and independent judgement. All board members, including any public officials, should be nominated based on qualifications relevant to the enterprise's sector of activity and business profile, and have equ~~ivalent~~al legal responsibilities. Boards members' professionality and independence should be ensured, for instance through competitive remuneration that incentivises board members to act consistent with the long-term interest of the SOE and its shareholders.

D. An appropriate number of ~~I~~independent board members (non-state and non-executive) should be on each board and on specialised board committees. Good practice calls for the share of independent members to account for the majority of board members. ~~where applicable~~ Independent board members should be free of any material interests or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgement.

E. Mechanisms should be implemented to avoid conflicts of interest preventing all board members from objectively carrying out their board duties and to limit political interference in board processes. Politicians who are in a position to influence materially the operating conditions of SOEs should not serve on their boards. Former such persons should be subject to predetermined cooling-off periods. Civil servants and other public officials can serve on boards under the condition that qualification and conflict of interest requirements apply to them.

F. Good practice calls the Chair to be independent and with a role separate from that of the CEO. The Chair should assume responsibility for boardroom efficiency and, when necessary in co-ordination with other board members, act as the liaison for communications with the state ownership entity. ~~Good practice calls for the Chair to be separate from the CEO.~~

G. ~~If~~Where employee representation on the board is mandated or commonplace, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence.

H. SOE boards should consider setting up specialised committees, composed of independent and qualified members, to support the full board in performing its functions, ~~particularly in respect to~~ in particular the audit committee – or equivalent body – for overseeing disclosure, internal controls and audit-related matter. Other committees, such as remuneration, nomination, ~~and~~ risk management, sustainability or other ad-hoc committees may provide support to the board depending upon the company's size, structure, complexity and risk profile. Their mandate, composition and working procedures should be well defined and disclosed by the board which retains full responsibility for the decisions taken. The establishment of specialised committees should improve boardroom efficiency and should not detract from the responsibility of the full board.

I. SOE boards should, under the Chair's oversight, carry out an annual, well-structured evaluation to appraise their performance and efficiency, and assess whether they possess the right mix of background and competences, including with respect to gender and other forms of diversity.

J. ~~SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent corporate organ.~~ SOE Boards should actively oversee, and ensure implementation of risk management systems. Boards should ensure that these systems are reassessed and adapted to the SOEs' circumstances with a view to establishing and maintaining the relevance and performance of internal controls, policies and procedures.

VII. State-owned enterprises and sustainability

(NEW CHAPTER)

Chapter VII is a new chapter and therefore mostly does not contain any track changes. Parts of the chapter that integrate Recommendations or Annotations from Chapter V. of the current SOE Guidelines on stakeholder relations and responsible business are marked as track changes to indicate draft revisions where they have been made.

The corporate governance framework should provide incentives for state ownership entities and SOEs to make decisions and manage their risks in a way that contributes to SOEs' sustainability and resilience and ensures long-term value creation. Where the state has sustainability goals, the state as owner should set concrete and ambitious, sustainability-related expectations for SOEs, including on disclosure and transparency, the role of the board and stakeholder engagement.

A. Where the state has set sustainability commitments, they should be integral to the state's ownership policy and practices, and be aligned with the state's broader national objectives and commitments related to sustainability. This includes:

1. Setting concrete and ambitious sustainability-related expectations and/or objectives for SOEs, consistent with the ownership policy and practices. In doing so, the state should respect the rights and fair treatment of all shareholders;
2. Communicating and clarifying shareholders' expectations on sustainability through regular dialogue with the boards, with due consideration for stakeholder interests;
3. Assessing, monitoring and reporting on sustainability objectives and performance of SOEs on a regular basis.

B. The state should expect SOE boards to adequately consider sustainability risks and opportunities when fulfilling their key functions. The following prerequisites are essential for ensuring effective sustainability management at enterprise level:

1. SOE boards should develop, implement and disclose sustainability-related strategies, objectives and targets based on verifiable metrics, and in line with shareholders' expectations, applicable legal and regulatory requirements;
2. SOEs should integrate sustainability considerations into their risk management and internal control systems;
3. SOE boards should effectively assess and monitor management performance, including on sustainability. Where SOE boards introduce specific remuneration schemes, such incentives should be carefully balanced and linked to relevant and material risks and the company's

strategy.

C. The state should expect SOEs to be subject to appropriate sustainability reporting and disclosure requirements, based on consistent, comparable and reliable information:

1. Sustainability reporting and disclosure should be aligned with high-quality internationally recognised standards that facilitate the consistency and comparability of sustainability-related disclosure across markets, jurisdictions and companies;
2. Phasing in of expectations or requirements should be considered for annual assurance attestations by an independent, competent and qualified attestation service provider, in accordance with high-quality internationally recognised assurance standards;

D. The state as an owner should set high expectations for SOEs' responsible business conduct; and should fully recognise SOEs' responsibilities towards stakeholders. Such expectations should be disclosed in a clear and transparent manner. In particular:

1. Governments, state ownership entities and SOEs should recognise and respect stakeholders' rights established by law or through mutual agreements;
2. SOEs should develop and encourage meaningful stakeholder engagement in advancing sustainability and ensuring a just transition, particularly from persons or groups that may have an interest in or could be impacted by an enterprise's activities;
3. State ownership entities and SOEs should take action to ensure high standards of integrity in the state-owned sector and to avoid the use of SOEs as conduits for political finance, patronage or personal or related-party enrichment.

Annotations to Chapter I: Rationales for state ownership

The state exercises the ownership of SOEs in the interest of the general public. It should carefully evaluate and disclose the ~~objectives~~ rationales that justify state ownership and subject these to a recurrent review.

The members of the public whose government exercises the ownership rights ~~are~~ should be the ultimate owners of SOEs. This implies that those who exercise ownership rights over SOEs owe duties toward the public that are not unlike the fiduciary duties of a board toward the shareholders, and should act as trustees of the public interest. High standards of transparency and accountability are needed to allow the public to assure itself that the state exercises its powers in accordance with the public's best interest, and that SOEs resources are used in an efficient manner and in line with rationales for ownership.

In OECD countries, the rationales for establishing or maintaining state enterprise ownership typically include one or more of the following: (1) the delivery of public goods or services where state ownership is deemed more efficient or reliable than contracting out to private operators; (2) the operation of natural monopolies where market regulation is deemed infeasible or inefficient; and (3) support for ~~broader~~ limited economic and strategic goals in the national interest, such as maintaining ~~certain~~ specific industries or sectors under national ownership, or shoring up failing companies of systemic importance. Such rationales should be subject to recurrent review and according to a reasonable timeline. The reviews should be subject to high standards of accountability to relevant representative bodies, and the results should be made transparent to the public. SOEs should not be burdened with public policy objectives unrelated to their primary functions and rationales for ownership. The objectives should be assigned in a transparent way and subject to high levels of accountability.

A. The ultimate purpose of state ownership of enterprises should be to maximise long-term value for society, ~~through~~ in an efficient and sustainable manner ~~allocation of resources~~.

The roles that are assigned to SOEs, and the rationales underpinning state enterprise ownership, differ radically across jurisdictions. However, good practice calls for governments to consider and articulate how any given enterprise ~~shall be~~ adds~~ing~~ long-term value for its shareholders, and to the members of the public that are its ultimate owners, ~~through~~ in an efficient and sustainable manner ~~allocation of resources~~. To inform the decision to establish or maintain an enterprise in state ownership, governments should consider whether a more efficient allocation of resources to benefit the public could be achieved through an alternative ownership or ~~taxation structure.~~ through measures such as regulation, subsidies, taxes, public procurement or the establishment of government agencies.

Where SOEs are expected to provide public service~~s~~ obligations ~~then,~~ a number of efficiency considerations impose themselves. The public is best served if services are delivered in an efficient, ~~and~~ transparent and sustainable manner, and when no alternative use of the same fiscal resources could have resulted in better services. Such considerations should guide policy makers' choices in relying on SOEs as delivery-vehicles for public ~~policy~~ service ~~objectives~~ obligations. Where SOEs are engaged in ~~competitive~~ economic activities ~~then~~, they serve the public interest best by maximising long-term value, in a sustainable manner, and generating an adequate revenue stream for the national treasury.

B. The government should develop an ownership policy. The policy should *inter alia* define the overall rationales for state ownership, the state's role in the governance of SOEs, how the state will implement its ownership policy, and the respective roles and responsibilities of those government offices involved in its implementation.

~~Multiple and contradictory rationales for state ownership can lead to either a very passive conduct of ownership functions, or conversely result in the state's excessive intervention in matters or decisions which should be left to the enterprise and its governance organs.~~ In order for the state to clearly position itself as an owner, it should clarify and prioritise its rationales for state ownership by developing a ~~clear~~ coherent and explicit ownership policy. The ownership policy should ideally take the form of a concise, high level policy document that outlines the overall rationales for state enterprise ownership and for individual SOEs, the state's role in the governance of SOEs, how the state will implement its ownership policy, and the respective roles and responsibilities of those government offices involved in its implementation. The ownership policy should be communicated to the public, and to all parts of the government that exercise ownership rights or are otherwise involved in the implementation of the state's ownership policy. This will provide SOEs, the market and the general public with predictability and a clear understanding of the state's overall objectives as an owner.

~~The ownership policy should ideally take the form of a concise, high level policy document that outlines the overall rationales for state enterprise ownership~~. ~~It may be considered good practice to~~ The ownership policy should also include ~~in the ownership policy~~ objectives such as the creation of long-term value, the provision of public services, or strategic goals such as the maintenance of certain industries under national ownership, or economic, environmental and social goals. It is the role of the state to decide the rationales for state ownership, ~~but whatever they are,~~ they should in any case be clearly defined for each SOE. ~~communicated to the public, and to all parts of the government that exercise ownership rights or are otherwise involved in the implementation of the state's ownership policy~~. Where the state's objectives for its SOE portfolio could intersect with the level playing field, the state should limit any distortion via mitigating measures and fully disclose the rationale, justification, and scope of possible distortions of the level playing field, especially if these could negatively affect foreign competitors. A high level of transparency is important to prevent preferential treatment~~, and therefore maximise proceeds~~.

In addition, the ownership policy should include more detailed information on how ownership rights are exercised within the state administration, including the ownership entity's mandate and main functions and the roles and responsibilities of all government entities that exercise state ownership. It should also reference and synthesize the main elements of any policies, laws and regulations applicable to SOEs, as well as any additional guidelines that inform the exercise of ownership rights by the state. Where relevant, the state should also include information on its reform priorities, and/or policy and plans regarding the privatisation of SOEs. ~~A high level of transparency is important to prevent preferential treatment, and therefore maximise proceeds.~~

Multiple and contradictory or unclear rationales for state ownership can lead to either a very passive conduct of ownership functions, or conversely result in the state's excessive intervention in matters or decisions which should be left to the SOE ~~enterprise and its governance organs~~.

C. The ownership policy should be subject to appropriate procedures of ~~political~~ accountability and disclosed to the general public. The government should review at regular intervals its ownership policy and evaluate its implementation.

In developing and updating the state's ownership policy, governments should make appropriate use of public consultation~~. The mechanisms and scope of public consultation vary across countries, but they~~, which should involve notifying and soliciting input from the general public or their representatives. They should, ~~also~~ inter alia, ~~involve~~ consult~~ing~~ broadly with private sector representatives, including investors and market service providers, and with trade union representatives. Effective and early use of public consultation can be instrumental in facilitating acceptance of the ownership policy by market participants and key stakeholders. The development of the ownership policy can also involve consultations with all concerned government entities, for example relevant legislative or parliamentary committees, the state audit institution, as well as relevant ministries and regulators.

The ownership policy should be accessible to the general public and widely circulated amongst the relevant ministries, agencies, SOE boards, management, and the legislature. The ~~political~~ state's commitment can be further strengthened by relying on proper accountability mechanisms such as regular legislative approval and ensuring periodic reviews.

The state should strive to be consistent in its ownership policy and avoid modifying the overall rationales for state ownership too often. However, rationales and objectives may evolve over time, in which case the ownership policy needs to be updated accordingly. Dependent on national context, the best way to do this may include reviews or a re-evaluation of SOE ownership as part of the state budgetary processes, medium-term fiscal plans or in accordance with the electoral cycle. Such reviews can be based on an evaluation of the implementation of the ownership policy, may include undertaking comparisons and benchmarks of SOEs. The evaluation should also consider whether state ownership is still the best instrument to safeguard the public interest.

Any ad-hoc interventions should generally be avoided, but can be necessary, such as in the case of emergency government support. In this case, attention needs to be paid to avoid emergency measures becoming longer-term structural support without long-term rationales in the ownership policies, and to ensure short-term crisis responses do not result in unintended and unjustified negative implications for competition and trade in the medium- and long-term. Governments should draw upon international best practices and act consistent with international agreements on state support. Crises measures should safeguard integrity and transparency and provide for a plan for an exit once the emergency abates by envisaging from the start of the measure a review of the intervention.

Any change in the ownership policy should be disclosed fully transparently, including the rationales behind the need for an update.

D. The state should define the rationales for owning individual SOEs and subject these to recurrent review. The rationales for ownership, and ~~A~~any public policy objectives that individual SOEs, or groups of SOEs, are required to achieve should be clearly linked to their primary functions, mandated by the relevant authorities and publicly disclosed.

The rationales for owning individual enterprises – or as the case may be, classes of enterprises – can vary. For example, sometimes certain groups of enterprises are state-owned because they achieve ~~fulfil~~ important public ~~policy~~ service obligations ~~functions~~, while other groups with predominantly economic activities remain state-owned for strategic reasons, or because they operate in sectors with natural monopoly characteristics~~. Natural monopolies are sectors where it is most effective for production to be undertaken by a single firm. In such cases, the state may deem it more cost efficient to own such enterprises directly rather than to regulate privately-owned monopolies~~. To clarify the respective ~~policy~~ rationales underpinning their maintenance in state ownership, it can sometimes be useful to classify those SOEs into separate categories and define their rationales accordingly. ~~All elements in the chain of agents involved in the governance of SOEs should be made aware of the government's commitment to the present Guidelines.~~ Such rationales should be subject to recurrent review, and publicly disclosed.

SOEs are sometimes expected to fulfil special responsibilities and obligations for social and public policy purposes~~. In some countries this includes a regulation of the prices at which SOEs have to sell their products and services.~~ These special responsibilities and obligations should be clearly mandated and ~~motivated by~~ aligned with national laws and regulations, and clearly linked to their primary functions. They could also be incorporated into corporate bylaws and subsequently transposed by SOEs in their corporate strategy. The market and the general public should be clearly informed about the nature and extent of these obligations, as well as about their overall impact on the SOEs' resources, ~~and~~ economic performance, and where feasible impact on the market. Where individual SOEs engage in economic activities in the course of fulfilling their public service obligations, states should assess if and how these activities intersect with the level playing field, take mitigating measures and fully disclose the rationale behind and justification for possible distortions of the level playing field, especially if these could negatively affect foreign competitors.

Countries differ in respect of the authorities that are mandated to communicate specific public policy objectives ~~obligations~~ to SOEs. In some cases, only the ~~government~~ ownership entity has this power. In others, the legislature can establish such obligations through the legislative process. In the latter case it is important that proper mechanisms for consultation and accountability be established between the legislature and the state bodies responsible for SOE ownership, to ensure adequate co-ordination and avoid undermining the autonomy of the ownership entity.

Annotations to Chapter II: The state's role as an owner

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.

In order to carry out its ownership functions, the government should refer to private and public sector governance standards, notably the G20/OECD Principles of Corporate Governance, which are also applicable to SOEs when it is not the sole owner of SOEs, and of all relevant sections when it is the sole owner of SOEs. In addition, there are specific aspects of SOE governance that either merit special attention or should be documented in more detail in order to guide SOE board members, management and the state ownership entity in effectively performing their respective roles.

A. Governments should simplify and standardise the legal forms under which SOEs operate. Their operational practices should follow commonly accepted corporate norms.

SOEs may have different legal forms from other companies. This may reflect specific objectives or societal considerations as well as special protection granted to certain stakeholders~~. This particularly concerns~~, such as employees whose remuneration may be fixed by regulatory acts or ~~/~~bodies ~~and~~ who benefit from specific pension rights and protection against redundancies equivalent to those provided to civil servants. ~~In a number of cases, SOEs are also to a large extent protected from insolvency or bankruptcy procedures by their specific legal status.~~

The state should ensure that as many elements of the Guidelines as possible are implemented in a consistent manner, despite different legal or corporate forms for SOEs throughout its portfolio.

~~Where this occurs, a number of other elements of the Guidelines have often not been properly implemented. For instance, the SOEs may then differ from private limited liability companies through:~~. This includes (i) the respective authority and power of the board, management and ministries; (ii) the composition and structure of these boards; (iii) the extent to which they grant consultation or decision-making rights to some stakeholders, more particularly, employees; (iv) disclosure requirements; and (v) the extent to which they are subjected to insolvency and bankruptcy procedures. SOEs~~The~~ legal form ~~of SOEs also often includes a~~and the ~~strict~~ definition of ~~the~~ their activities~~y of the SOEs concerned~~, should in general not prevent~~ing~~ them from diversifying or extending their activities in new sectors or overseas, especially if engaged in economic activities. Limits on SOEs activities are often relevant if the SOE carries out important public service obligations, and are aimed ~~Such limits aim~~ to prevent misuse of public funds, stop overly ambitious growth strategies or prevent SOEs from exporting sensitive technologies. Care must be taken to ensure that such legal limits do not hamper the necessary autonomy of the board in carrying out its duties.

When standardising the legal form of SOEs, governments should base themselves as much as possible on corporate law that is equally applicable to privately owned companies and avoid creating a specific legal form, or granting SOEs ~~a~~ privileged status or special protections, when this is not absolutely necessary for achieving the public policy objectives imposed on the enterprise. Standardising of the legal form of SOEs enhances transparency, accountability and facilitates oversight through benchmarking. The standardising should particularly target SOEs engaged in economic activities, availing the same~~. It should focus on making those~~ means and instruments usually available to private owners~~,~~ also ~~available~~ to the state as an owner. Standardising should therefore primarily concern the role and authority of the enterprise's governance organs as well as transparency and disclosure obligations.

B. The government should allow SOEs full operational autonomy to achieve their defined objectives and refrain from unduly intervening in the ~~SOE~~ management of SOEs. The government as a shareholder should avoid redefining SOE objectives in a non-transparent manner and only in cases where there has been a fundamental change of mission.

The prime means for an active and informed ownership by the state are a clear and consistent ownership policy, the development of broad mandates and objectives for SOEs, a structured board nomination process and an effective exercise of established ownership rights. The state's ~~broad~~ mandates and objectives for SOEs should be revised only in cases where there has been a fundamental change of mission. While it may sometimes be necessary to review and subsequently modify an SOE's objectives, the state should refrain from modifying them too often and should ensure that the procedures involved are transparent.

~~This does not imply that the government should not act as an active owner. It means that the ownership entity's authority to give direction to the SOE or its board should be limited to strategic issues and public policy objectives. The state should not be involved in operational decision-making, such as directing the SOE's hiring decisions. The state should publicly disclose and specify in which areas and types of decisions the ownership entity is competent to give instructions.~~

C. The state should let SOE boards exercise their responsibilities and should respect their independence. The ownership entity should establish and maintain appropriate frameworks for communication with SOEs highest governing body, and typically through the Chair.

In the nomination and election of board members, the ownership entity should focus on the need for SOE boards to exercise their responsibilities in a professional and independent manner. It is important that when carrying out their duties individual board members do not act as representatives of different constituencies. Independence requires that all board members carry out their duties in an even-handed manner with respect to all shareholders.

When the state is a controlling owner, ~~it is in a unique position to nominate and elect the board without the consent of other shareholders. This legitimate right comes with a high degree of responsibility for identifying, nominating and electing board members. In this process, and in order to minimise possible conflicts of interest,~~ the ownership entity should avoid electing an excessive number of board members from the state administration. Moreover, board members should only be removed for good cause and their appointment and removal should be independent from the state's election periods or political cycles. This is particularly relevant for SOEs engaged in economic activities, where limiting board membership by representatives of the ownership entity or by other state officials can increase professionalism and~~,~~ help prevent conflict of interest and ~~excessive~~ government intervention in SOE management~~and it may help limit the state's responsibility for decisions taken by SOE boards.~~

Employees of the ownership entity or professionals from other parts of the administration should only be elected to SOE boards if they meet the required competence level for all board members and if they do not act as a conduit for political influence that extends beyond the ownership role. They should have the same duties and responsibilities as the other board members and act in the interest of the SOE and all its shareholders. Disqualification conditions and situations of conflict of interest should be carefully evaluated and guidance provided about how to handle and resolve them. The professionals concerned should have neither excessive inherent nor perceived conflicts of interest. In particular, this implies that they should neither take part in regulatory decisions concerning the same SOE nor have any specific obligations or restrictions that would prevent them from acting in the enterprise's interest. More generally, all potential conflicts of interests concerning any member of the board should be reported to the board which should then disclose these together with information on how they are being managed.

It is important to clarify the respective personal and state liability when state ~~officials~~ representatives are on SOE boards. The state officials concerned may have to disclose any personal ownership they have in the SOE and follow the relevant insider trading regulation. Guidelines or codes of ethics for members of the ownership entity and other state officials serving as SOE board members could be developed by the ownership entity. Such guidelines or codes of ethics should indicate how information passed on to the state from these board members should be handled. Direction in terms of broader policy objectives should be channeled through the ownership entity and enunciated as enterprise objectives rather than imposed directly through board participation. As a general rule, state officials involved in exercising their duties should be held accountable for potential civil or criminal liabilities resulting from corporate misconduct. Ownership entities should respect the confidentiality of board discussions and reporting back by state representatives to the boards, other than through established communication channels should be avoided. Furthermore, strict limitations on the dissemination of this information should be put in place.

~~This does not imply that the government should not act as an active owner.~~ Active ownership ~~It~~ means that the state should have clearly defined rationales, and objectives as an owner, electing competent boards, undertake systematic and continuous monitoring of the SOEs and vote at the general meeting. ~~ownership entity's authority to give direction to the SOE or its board should be limited to strategic matters and public policy objectives.~~

The state ownership entity should establish and maintain appropriate frameworks for communication with SOEs highest governing body, and typically through the Chair. Public service objectives, if not established by regulation or legislation, should be communicated in the government's ownership policy or with the owners' expectations shared with the entire board, and be made public. If there are non-state shareholders, such expectations should be approved by the annual general shareholders meeting and also be made public. The SOE should maintain accurate records of communication between the ownership entity and SOEs. The state should not be involved in operational decision-making, such as directing the SOE's hiring decisions. The state should publicly disclose and specify in which areas and types of decisions the ownership entity is competent to give instructions.

When representatives of government, including those of the ownership entity, overstep their role and/or act in a way that that appears to be irregular, SOEs should be able to seek advice or to report it through established reporting channels.

D. The exercise of ownership rights should be clearly identified within the state administration~~. The exercise of ownership rights should be~~ and centralised in a single ownership entity~~, or,~~. ~~i~~If this is not possible, relevant ownership functions should be carried out by a co-ordinating body with a clear mandate to act on a whole of government basis. ~~This "ownership entity" should have the capacity and competencies to effectively carry out its duties.~~

It is critical for the ownership function within the state administration to be clearly identified, whether it is located in a central ministry such as the finance or economics ministries, in a separate administrative or corporate entity, or within a specific sector ministry. The ownership function of SOEs is the entity that exercises the power, responsibility, or steering ability to appoint boards of directors; set and monitor objectives; and/or vote company shares on behalf of the government.

Ownership models can be broadly classified into one or more of the following types: a centralised model, a coordinating agency model, a dual ownership model, a twin track model and a decentralised ownership model.

Centralisation can be ~~is~~ an effective way to clearly separate the exercise of the ownership function from other potentially conflicting activities performed by the state, particularly market regulation and industrial policy as mentioned in Guideline III.A below, provided that the ownership can be sufficiently well resourced, and its operations shielded from irregular practices.

A centralised ownership model is characterised by one central decision-making body acting as shareholder in the majority of all or certain categories of SOEs controlled or held, directly or indirectly by the state. Its role will include nominating directors, setting targets and tracking and evaluating SOEs' operations. The ownership entity is also responsible for setting and monitoring broad mandates and objectives for SOEs based on its ownership policy, coordinating (when relevant) its decisions with other government stakeholders, and defining applicable frameworks and important matters relating to the governance of SOEs.

~~To achieve a clear identification of the ownership function, it can be~~The centralised ~~in a single~~ownership entity~~, which is~~ should be independent or under the authority of one minister. This approach helps in clarifying the ownership policy and its orientation, and also helps ensure its more consistent implementation. Centralisation of the ownership function also allows for reinforcing and bringing together relevant competencies by organising "pools" of experts on key matters, such as financial reporting or board nomination. In this way, centralisation can be a major force in the development of aggregate reporting on state ownership. ~~Finally, centralisation is also an effective way to clearly separate the exercise of the ownership function from other potentially conflicting activities performed by the state, particularly market regulation and industrial policy, as mentioned in Guideline III.A below.~~

~~The ownership entity should have the requisite capacities and competencies to effectively carry out its duties, and be supported by formal regulations and procedures consistent with those applicable to the companies in which it exercises the state's ownership rights.~~

If the ownership function is not centralised, a minimum requirement is to establish a strong co-ordinating entity among the different administrative departments or corporate entities involved which has the mandate to operate on a whole of government basis. This entity should be a specialised government unit or corporate entity which operates in an advisory capacity to other shareholding ministries on best practices in corporate governance, technical and operational issues and which has the clear mandate to monitor SOE performance. This will help to ensure that each SOE has a clear mandate and receives a coherent message in terms of strategic guidance or reporting requirements. The co-ordinating entity would harmonise and co-ordinate the actions and policies undertaken by different ownership departments in various ministries, and help ensure that decisions regarding enterprise ownership are taken on a whole-of-government basis – thus ensuring that SOEs are not subject to competing or contradictory policy mandates. The co-ordinating entity should also be in charge of establishing an overall ownership policy, developing specific guidelines and unifying practices among the various ministries. The establishment of a co-ordinating entity can also facilitate the centralisation of some key functions, in order to make use of specific expertise and ensure independence from individual sector ministries. For example, it can be useful for the co-ordinating entity to undertake the function of board nomination.

Exercising ownership rights through state-owned holding companies (SOHCs) is another way of centralisation and, depending on its own corporate governance arrangements and legal form, can permit a separation of the state's ownership, policy and regulatory functions. In some contexts, the indirect exercise of ownership via SOHCs can ensure arm's length separation from other government functions thereby shielding SOEs activities from undue political or day-to-day interference. Many SOHC's have as a mission to act as an owner-representative and to manage the state' portfolio as an active asset manager or investment company with the aim of sustainably growing shareholder value through long-term and active ownership. If an SOHC is incorporated as a private entity under applicable company law, it's corporate form may allow for it restructure or divest its portfolio assets with more flexibility and agility in line with its overall mission. Experience demonstrates that SOHCs may not be suitable in all contexts, especially if its own governance is vulnerable to undue political interference or other irregular practices. The state as the ultimate beneficiary owner of SOHC should establish rigorous financial and non-financial objectives for SOHCs and their portfolio enterprises, and establish legal and regulatory frameworks that ensure SOHCs are conducive to the highest standards of corporate governance, integrity, transparency and accountability.

E. The ownership entity should have the capacity and competencies to effectively carry out its duties and, be held accountable to the relevant representative bodies. It should ~~and~~ have clearly defined relationships with relevant public bodies~~, including the state supreme audit institutions~~.

The ownership entity should have the requisite capacities, personnel, and competencies to effectively carry out its duties, and be supported by formal regulations and procedures consistent with those applicable to the companies in which it exercises the state's ownership rights.

The relationship of the ownership entity with other government bodies as well as with other state-owned institutional investors such as sovereign wealth funds, development banks and pension funds controlled or influenced by the state should be clearly defined. A number of state bodies, ministries, ~~or~~ administrations or financial SOEs may have different roles vis-à-vis the same SOEs. In order to increase public confidence in the way the state manages ownership of SOEs, it is important that these different roles be clearly identified and explained to the general public. For instance, the ownership entity should maintain co-operation and continuous dialogue with the state supreme audit institutions responsible for auditing the SOEs. It should support the work of the state audit institution and take appropriate measures in response to audit findings.

The ownership entity should be held clearly accountable for the way it carries out state ownership. Its accountability should be, directly or indirectly, to bodies representing the interests of the general public, such as the legislature. Its accountability to the legislature should be clearly defined, as should the accountability of SOEs themselves, which should not be diluted by virtue of the intermediary reporting relationship.

Accountability should go beyond ensuring that the exercise of ownership does not interfere with the legislature's prerogative as regards budget policy. The ownership entity should report on its own performance in exercising state ownership and in achieving the state's objectives in this regard. It should provide quantitative and reliable information to the public and its representatives on how the SOEs are managed in the interests of their owners. In the case of legislative hearings, confidentiality issues should be dealt with through specific procedures such as confidential or closed meetings. While generally accepted as a useful procedure, the form, frequency and content of this dialogue may differ according to the constitutional law and the different legislative traditions and roles.

Accountability requirements should not unduly restrict the autonomy of the ownership entity in fulfilling its responsibilities. For example, cases where the ownership entity needs to obtain the legislature's ex ante approval should be limited and relate to significant changes to the overall ownership policy, significant changes in the size of the state sector and significant transactions (investments or disinvestment). More generally, the ownership entity should enjoy a certain degree of flexibility vis-à-vis its responsible ministry, where applicable, in the way it organises itself and takes decisions with regards to procedures and processes. The ownership entity could also enjoy a certain degree of budgetary autonomy that can allow flexibility in recruiting, remunerating and retaining the necessary expertise, for instance through fixed-term contracts or secondments from the private sector.

F. The state should act as an informed and active owner and should exercise its ownership rights according to the legal structure of each enterprise and depending on its respective degree of ownership and control.

To avoid either undue political interference or lack of oversight due to passive state ownership that results in negative performance, it is important for the ownership entity to focus on the effective exercise of ownership rights. The state as an owner should typically conduct itself as any major shareholder when it is in a position to significantly influence the enterprise and be an informed and active shareholder when holding a minority post. The state needs to exercise its rights in order to protect its ownership and optimise its value.

Among the basic shareholder rights are: (i) to participate and vote in shareholder meetings; (ii) to obtain relevant and sufficient information on the corporation on a timely and regular basis; (iii) to elect and remove members of the board; (iv) to approve extraordinary transactions; and (v) to vote on dividend distribution and enterprise dissolution. The ownership entity should exercise these rights fully and judiciously, as this would allow the necessary influence on SOEs without infringing on their day-to-day management. The effectiveness and credibility of SOE governance and oversight will, to a large extent, depend on the ability of the ownership entity to make an informed use of its shareholder rights and effectively exercise its ownership functions in SOEs.

An ownership entity needs unique competencies and should have professionals with legal, financial, economic, sectorial, sustainability-related and management skills that are experienced in carrying out fiduciary responsibilities. Such professionals must also clearly understand their roles and responsibilities as civil servants with respect to the SOEs. In addition, the ownership entity should include competencies related to the specific public policy objectives or public service obligations that some SOEs under their supervision are required to undertake ~~in terms of public service provisions~~.

The ownership entity should moreover have competencies with regard to and be attentive to digital technologies and the risks and chances of their use in the oversight and implementation of corporate governance regulatory requirements and practices. Digital technologies may be used to enhance the oversight of ownership requirements, but also require that there is due attention to the management of associated risks. Important considerations include ensuring the quality of data; ensuring that staff have proper technical competence; considering interoperability between systems in the development of reporting formats; and managing third-party dependencies; digital security risks; and data security processes and measures. While technologies such as artificial intelligence and algorithmic decision-making have been used mainly in the market supervisory processes, technological advances may open doors to their use in ownership practices. As technologies evolve and may serve to strengthen corporate governance practices, the regulatory framework may require review and adjustments to facilitate their use.

The ownership entity should also have the possibility to have recourse to outside advice and to contract out some aspects of the ownership function, in order to exercise the state's ownership rights in a better manner. It could, for example, make use of specialists for carrying out evaluation, active monitoring, or proxy voting on its behalf where deemed necessary and appropriate. The use of short-term contracts and secondments can be useful in this regard.

~~Its p~~Prime responsibilities of the ownership entity include:

The applicability of these responsibilities depends on the degree of ownership of the state over the SOE. If the SOE is indirectly held by the state via another parent SOE (as part of a corporate group structure), it is the parent company and not directly the state who exercises the following responsibilities. In the case of other shareholders, the ownership rights need to be exercised in accordance with all of these, in line with general corporate law, by-laws and regulations.

1. **Being represented at the general shareholders meetings and effectively exercising voting rights;**

The state as an owner should fulfil its fiduciary duty by exercising its voting rights, or at least explain if it does not do so. The state should not find itself in the position of not having reacted to propositions put before the SOEs' general shareholder meetings. It is important to establish appropriate procedures for state representation in general shareholders meetings. This is achieved by clearly identifying the ownership entity as representing the state's shares.

For the state to be able to express its views on issues submitted for approval at shareholders' meetings, it is further necessary that the ownership entity organises itself to be able to present an informed view on these issues and articulate it to SOE boards via the general shareholders meeting.

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;

The ownership entity should ensure that SOEs have efficient and well-functioning professional boards, with the requisite ~~required~~ mix of competencies to fulfil their responsibilities. This will involve establishing a structured nomination process and playing an active role in this process. This will be facilitated if the ownership entity is given sole responsibility for organising the state's participation in the nomination process in the case it directly holds the SOE's shares.

The nomination of SOE boards should be made transparent~~,~~ in the form of a clearly structured board profile and based on an appraisal of the variety of skills, competencies and experiences required, including for its specialised committees. Competence and related experience requirements should derive from an evaluation of the incumbent board and needs related to the enterprise's long-term strategy. These evaluations should also take into consideration the role played by employee board representation when this is required by law, mutual agreements or is commonplace. To base nominations on such explicit competence requirements and evaluations will likely lead to more professional, accountable and ~~business~~ goal-oriented boards.

SOE boards should also be able to make recommendations to the ownership entity concerning the approved board member profiles, skill requirements and board member evaluations. Setting up nomination committees or specialised commission or "public board" to oversee nominations may be useful, helping to focus the search for good candidates and in structuring further the nomination process. ~~In some countries, it is also considered good practice to establish a specialised commission or "public board" to oversee nominations in SOE boards. Even though such commissions or public boards might have only recommendation powers, they could have a strong influence in practice on increasing the independence and professionalism of SOE boards.~~ Proposed nominations should be disclosed in advance of the general shareholders meeting, with adequate information about the professional background and expertise of the respective candidates.

It could also be useful for the ownership entity to maintain a database of qualified candidates, developed through an open competitive process. The use of professional staffing agencies or international advertisements is another means to enhance the quality of the search process. These practices can help to enlarge the pool of qualified candidates for SOE boards, particularly in terms of private sector expertise and international experience. The process may also favour greater board diversity, including gender diversity.

Some jurisdictions have established mandatory quotas or voluntary targets for female participation on boards and senior management (including in the executive boards in two-tier systems). The ownership entity should consider the OECD standards on gender, and other forms of diversity, as relevant to the jurisdictions in its nomination practices. This may be based on diversity criteria such as gender, age or other demographic characteristics, as well as on experience and expertise, for example on accounting, digitalisation, sustainability, risk management or specific sectors.

Ownership entities should also consider additional and complementary measures to strengthen the female talent and diversity pipeline aimed at enhancing board and management diversity.

~~The ownership entity should consider the OECD Recommendation on Gender Equality in Education, Employment and Entrepreneurship. It recommends that jurisdictions encourage measures such as voluntary targets, disclosure requirements and private initiatives that enhance gender diversity on boards and in senior management of listed companies and consider the costs and benefits of other approaches such as boardroom quotas. Where SOEs provide public services, the recommendations regarding gender equality in the public sector are also pertinent. According to these, the authorities should take measures including introducing mechanisms to improve the gender balance in leadership positions in the public sector, such as disclosure requirements, target setting or quotas for women in senior management positions.~~

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;**

The state as an active owner should, as mentioned above, define and communicate broad mandates and objectives for fully state-owned SOEs. Where the state is not the sole owner of an SOE, it is generally not in a position to formally "mandate" the fulfilment of specific objectives, but should rather communicate its expectations via the standard channels as a significant shareholder.

SOE mandates are concise documents, sometimes reflected in laws, that give a brief overview of an SOE's high-level long-term objectives, in line with the established rationale for state ownership in the enterprise. A mandate will usually define the predominant activities of an SOE and give some indications regarding its main economic and, where relevant, public policy objectives. ~~For example, the state might define the mandate of its state-owned postal services operator as follows: "To operate the national postal service on a self-sustaining basis and to maintain universal service at affordable prices to meet the needs of the national population".~~ Clearly defined mandates help ensure appropriate levels of accountability at the enterprise level, and can help limit unpredictable changes to an SOE's operations, such as non-recurring special obligations imposed by the state that might threaten an SOE's commercial viability. They also provide a framework to help the state define and subsequently monitor the fulfilment of an SOE's more immediate-term objectives and targets.

In addition to defining the broad mandates of SOEs, the ownership entity should also communicate more specific financial, operational and non- financial performance objectives to SOEs, and regularly monitor their implementation. This will help in avoiding the situation where SOEs are given excessive autonomy in setting their own objectives or in defining the nature and extent of their public policy objectives ~~service obligations~~. The objectives may include avoiding market distortion and pursuing profitability, expressed in the form of specific targets, such as rate-of-return targets, dividend policy and guidelines for assessing capital structure appropriateness. Setting objectives may include trade-offs, for example between shareholder value, long term investment capacity, public policy objectives, public service obligations and even job security. The state should therefore go further than defining its main objectives as an owner; it should also indicate its priorities and clarify how inherent trade-offs shall be handled. In doing so, the state should avoid interfering in operational matters, and thereby respect the independence of the board.

4. **Setting up reporting systems that allow the ownership entity to regularly monitor ~~audit~~ and assess SOE performance, and oversee and monitor their compliance with applicable corporate governance standards, including by making use of digital technologies;**

In order for the ownership entity to make informed decisions on key corporate matters, it should ensure that it receives all necessary and relevant information in a timely manner. The ownership entity should also establish means that make it possible to monitor SOEs' activity and performance on a continuous basis, including by making use of digital technologies. The ownership entity should ensure that adequate external reporting systems are in place for all SOEs. The reporting systems should give the ownership entity a true picture of the SOE's performance or financial situation, enabling it to react on time and to be selective in its intervention.

The ownership entity should develop the appropriate devices and select proper valuation methods to monitor SOEs' performance based on their established objectives. It could be helped in this regard by developing systematic benchmarking of SOE performance, with private or public sector entities, both domestically and abroad. For SOEs with no comparable entity against which to benchmark overall performance, comparisons can be made concerning certain elements of their operations and performance. This benchmarking should cover productivity and the efficient use of labour, assets and capital. This benchmarking is particularly important for SOEs operating in sectors where they do not face competition. It allows the SOEs, the ownership entity and the general public to better assess SOE performance and reflect on their development.

Effective monitoring of SOE performance can be facilitated by having adequate accounting and audit competencies within the ownership entity to ensure appropriate communication with relevant counterparts, both with SOEs' financial services, its internal audit function and specific state controllers. The ownership entity should also require that SOE boards establish adequate internal controls, ethics and compliance measures for detecting and preventing violations of the law.

5. **Developing a disclosure policy for SOEs that identifies what information should be publicly disclosed, the appropriate channels for disclosure, and mechanisms for ensuring quality of information;**

In order to ensure adequate accountability by SOEs to shareholders, reporting bodies and the broader public, the state as an owner should develop and communicate a coherent transparency and disclosure policy for the enterprises it owns. The disclosure policy should emphasise the need for SOEs to report material information. The development of the disclosure policy should build on an extensive review of existing legal and regulatory requirements applicable to SOEs, as well as the identification of any gaps in requirements and practices as compared with good practice and national listing requirements. Based on this review process, the state might consider a number of measures to improve the existing transparency and disclosure framework, such as proposing amendments to the legal and regulatory framework, or elaborating specific guidelines, principles or codes to improve practices at the enterprise level. The process should involve structured consultations with SOE boards and management, as well as with regulators, members of the legislature and other relevant stakeholders.

The ownership entity should communicate widely and effectively about the transparency and disclosure framework for SOEs, and also encourage implementation and ensure quality of information at the enterprise level. Examples of such mechanisms include: the development of guidance manuals and training seminars for SOEs; special initiatives such as performance awards that recognise individual SOEs for high-quality disclosure practices; independent, external assurance and mechanisms to measure, assess and report on implementation of disclosure requirements by SOEs.

6. **~~When appropriate and permitted by the legal system and the state's level of ownership,~~ Maintaining, as appropriate, continuous dialogue with external auditors and specific state control organs;**

National legislation differs concerning the communication with external auditors. In some jurisdictions, this is the prerogative of the board of directors. In others, in the case of ~~wholly~~fully-state owned enterprises, the ownership function as the sole representative of the annual general meeting is expected to communicate with the external auditors. In this case the ownership entity will need the requisite capacity, including detailed knowledge of financial accountancy, to fill this function. Depending on the legislation, the ownership entity may be entitled, through the annual shareholders' meeting, to nominate and even appoint the external auditors. Regarding ~~wholly~~fully-owned SOEs, the ownership entity should maintain a continuous dialogue with external auditors, as well as with the specific state controllers when the latter exist. This continuous dialogue could take the form of regular exchange of information, meetings or discussions when specific problems occur. External auditors will provide the ownership entity with an external, independent and qualified view on the SOE performance and financial situation. However, continuous dialogue of the ownership entity with external auditors and state controllers should not be at the expense of the board's responsibility.

When SOEs are publicly traded or partially-owned, the ownership entity must respect the rights and fair treatment of minority shareholders. The dialogue with external auditors should not give the ownership entity any privileged information and should respect regulation regarding privileged and confidential information.

7. **Ensuring that ownership rights are exercised on a whole-of-government basis, while preventing conflicts of interests in the exercise of its responsibilities, when other public sector entities exercise ownership rights;**

The state should directly exercise ownership rights on a “whole of government” basis. Where appropriate, public sector share owners should be allowed and encouraged to cooperate and coordinate their actions in nominating and electing board members, placing proposals on the agenda and holding discussions directly with the SOE in order to improve corporate governance, subject to shareholders’ compliance with applicable law, including for example, beneficial ownership reporting requirements.

It must be recognised, however, that co-operation among shareholders should not be used to manipulate markets, and safeguards may be needed to prevent anticompetitive behavior, abusive actions, and ensure shareholders’ equitable treatment in line with recommendations covered under Chapter IV of the SOE Guidelines.

Such co-operation or co-ordination should not come at the expense of public sector entities’ ability to fulfil any fiduciary obligations, to avoid conflicts of interest in the exercise of their responsibilities towards their clients. They should develop and disclose their policies on how they exercise ownership functions in SOEs they invest in and how they manage conflicts of interest, and in line with OECD corporate governance standards.

8. **Establishing a clear overarching remuneration policy for SOE boards that fosters the long- and medium-term interest of the enterprise and can attract and motivate qualified professionals.**

Various policy approaches underpinning board remuneration exist across countries. Establishing a clear overarching remuneration policy is important to set broad guidelines or principles on remuneration, typically set out in the ownership policy. There is a strong case for aligning the remuneration of board members of SOEs with ~~private sector~~ market practices. For SOEs with predominantly economic objectives operating in a competitive environment, board remuneration levels should be aligned with the longer-term interests of the SOEs and reflect market conditions insofar as this is necessary to attract and retain highly qualified board members. However, care should also be taken to effectively manage any potential backlash against SOEs and the ownership entity due to negative public perception triggered by excessive board remuneration levels. This can pose a challenge for attracting top talent to SOE boards, although other factors such as reputational benefits, prestige and access to networking are sometimes considered to represent non-negligible aspects of board remuneration.

Annotations to Chapter III: State-owned enterprises in the marketplace

Consistent with the rationale for state ownership, the legal, ~~and~~ regulatory and policy framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs ~~undertake~~ engage in economic activities.

When SOEs engage in economic activities then it is commonly agreed that those activities must be carried out without any undue advantages or disadvantages relative to other SOEs or private enterprises. There is less consensus about how a level playing field is to be obtained in practice – particularly where SOEs combine their economic activities with non-trivial public policy objectives. In addition to specific challenges such as ensuring legal, administrative, tax, debt and regulatory neutrality ~~equal financial, regulatory and tax treatment~~ come some more overarching issues, including identifying the cost of public service ~~activities~~ obligations and, where feasible, separation of economic activities and public policy objectives. The OECD Recommendation on Competitive Neutrality [OECD/LEGAL/0462] ~~publication~~ ~~OECD (2012) Competitive Neutrality: Maintaining a Level Playing Field between Public and Private Business, which provides best practices from OECD Member Countries, should serve as a point of inspiration for regulators and policy makers.~~ should be observed. Another challenge is the evolving internationalisation of SOEs and their participation in markets and value chains, which requires further solutions to prevent and mitigate possible distortions of the playing field.

A. There should be a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation and policy making.

When the state plays a dual role of market regulator and owner of SOEs with economic operations ~~(e.g. in newly deregulated and often partially privatised network industries)~~ the state becomes at the same time a major market player and an arbitrator. This can create conflicts of interest that are neither in the interest of the enterprise, the state nor the public. Full and transparent ~~administrative and legal~~ separation of responsibilities for ownership and market regulation is a fundamental prerequisite for creating a level playing field for SOEs and private companies and for avoiding distortion of competition as well as undue influence by the state, and therefore also a key recommendation of the OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises, which should be fully implemented by adherents. This would include ensuring that any government bodies that are responsible for regulating the market or relevant industry are separate and distinct from government bodies that have ownership responsibilities over SOEs in the relevant industry. ~~Such separation is also advocated by the OECD Principles of Regulatory Reform.~~

Another important case is when SOEs are used as delivery vehicles for specific public policy objectives ~~goals~~, such as the ~~implementation of industrial policy~~ the advancement of sustainable development or the pursuit of macro-stabilisation or economic growth objectives. In such cases, the lack of separation between the ownership and policy formulation functions is problematic for a number of reasons highlighted throughout the Guidelines, and it can easily result in goals confusion and conflicts of interest between branches of the state. A separation of ~~industrial~~ public policy and ownership need not prevent necessary co-ordination between the relevant bodies~~., and i~~It will enhance the identification of the state as an owner and will favour transparency in defining objectives and monitoring performance. Particularly in the field of sustainability, the separation of different state functions should be safeguarded, while at the same time pursuing a whole of government approach to implement national sustainability objectives in co-ordination with relevant public authorities.

In order to prevent conflicts of interest, it is also necessary to separate clearly and transparently the ownership function from any entities within the state administration which might be clients or main suppliers to SOEs. Legal as well as non-legal barriers to fair procurement should be removed. In implementing effective separation between the different state roles with regard to SOEs, both perceived and real conflicts of interest should be taken into account.

B. All s~~S~~takeholders ~~and other interested parties, including creditors and competitors,~~ should have access to efficient redress through unbiased legal or arbitration processes when they consider that their rights have been violated. SOEs' legal form should allow creditors to press their claims and to initiate insolvency procedures.

SOEs as well as the state as a shareholder should not be protected from challenge via the courts in case they are accused of infringing the law or disrespecting contractual obligations. Stakeholders should be able to challenge SOEs and the state as an owner in courts ~~and/~~or tribunals and be treated fairly and equitably in such cases by the judicial system. They should be able to do so without having to fear an adverse reaction from the state powers exercising ownership over the SOE that is subject to the dispute. SOEs should also be subject to bankruptcy rules equivalent to those for competing enterprises.

C. Where SOEs ~~combine~~ engage in both economic activities and fulfil public policy objectives, ~~high standards of transparency and disclosure regarding their cost and revenue structures must be maintained~~ the latter should be transparently and specifically identified, allowing for an attribution to main activity areas.

Where SOEs ~~combine~~ engage in both economic activities and public policy objectives, achieving public policy objectives will in certain limited circumstances require exceptions to competitive neutrality standards when these activities amount to or include economic activities at the same time, or when it is not possible to prevent that advantages granted to or by the SOE under public policy objectives are carried over to economic activities. In this case, it is particularly important to fully disclose all public policy objectives, their reasoning, scope and related compensation or advantages. In such cases, exceptions to competitive neutrality should be limited to the extent necessary to achieve the overriding public policy objective. When SOEs engage in economic activities that are not affected by public service obligations, or economic activities can otherwise be efficiently singled out, a structural or accounting separation of those activities~~, when feasible and efficient,~~ should ~~can~~ facilitate the process of identifying, costing and funding public service obligations ~~policy objectives~~ transparently.

In particular:

1. **~~h~~High standards of transparency and disclosure regarding their cost and revenue structures must be maintained;**

Whether activities are considered economic activities or not, as well as whether they are affected by public service obligations or not, they should be transparently and specifically identified and disclosed. ~~Structural separation implies the division of a formerly integrated entity into economic activities and parts tasked with carrying out public policy objectives.~~ Ideally,~~There are different degrees of separation ranging from~~ accounting, functional or corporate separation should be introduced so that the different activities can be accounted for separately. However, it must be recognised that depending on individual SOEs' production factors, including technology, capital equipment and human capital, structural separation is not always feasible and, where feasible, is sometimes not economically efficient. The benefits and costs of structural separation should be carefully balanced against the benefits and costs of behavioural measures.

Economic activities of entities which remain integrated ~~with other parts of the government sector~~ typically share costs, ~~and/or~~ assets ~~and~~ or liabilities. Ensuring a level playing field then requires, first, a high level of transparency and disclosure regarding the cost structure. This point is further accentuated where the ~~public policy objectives of an~~ SOE are subject to government subsidies or other preferential treatment. Secondly, a separation of costs and assets between accounts corresponding to economic activities and ~~public policy objectives~~ public service obligations should be undertaken. ~~Such efforts have been the object of international rulemaking.~~ The separation of economic activities and public ~~policy objectives~~ service obligations also helps avoid market-distorting cross-subsidisation between the two types of activities. If possible, overheads that cannot be clearly attributed to either economic activities or activities carried out under public service obligations should be broken down and distributed by percentage.

2. **Net costs related to achieving public service obligations should be separately funded, proportionate and disclosed, ~~allowing for an attribution to main activity areas,~~ ensuring that compensation is not used for cross-subsidisation;**

In order to maintain a level playing field with private competitors, SOEs need to be adequately compensated for the ~~fulfilment~~ achievement of public service obligations ~~policy objectives~~, with measures taken to avoid both over compensation and under compensation. On the one hand, if SOEs are over compensated for their public service obligations ~~policy activities~~, this can lead them to be less efficient in delivering goal achievement and may also amount to an effective subsidy on their competitive activities, thus distorting the level playing field with private competitors. On the other hand, under compensation for public service obligations ~~policy activities~~ can jeopardise the viability of the enterprise and put it at a disadvantage relative to competitors.

It is therefore important that any net costs related to the ~~fulfilment~~ achievement of public service obligations ~~policy objectives~~ be clearly identified, disclosed and adequately compensated ~~separately by the state~~ on the basis of specific legal provisions and/or through contractual mechanisms, such as management or service contracts. Related funding arrangements should also be disclosed. Compensation should be structured in a way that avoids market distortion. This is particularly the case if the enterprises concerned are pursuing public service obligations ~~policy objectives~~ in addition to economic activities. ~~Where SOEs are profitable the compensation can take the form of foregone dividend revenues by the state, having the equivalent effect of a subsidy, but regardless of forms the compensation should be identified and accounted for.~~ It is important that compensation provided to SOEs be calibrated to the ~~actual~~ net costs of fulfilling well-defined public service obligations ~~policy objectives~~ and not be used to offset any financial or operational inefficiencies. Compensation should never be used for financing SOEs' economic activities, including in other markets, or for cross-subsidisation of other SOEs or private companies. The funding and fulfilment of public service obligations ~~policy objectives~~ should ~~also~~ be monitored, ~~and~~ evaluated through the overall performance monitoring system and periodically reviewed. Establishing or maintaining independent oversight and monitoring should ensure that funding arrangements for public service obligations is calculated based on clear targets and objectives, proportionate, transparent, and based on efficiently incurred costs, including capital costs, and periodically reviewed.

3. **As a general rule, state-owned enterprises should not be used to subsidise or grant advantages to other commercial entities or to cause unfair disadvantages to other commercial entities. If this does occur, care should be taken to ensure that: (i)**

support measures are consistent with applicable competition, trade and investment rules; and (ii) the support measures and their funding are clearly defined and publicly disclosed.

Regardless of whether a state-owned enterprise engages in public policy objectives, economic activities, or a combination thereof, SOEs should, as a general rule, not be used to subsidise commercial entities and should ensure that any such support measures are both transparent and consistent with trade and competition obligations.

However, public service obligations may sometimes lead SOEs to allocate grants, loans or other advantages to other commercial entities. The decision on whether or not to assign such a role to SOEs should take into account similar considerations as those raised in Guideline I.A, namely maximising long-term value in an efficient and sustainable manner. Any such obligations should not result in unfair disadvantages that are either deliberate, without legal basis or disproportionate.

Examples of advantages that may cause concern, especially if provided as part of a public service obligations, include subsidies, favourable loans, loan guarantees, investment in capital or equity, as well as in-kind support or at below-market prices such as energy inputs, real estate, information technology, infrastructure or access to data and information resources. The provision of support via SOEs should be consistent with applicable competition, trade and investment rules.

Where the support granted via SOEs aims to correct demonstrated market failures to achieve overriding public policy objectives, concerns about the competitive landscape should normally not arise. Examples include efforts to ensure the provision of goods and services for which there is no commercial market or which private sector entities are unwilling to provide. When intervening in markets where competition does actually or potentially exist, care must be taken to assess the impact on market efficiency and its economic costs. Consistent with the above, costs related to the attainment of public policy objectives should be disclosed, including by the SOEs concerned.

Care should be taken to ensure that any support measures are consistent with existent laws, regulations and international obligations. The allocation of grants, loans or other advantages to enterprises may be inconsistent with international rules for trade and investment, and may hinder competitive neutrality.

D. ~~As a guiding principle,~~ The state should not exempt SOEs, when ~~undertaking~~ engaging in economic activities, ~~should not be exempt~~ from the application and enforcement of ~~general~~ laws, ~~tax codes and~~ regulations and market-based mechanisms and should ensure tax, debt and regulatory neutrality to prevent undue discrimination between SOEs and their competitors. ~~Laws and regulations should not unduly discriminate between SOEs and their market competitors.~~ ~~SOEs' legal form should allow creditors to press their claims and to initiate insolvency procedures.~~

When SOEs engage in economic activities, ~~Although in some countries SOEs are~~ exemptions, in law or in practice, from certain laws and regulations otherwise applicable to private sector companies (e.g. tax, administrative, competition and bankruptcy laws as well as zoning regulations and building codes), ~~such exemptions~~ should~~d generally~~ be avoided except for the cases explained under C.~~; where they exist, they should be limited and transparent, and SOEs, to the extent possible, should adhere to the policies underpinning those laws and regulations. Any exemptions from the application of general laws or regulations that result in favourable treatment for SOEs, or affect public safety, should be disclosed, either by the state ownership entity or by individual SOEs.~~

SOEs and their private competitors should generally be treated equally, including under national treatment and market access rules. This includes the application of the OECD Declaration on International Investment and Multinational Enterprises and the OECD Code~~s~~ of Liberalisation of Current Invisible Operations [OECD/LEGAL/0001], where applicable.

When SOEs are subject to undue advantages due to their public ownership, (e.g. preferential treatment and regulatory insulation, soft budget constraints and access to explicit or implicit state guarantees and below-market financing) they may also be less reactive market-based mechanisms (for example carbon pricing mechanisms or emissions trading schemes aimed at mitigating carbon emissions). The same is true when lower standards of responsible business conduct are expected of SOEs.

E. SOEs' economic activities should face market consistent conditions ~~regarding access~~ including with regard to debt and equity finance.

~~Whether financing for an SOE's economic activities comes from the state budget or the commercial marketplace,~~ M~~m~~easures should be implemented to ensure that the ~~terms~~ SOEs' economic activities including the purchase and sale of all goods and services and conditions regarding access to, granting and receiving debt and equity finance ~~of both debt and equity financing~~ should face market consistent conditions, irrespective of whether financing for an SOE's economic activities comes from the state budget, other SOEs, or the commercial marketplace.

In particular:

1. **All business relations of SOEs', including ~~relations~~ with ~~all~~ financial institutions, ~~as well non-financial SOEs~~ should be based on purely commercial grounds;~~.~~**

Creditors sometimes seem to assume that there is an implicit state guarantee on SOEs' debts. This situation has in many instances led to greater access to funding or artificially low funding costs disrupting the competitive landscape. Moreover, in those countries where state-owned financial institutions or state-owned institutional investors tend to be among the main creditors of SOEs involved in economic activities, there is great scope for conflicts of interest. Reliance on state-owned financial institutions and investors may shelter SOEs from a crucial source of market monitoring and pressure, thereby distorting their incentive structure and leading to excessive indebtedness, wasted resources and market distortions.

A clear distinction is necessary between the state's and SOEs' respective responsibilities in relation to creditors. Mechanisms should be developed to manage conflicts of interests and ensure that SOEs develop relations with state-owned banks, other financial institutions and institutional investors as well as other SOEs based on purely commercial grounds. State-owned banks should grant credit to SOEs on the same terms and conditions as for private companies. These mechanisms could also include limits on, and careful scrutiny of, SOEs' board members sitting on the boards of state-owned banks.

Where the state extends guarantees to SOEs effectively to compensate for its inability to provide them with equity capital additional problems may arise. As a general principle, the state should not give an automatic guarantee in respect of SOE liabilities. Fair practices with regard to the disclosure and remuneration of state guarantees should also be developed and SOEs should be encouraged to seek financing from capital markets. With regard to commercial lenders, and to address the issue of implicit state guarantees, the state should make clear to all market participants its lack of backing of SOE-incurred debts. It should also consider mechanisms of imposing compensatory payments to the national treasury from SOEs benefiting from lower funding costs than private companies in like circumstances.

SOE's relation to other business partners, including other SOEs, should be based on commercial considerations, and at arm's length, and in no case amount to cross-subsidisation of other SOEs or private entities.

2. **SOEs' economic activities should not benefit from or provide any direct or indirect financial support that confers an advantage over private competitors, such as preferential debt or equity financing, guarantees, tax arrears or preferential trade**

credits from other SOEs~~. SOEs' economic activities should not receive inputs (such as energy, water or land) at prices or conditions more favourable than those available to private competitors;.~~

To maintain a level playing field, SOEs should be subject to an equal or equivalent financing and tax treatment as private competitors in like circumstances. ~~In addition to the points raised above, T~~there should ~~also~~ be no expectation that SOEs may benefit from their government-near status to run up tax arrears or be subject to lenient enforcement of tax rules.

SOEs ~~also~~ should generally not benefit from "off market" funding arrangements from other SOEs, such as trade credits or below-market equity infusions. Such arrangements, unless they are fully consistent with ~~normal~~ regular corporate practices, amount to preferential finance ~~lending~~. The state should implement measures to ensure that inter-SOE transactions take place on purely commercial terms. The state should further pay attention to its ownership practices of state-owned financial institutions, which should not confer advantages inconsistent with market conditions. For example, state-owned financial institutions should not confer below-market lending or financing. Moreover, government equity infusions originating from state investment funds should not be provided or maintained under non-market conditions. Additional guidance regarding implicit or explicit guarantees are provided in III. E.1.

Ad hoc state support measures (e.g. in the form of below market finance or equity) necessitated by an emergency or crisis should be aligned with the principle of competitive neutrality, whereby emergency support is transparent, non-discriminatory, targeted, time-limited, should not distort trade and competition and is consistent with longer-term objectives. State owners should follow international best practices regarding emergency government support, and inter alia discuss, identify and/or propose less competitively distortive alternatives that still allow the policymaker to achieve the same goal. Ad hoc support measures should always provide for a transparent exit plan.

3. **SOEs' economic activities should not receive or provide in-kind inputs (such as goods, energy, water, real estate, data access, ~~or~~ land or labour~~)~~ nor at prices or conditions more favourable than those available to privately owned competitors;**

SOEs should not receive or provide any in-kind inputs such as real estate, goods or services, but also access to data and information resources, or infrastructure or at prices or conditions more favourable than those available to privately owned competitors.

4. **SOEs' economic activities should be required to earn rates of return~~, taking into account their operational conditions~~ that are consistent with those obtained by competing private enterprises.**

SOEs' economic activities should be expected to earn rates of return (RoR) comparable, in the long run, to those of the competing companies in like circumstances. ~~withcomparable capital structures~~ This does not imply that RoR should necessarily be identical in SOEs and private companies. The relevant metric would arguably be risk-adjusted RoR to reflect that private investors may have a different – in many cases greater – risk appetite than state-owned.

Rates of return ~~(RoR)~~ need to be considered over a long-time span and factor in the whole life cycle of products, given that even among private companies operating in highly competitive environments RoRs can differ considerably in the short and medium term and private companies increasingly voluntarily and often even by obligation factor in these costs as well. Moreover when engaging in economic activities, any equity financing provided by the state budget should be subject to a required minimum expected RoR that is consistent with private sector companies in like circumstances. A number of governments allow lower RoR to compensate for balance sheet anomalies such as temporary needs for high capital spending. This is not uncommon in other parts of the corporate sector and, if carefully calibrated, this does not imply a departure from practices consistent with maintaining a level playing field. Conversely, some governments also tend to lower RoR requirements to compensate SOEs for such public policy objectives as they are charged with. This ~~is not a good practice since this kind of objective, as discussed elsewhere in the Guidelines, should be compensated separately and be more closely~~ should only be pursued if lowering RoR requirements is directly linked to the ~~actual cost of~~ attainment of the public policy objectives. The return target should be a reflection of the risk profile and capital structure of the SOE, in line with the guidance in I.A.

F. When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be open, competitive, non-discriminatory, promote supplier diversity, and safeguarded by appropriate standards of integrity and transparency, ensuring that SOEs and its suppliers are not subject to undue advantages or disadvantages.

The participation of SOEs in public procurement processes has been an area of concern for governments committed to a level playing field. Legislation should provide for ~~Designing~~ bidding regimes that in principle do not favour any category of bidder ~~is uncomplicated, and indeed is embedded in the legislation of a growing number of jurisdictions.~~ and implementation measures. ~~may, however, in practice be complicated. Whether or not such~~These rules ~~are limited to procurement by the general government or are~~should ~~also~~ extend~~ed~~ to procurement by SOEs ~~differs between countries~~. When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be transparent, competitive, non- discriminatory, promote supplier diversity and safeguarded by appropriate standards of transparency and integrity. Generally, the activities of SOEs can be divided into two parts: activities that are for commercial sale or resale; and activities to fulfil a governmental purpose. In cases where an SOE is fulfilling a governmental purpose, or to the extent that a particular activity allows an SOE to fulfil such a purpose, the SOE should adopt government procurement ~~guidelines~~ procedures that ensure a level playing field for all competitors, state-owned or otherwise. State-owned monopolies should follow the same procurement rules applicable to the general government sector.

G. In addition to the above, when SOEs engage in economic activities and whose activities could affect trade and competition, they should:

A growing number of SOEs's operations affect or could potentially affect trade and competition. States should pay attention to their SOEs' impact on trade and competition and should avoid any market distortions, especially when state owners grant a favourable domestic market position to their SOEs which the latter can lever into a competitive advantage in other markets. The provisions under this sub-chapter apply in addition to the other sub-chapters when SOEs' engage in economic activities and whose activities could affect trade and competition.

Due to SOEs' important roles for most national economies and operations in sectors that provide essential services in the public interest, such as transportation, public utilities and finance, the concentration of SOEs in these sectors can have direct implications on the competitive landscape. Firstly, state intervention in these sectors plays an significant upstream and downstream role in international supply chains. Secondly, a high degree of cross-border trade and investment takes place in most of these sectors. Thirdly, SOEs in the network industries often operate as vertically integrated structures with incipient monopolies in parts of their value chains. This means that they can have an impact on the entry conditions of would-be competitors across a number of commercial activities.

1. **Conduct all business, other than carrying out public service obligations, in accordance with commercial considerations and high standards of responsible business conduct;**

All SOE economic activities that can affect trade and competition should be in accordance with commercial considerations and in line with OECD standards bearing on responsible business conduct. This includes the purchase and sale of goods and services, but also the reception and provision of loans, guarantees or equity investments domestically or internationally by SOEs. To avoid market distortions, SOEs should consider whether a private sector enterprise operating at arm's length would make the same business decision, for example granting a loan, under comparable circumstances and under similar conditions, to verify that it was provided on market terms.

At the same time, further nuance is necessary as regards public service obligations. As an exception from the general rule, the requirement of commercial considerations should not to apply when an SOE is carrying out a public service obligation, on the condition that the SOE's purchases and sales are not discriminatory.

2. **Avoid activities that directly or indirectly discriminate, on the basis of nationality, against competitors, goods and services.**

Before making business decisions, SOEs should consider whether these could, directly or indirectly, discriminate against foreign competitors, their goods and services. While direct discrimination may be addressed under WTO rules and trade agreements, indirect discrimination can be the cause of public policy objectives and domestic policies that can distort the market in favour of domestic industry or other SOEs. If SOEs or state owners identify such discrimination, they should examine other measures less harmful to international competition, and transparently disclose (potentially) discriminating conduct including its justification and measures undertaken to mitigate international market distortions. Adherents should implement the OECD Code of Liberalisation of Capital Movements [OECD/LEGAL/0001] with regard to their SOEs.

Annotations to Chapter IV: Equitable treatment of shareholders and other investors

Where SOEs are listed or otherwise include non-state investors among their owners, the state and the enterprises should recognise the rights of all shareholders and ensure shareholders' equitable treatment and equal access to corporate information.

It is in the state's interest to ensure that, in all enterprises where it has a stake, all shareholders are treated equitably. The state's reputation in this respect will influence SOEs' capacity to attract outside funding and the valuation of the enterprise. It should therefore ensure that other shareholders do not perceive the state as an opaque, unpredictable and unfair owner. The state should on the contrary establish itself as exemplary and follow best practices regarding the treatment of shareholders.

A. The state should strive toward full implementation of the G20/OECD Principles of Corporate Governance when it is not the sole owner of SOEs, and of all relevant sections when it is the sole owner of SOEs.

Concerning shareholder protection this includes:

1. The state and SOEs should ensure that all shareholders are treated equitably.

Whenever a part of an SOE's capital is held by private shareholders, institutional or individual, the state should recognise their rights. Non-state shareholders should in particular be protected against abusive action by the state as an owner, and should have efficient means of redress for violation of their rights at a reasonable cost and without excessive delay. In addition, private shareholders should not be expropriated by the state owner without just cause and market consistent compensation. Insider trading, market manipulation and abusive self-dealing should be prohibited. Pre-emptive rights and qualified majorities for certain shareholder decisions can also be a useful ex ante means of ensuring minority shareholder protection. Specific care should be taken to ensure the protection of shareholders in cases of partial privatisation of SOEs.

As a dominant shareholder, the state is in many cases able to make decisions in general shareholders meetings without the agreement of any other shareholders. It is usually in a position to decide on the composition of the board of directors. While such decision-making power is a legitimate right that follows with ownership, it is important that the state doesn't abuse its role as a dominant shareholder, for example by pursuing objectives that are not in the interest of the enterprise and are thereby to the detriment of other shareholders. Abuse can occur through inappropriate related party transactions, biased business decisions or changes in the capital structure favouring controlling shareholders.

The ownership entity should develop guidelines regarding equitable treatment of non-state shareholders. It should ensure that individual SOEs, and more particularly their boards, are fully aware of the importance of the relationship with shareholders and are active in enhancing it. When the state is able to exercise a degree of control that exceeds its shareholding, then there is a potential for abuse. The use of golden shares should be limited to cases where they are strictly necessary to protect certain essential public interests such as those relating to the protection of public security and proportionate to the pursuit of these objectives. Further, governments should disclose the existence of any shareholders' agreements and capital structures that allow a shareholder to exercise a degree of control over the corporation disproportionate to the shareholders' equity ownership in the enterprise.

2. **SOEs should observe a high degree of transparency, including as a general rule equal and simultaneous disclosure of information, towards all shareholders.**

A crucial condition for protecting shareholders is to ensure a high degree of transparency. As a general rule, material information should be reported to all shareholders simultaneously to ensure their equitable treatment, including information on the financial situation, performance, sustainability, ownership and governance of the SOE. This also includes timely and simultaneous reporting of material developments that arise between regular reports. Moreover, any shareholder agreements, including information agreements covering board members, should be disclosed.

Minority and other shareholders should have access to all the necessary information to be able to make informed investment decisions. Meanwhile, significant shareholders, including the ownership entity, should not make any abusive use of the information they might obtain as controlling shareholders or board members. For non-listed SOEs, other shareholders are usually well identified and often have privileged access to information, through board seats for example. However, whatever the quality and completeness of the legal and regulatory framework concerning disclosure of information, the ownership entity should ensure that all enterprises where the state has shares put mechanisms and procedures in place to guarantee easy and equitable access to information by all shareholders. Particular care should be taken to ensure that when SOEs are partially privatised, the state as shareholder should have no greater involvement in corporate decisions, or access to information, than what its shareholding provides as a right.

3. **SOEs should develop an active policy of communication and consultation with all shareholders.**

SOEs, including any enterprise in which the state is a minority shareholder, should identify their shareholders and keep them duly informed in a timely and systematic fashion about material events and forthcoming shareholder meetings. They should also provide them with ~~sufficient~~ background information on issues that will be subject to decision that is reliable, comparable and sufficient to make informed decisions. It is the responsibility of SOE boards to make sure that the enterprise fulfils its obligations in terms of information to all shareholders, including institutional investors. In doing so, SOEs should not only apply the existing legal and regulatory framework, but are encouraged to go beyond it when relevant in order to build credibility and confidence, with due regard to avoiding overly burdensome requirements. Where possible, active consultation with minority shareholders will help in improving the decision-making process and the acceptance of key decisions. Where institutional investors are among shareholders of SOEs, due consideration should be given to the G20/OECD Principles of Corporate Governance, Principle III.A.

4. **The participation of minority shareholders in shareholder meetings should be facilitated so they can take part in fundamental corporate decisions such as board election. When necessitated, remote participation conducted in a manner that ensures equal access to information and opportunities for participation of all shareholders.**

Minority shareholders may be concerned about actual decisions being made outside the SOE's shareholder meetings or board meetings. This is a legitimate concern for listed companies with a significant or controlling shareholder, but it can also be an issue in companies where the state is the dominant shareholder. It might be appropriate for the state as an owner to reassure minority shareholders that their interests are taken into consideration. In situations where there may be a conflict between the interest of the state and those of minority shareholders, such as related party transactions, the involvement of minority shareholders in the approval process of such transactions should be considered.

The right to participate in general shareholder meetings is a fundamental shareholder right. To encourage minority shareholders to actively participate in SOEs' general shareholder meetings and to facilitate the exercise of their rights, specific mechanisms could be adopted by SOEs. These could include qualified majorities for certain shareholder decisions and, when deemed useful by the circumstances, the possibility to use special election rules, such as cumulative voting. Additional measures should include facilitating voting in absentia or developing the use of electronic means as a way to reduce participation costs. Moreover, employee-shareholder participation in general shareholders meetings could be facilitated by, for example, the collection of proxy votes from employee-shareholders.

It is important that any special mechanism for minority protection is carefully balanced. It should favour all minority shareholders and in no respect contradict the concept of equitable treatment. It should neither prevent the state as a majority shareholder from exercising its legitimate influence on the decisions nor should it allow minority shareholders to unduly hold up the decision-making process.

Virtual or hybrid (where certain shareholders attend the meeting physically and others virtually) general shareholder meetings can help improve shareholder engagement by reducing their time and costs of participating. There should be no impediments in the legal and regulatory framework to holding such meetings as long as they are conducted in a manner that ensures equal access to information and opportunities for participation by all shareholders. In addition, due care is required to ensure that remote meetings do not decrease the possibility for minority shareholders to engage with and ask questions to boards and management in comparison to physical meetings. When choosing service providers that provide technology to manage remote participation, it is important to consider that they have the appropriate professionalism as well as data handling and digital security capacity to support the conduct of fair and transparent shareholder meetings, with technical and organisational security measures in place for each of the processing operations carried out by virtue of their service, especially concerning personal data, which require stricter security measures. Such processes should allow for the verification of shareholders' identity through secured authentication of attendees and ensure equal participation as well as the confidentiality and security of votes cast prior to the meeting.

5. **Transactions between the state and SOEs, and between SOEs, should take place on market consistent terms.**

To ensure equitable treatment of all shareholders, transactions between the state and SOEs should take place according to commercial considerations ~~on the same terms as those between any other market participants~~. This is conceptually related to the issue of abusive related party transactions, but it differs insofar as "related parties" are more weakly defined in the case of state ownership. SOEs are, in general, autonomous legal entities that should be subject to and protected by the general rule of law in their countries of operation. The rule of law should extend to abuse of SOEs as conduits for political finance, patronage, or personal or related-party enrichment. The government is advised to ensure the market consistency of all transactions by SOEs with the state and state-controlled entities and, as appropriate, test them for probity. The issue is further linked to the board obligations treated elsewhere in these Guidelines, because the protection of all shareholders is a clearly articulated duty of loyalty by board members to the enterprise and its shareholders.

B. National corporate governance codes should be adhered to by all listed, and~~, where practical,~~ unlisted SOEs to the extent possible.

Most countries have corporate governance codes for stock-market listed enterprises. However, their implementation mechanisms differ significantly, with some being merely advisory, others being implemented (by stock markets or securities regulators) on a comply-or-explain basis, and yet others being mandatory. It is a basic premise of the Guidelines that SOEs should be subject to best practice governance standards of listed enterprises. This implies that both listed and unlisted SOEs should always comply with the national corporate governance code, irrespectively of how legally "binding" they are.

C. Where SOEs are required to pursue public policy objectives that may have a material effect on the company's performance, results and viability, adequate information about these should be available to the public and non-state shareholders at all times.

As part of its commitment to ensure a high degree of transparency with all shareholders, the state should ensure that material information on any public policy objectives an SOE is expected to fulfil, as well as on their rationales, is disclosed to non-state shareholders and the public, in compliance with competition laws, insofar as this may affect the valuation of the enterprise. The relevant information should be disclosed to all shareholders at the time of investment and be made continually available throughout the duration of the investment.

D. When SOEs engage in co-operative projects such as joint ventures and public-private partnerships, the contracting parties~~y~~ should ensure that contractual rights and obligations are upheld and that disputes are addressed in a timely and objective manner.

When SOEs engage in co-operative projects with private partners, care should be taken to uphold the contractual rights of all parties and to ensure effective redress and/or dispute resolution mechanisms. Relevant other OECD ~~Recommendations should be observed~~ standards bearing on public governance of public-private partnerships and the governance of infrastructure may apply~~., in particular the OECD Recommendation Principles for Public Governance of Public-Private Partnerships as well as, in the relevant sectors, the OECD Principles for Private Sector Participation in Infrastructure.~~ One of the key recommendations from these ~~instruments is~~ standards are that care should be taken to monitor and manage any implicit or explicit fiscal risks for the government resulting from public-private partnerships or other arrangements that the SOE enters into.

Moreover, formal agreements between the state and private partners, or between the SOE and private partners, should clearly specify the respective responsibilities of project partners in the case of unforeseen events, while at the same time there should be sufficient flexibility for contract renegotiation in case of need. Dispute resolution mechanisms need to ensure that any disputes occurring throughout the duration of the project are addressed in a fair and timely manner, without prejudice to other judicial remedies.

Annotations to Chapter V: Disclosure, ~~and~~ transparency, and accountability

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.

Transparency regarding the financial and non-financial performance of SOEs is key for strengthening the accountability of SOE boards and management and for enabling the state to act as an informed owner. When deciding on the reporting and disclosure requirements for SOEs, some consideration should be given to enterprise size and commercial orientation. For example, for SOEs of a small size not engaged in public policy ~~activities~~, disclosure requirements should not be so high as to effectively confer a competitive disadvantage. Conversely, where SOEs are large or where state ownership is motivated primarily by public policy objectives, the enterprises concerned should implement particularly high standards of transparency and disclosure in areas that may materially affect the financial and non-financial performance of the enterprise.

A. SOEs should report all material ~~financial and non-financial~~ information on the enterprise in line with high-quality, internationally recognised standards of corporate disclosure, ~~and~~ including areas of significant concern for the state as an owner and the general public. ~~This includes in particular SOE activities that are carried out in the public interest.~~

All SOEs should disclose ~~financial and non-financial~~ all material information, and large and listed ones should do so according to high-quality internationally recognised standards such as the International Financial Reporting Standards (IFRS) or Generally Accepted accounting Principles (GAAP), or national accounting standard consistent with these standards. All other SOEs should apply these standards to the extent possible. This implies that SOE board members sign financial reports and that CEOs and CFOs certify that these reports in all material respects appropriately and fairly present the operations and financial condition of the SOE.

To the extent possible, the relevant authorities should carry out a cost-benefit analysis to determine which SOEs should be submitted to high-quality internationally recognised standards and decide on standards for the entire portfolio to enhance consistency and comparability. This analysis should consider that demanding disclosure requirements are both an incentive and a means for the board and management to perform their duties professionally.

The annual report will be an important source of information to help interpret the financial and operating results as enumerated in the audited financial statements of an SOE. Commercially operating SOEs should produce annual financial statements, including a balance sheet, cash flow statement, profit and loss statement, statement of changes to owners' equity, and notes. These statements should generally be finalised three to six months after the end of the financial year. Reporting should be complete, concise, reliable and comparable.

While all SOEs, even those pursuing purely commercial activities, fulfill their activities in the public interest, ~~A~~a high level of disclosure is ~~also~~ especially valuable for SOEs pursuing important public policy objectives. It is particularly important when they have a significant impact on the state budget, on the risks carried by the state, or when they have a more global ~~societal~~ impact on sustainability-related matters or the international level playing field. ~~In the EU, for example, companies that are entitled to state subsidies for carrying out services of general economic interest are required to keep separate accounts for these activities.~~

With due regard to enterprise capacity and size, SOEs should face ~~at least~~ the same disclosure requirements as listed companies. Disclosure requirements should not compromise essential corporate confidentiality, and should not put SOEs at a disadvantage in relation to private competitors. SOEs should report on all material information, such as their financial and operating results, non-financial information, remuneration policies and actual remuneration granted to board members and key executives, related party transactions, governance structures and governance policies. SOEs should disclose whether they follow any code of corporate governance and, if so, indicate which one. In the disclosure of financial and non-financial performance, it is considered good practice to adhere to internationally accepted reporting standards.

~~Regarding disclosure of remuneration of board members and key executives, it is viewed as good practice to carry this out on an individual basis. The information should include termination and retirement provisions, as well as any specific benefits or in kind remuneration provided to board members.~~

With due regard to enterprise capacity and size, ~~examples of~~ such information should include:

1. **A clear statement to the public of enterprise objectives and their fulfilment, ~~(for fully-owned SOEs this would~~ including~~e~~ any mandate elaborated by the state ownership entity~~)~~;**

It is important that each SOE is clear about its overall objectives. Regardless of the existing performance monitoring system, a limited set of basic overall objectives should be identified together with information about how the enterprise is dealing with trade-offs between objectives that could be conflicting.

When the state is a majority shareholder or effectively controls the SOE, enterprise objectives should be made clear to all other investors, the market and the general public. Such disclosure obligations will encourage SOE officials to clarify the objectives to themselves, and could also increase management's commitment to fulfilling these objectives. It will provide a reference point for all shareholders, the market and the general public for considering the strategy adopted and decisions taken by the management.

SOEs should report on how they fulfilled their objectives by disclosing key financial and non-financial performance indicators. When the SOE is also used for public policy objectives, it should also report on how these are being achieved.

2. **Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public service obligations ~~policy objectives~~;**

Like private corporations, SOEs should disclose information on their financial, operational and non-financial performance. For example, this could include the main financial figures, such as on income, balance sheet, dividend and debt values, key financial figures such as capital employed, EBITA, return on equity, return on assets, equity ratio, investments, dividend pay-out, financial leverage, and other key figures such as number of employees and achievement on targets related to gender parity and other types of diversity, if applicable. The reporting standard (e.g. IFRS or other) applied to the financial reporting should be indicated. The information should enable the reader to gauge key financial metrics regarding commercial and non-commercial orientations. In addition, when SOEs are expected to fulfil specific public ~~policy objectives~~service obligations, information on the costs of related activities~~, and how they are funded,~~ should be disclosed. Any compensation for the SOEs, including for public service obligations, through subsidies or other forms of in-kind benefits and advantages should be quantifiable and disclosed, together with their possible impact on the level playing field and a justification. It is also recommended as good practice that an internal control report is included in the financial statements, describing the internal control structure and procedures for financial reporting. At the same time, care should be taken by the ownership entity to ensure that the additional reporting obligations placed on SOEs, beyond those placed on private enterprises, do not create an undue burden on their economic activities.

3. **The governance, ownership, and legal and voting structure of the enterprise or group as well as any subsidiaries, including the content of any corporate governance code or policy and implementation processes;**

It is important that the ownership and voting structures of SOEs are transparent so that all shareholders have a clear understanding of their share of cash-flow and voting rights. It should also be clear who retains legal ownership of the state's shares and where the responsibility for exercising the state's ownership rights ~~are~~ is located. Any special rights or agreements that diverge from generally applicable corporate governance rules, and that may distort the ownership or control structure of the SOE, such as golden shares and power of veto, should be disclosed. The existence of any control arrangements such as shareholder agreements should be disclosed, whereas some of their contents may be subject to conditions of confidentiality.

SOEs should publish any other relevant information on their organisational structure, such as on their subsidiaries and affiliates and any other entity in which they have participation, representation and intervention. This should include the percentage owned in each such subsidiary or holding, as well as the countries of their incorporation and operation. Complicated group structures may increase the opaqueness inherent in related party transactions and the possibility of circumventing disclosure requirements. Special consideration should be given to identifying all related parties in jurisdictions with complex group structures involving publicly traded companies.

4. **The remuneration of board members and key executives;**

It is important that SOEs ensure high levels of transparency regarding the remuneration of board members and key executives at a minimum in aggregate form but preferably on an individual basis. Failure to provide adequate information to the public could result in negative perceptions and fuel risks of a backlash against the ownership entity and individual SOEs. Information should relate to actual remuneration levels and the policies that underpin them. The information should, where relevant, include termination and retirement provisions, as well as any specific benefits or in-kind remuneration provided to board members and key executives.

5. **Board selection process 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, if applicable, classification ~~whether they are considered~~ as independent ~~by the SOE board~~;**

Full transparency surrounding board member qualifications is especially important for SOEs and should be fully aligned with the OECD Recommendation on Guidelines on Anti-corruption and Integrity in State-Owned Enterprises [OECD/LEGAL/0451]. In fully-owned SOEs, SOE board member nomination is often the direct responsibility of the government and as such, there is a risk that board members be perceived as acting on behalf of the state or specific political constituencies, rather than in the long-term interest of the enterprise and its shareholders. Requiring high levels of transparency on board member qualifications and nomination processes can play a part in increasing the professionalism of SOE boards. It also allows investors to evaluate board member qualifications and identify any potential conflicts of interest. Regarding the classification of board members as independent, while the scope and definition of independence varies considerably according to national legal context and codes of corporate governance, 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), from 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 mindset and sufficient competencies to carry out the board duties. To enhance gender diversity, many jurisdictions require or recommend the disclosure of the gender composition of boards and of senior management. Relevant policies to promote diversity in board and executive-level positions should also be disclosed.

6. Any material foreseeable risk factors and measures taken to manage such risks;

Severe difficulties arise when SOEs ~~undertake ambitious strategies without~~ do not clearly identify~~ing~~, assess~~ing~~, control for or ~~duly~~ report~~ing~~ on ~~the related~~ risks. ~~Disclosure of material risk factors is particularly important when SOEs operate in newly de-regulated and increasingly internationalised industries where they are facing a series of new risks, such as political, operational, or exchange rate risks.~~ Without adequate reporting of material risk factors, SOEs may give a false representation of their financial situation, ~~and~~ overall performance or potential for long-term value creation. This in turn may lead to inappropriate strategic decisions and unexpected financial losses. Material risk factors should be reported in a timely fashion and with sufficient frequency.

Appropriate disclosure by SOEs of the nature and extent of risk incurred in their operations depends on the soundness of the SOEs' ~~requires the establishment of sound internal~~ risk management system~~s to identify, manage, control and report on risks~~. SOEs should report according to new and evolving standards ~~and disclose all off-balance-sheet assets and liabilities.~~ When appropriate, such reporting could cover risk management strategies as well as systems put in place to implement them. ~~This should apply to financial and operational risks, but also where relevant and material to the SOE human rights, labour, environment and tax-related risks.~~ ~~Companies in extractive industries should disclose their reserves according to best practices in this regard, as this may be a key element of their value and risk profile.~~

The Guidelines envision the disclosure of sufficient and comprehensive information to fully inform shareholders and other users of the reasonably foreseeable material risks of the SOE. Disclosure of risk is most effective when it is tailored to the particular company and industry in question. Disclosure about the system for monitoring and managing risk is increasingly regarded as good practice, including the nature and effectiveness of related due diligence processes.

All shareholders – including both state and non-state shareholders – need information on reasonably foreseeable material risks for SOEs that may include: risks that are specific to the industry or the geographical areas in which the SOE operates; dependence on commodities and supply chains; financial market risks including interest rate or currency risk; risks related to derivatives and off-balance sheet transactions; business conduct risks including corruption, human rights and labour risks; digital security risks; tax-related risks; sustainability risks, notably climate-related risks. Risk-related disclosures may additionally cover other major geopolitical events such as pandemics, innovation, links to national development plans, and gender equality and diversity. Companies in extractive industries should disclose their reserves according to best practices in this regard, as this may be a key element of their value and risk profile.

Disclos~~ur~~ed information on ~~of~~ material foreseeable risk factors may be ~~is~~ particularly useful for shareholders and stakeholders ~~important~~ when SOEs operate in newly de-regulated and increasingly internationalised industries, new jurisdictions or high-risk sectors, where they may ~~are~~ face~~ing a~~

~~series of~~ new or different risks, including those mentioned above. ~~such as political, operational, or exchange rate risks.~~

7. **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;**

To give a fair and complete picture of an SOE's financial situation, it is necessary that mutual obligations, financial assistance or risk sharing mechanisms between the state and SOEs are appropriately disclosed. Disclosure should include details on any financial targets set by the government for the SOE, such as on the capital structure, profitability and dividends, and any state grant or subsidy received by the SOE, any guarantee granted by the state or another SOE to the SOE for its operations, as well as any commitment that the state undertakes on behalf of an SOE. Disclosure standards should be in line with existing legal obligations, for example those governing state aid. Disclosure of guarantees could be done by SOEs themselves or by the state. It is considered good practice that the legislature monitors state guarantees in order to respect budgetary procedures.

Public-private partnerships and joint ventures should also be adequately disclosed. Such ventures are often characterised by transfers of risks, resources and rewards between public and private partners for the provision of public services or public infrastructure and may consequently induce new and specific material risks.

8. **Any material transactions with the state and other related entities including state-owned financial institutions;**

Material transactions between SOEs and related entities, such as an equity investment of one SOE in another, might be a source of potential abuse and should be disclosed. Reporting on transactions with related entities should provide all information that is necessary for assessing the fairness and appropriateness of these transactions. It is also considered good practice, even in the absence of material transactions, to clearly identify SOEs' organisational and corporate links with other related entities. SOEs should also report on all contractual relations and transactions with state-owned institutional investors, since these have a high risk of conflict of interest.

9. **Relevant liabilities such as debt contracts, including the risk of non-compliance with covenants;**

With due regard to commercial confidentiality, SOEs should moreover disclose information on debt contracts, including the risk of non-compliance with covenants, in accordance with applicable standards. Under normal circumstances, shareholders and directors control the major decisions taken by the SOE. However, certain provisions in corporate bonds and other debt contracts that significantly limit the discretion of management and shareholders, such as covenants that restrict dividend payouts, require creditors' approval for the divestment of major assets, or penalise debtors if financial leverage exceeds a predetermined threshold. Moreover, under financial stress but before bankruptcy, SOEs may choose to negotiate a waiver of compliance with a covenant, when existing creditors may require changes in the business. As a consequence, the timely disclosure of material information on debt contracts, including the impact of material risks related to a covenant breach and the likelihood of their occurrence, in accordance with applicable standards, is necessary for investors to understand an SOE's business risks.

10. **Any relevant ~~issues~~ matters and objectives relating to ~~employees~~ sustainability and ~~other~~ stakeholders relations;**

Individual SOEs disclosure should include sustainability-related matters in line with international best practices as elaborated in Chapter VII. Additionally, disclosures may cover alignment with relevant international standards bearing on sustainability, including the OECD Guidelines for Multinational Enterprises [OECD/LEGAL/0144], the UN Guiding Principles on Business and Human Rights, the Global Compact and the 2030 Agenda and should cover all material ~~on~~ environmental, social and governance matters, compliance with the respective legal obligations or specific policies with regard to human rights, health, safety, diversity, consumer security, employment, anti-corruption and sustainable business practices.

SOEs should provide information on key issues relevant to employees and other stakeholders that may materially affect the financial and non-financial performance of the enterprise, or have significant impacts on stakeholders. Disclosure may include management/employee relations, including remuneration, collective bargaining coverage, and mechanisms for employee representation, as well as relations with other stakeholders such as creditors, suppliers, consumers and ~~local~~ communities affected by the SOEs' activities, with particular attention paid to marginalised and vulnerable groups. ~~It may also include any material information on environmental, social, human rights and anti-corruption measures.~~

Some countries require extensive disclosure of information on human resources. Relevant policies, such as programmes for human resource development and training, retention rates of employees and employee share ownership plans, can communicate important information on the competitive strengths of companies to market participants and other stakeholders.

B. ~~SOEs' annual financial statements should be subject to an independent external audit based on high-quality standards.~~ An annual external audit should be conducted by an independent, competent and qualified auditor in accordance with internationally recognised auditing, ethical and independence standards in order to provide reasonable assurance to the board and shareholders on whether the SOEs' financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework. Specific state control procedures do not substitute for an independent external audit.

In the interest of the general public, SOEs should be as transparent as publicly traded corporations. Regardless of their legal status and even if they are not listed, all SOEs should report according to best practice accounting and auditing standards.

~~In practice, SOEs are not necessarily required to be audited by external, independent auditors. This is often due to specific state audit and control systems that are sometimes considered sufficient to ensure the quality and comprehensiveness of accounting information. These financial controls are typically performed by~~Existing state auditing bodies and other intragovernmental control instances such as specialised state or "supreme" audit entities, ~~which may~~even if they inspect both SOEs and the ownership entity, ~~. In many cases they also attend board meetings and are often reporting directly to the legislature on the performance of SOEs. However, these specific controls~~ are not sufficient to ensure the quality and comprehensiveness of accounting information and are designed to monitor the use of public funds and budget resources, rather than the operations of the SOE as a whole.

To reinforce trust in the information provided, the state should require that, in addition to special state audits, at least all large SOEs be subject to external audits that are carried out in accordance with internationally recognised standards. Adequate procedures should be developed for the selection of external auditors and it is crucial that they are independent from the management as well as large shareholders, i.e. the state in the case of SOEs. Moreover, external auditors should be subject to the same criteria of independence as for private sector companies. This requires the close attention of the audit committee or the board of directors and generally involves limiting the provision of non-audit services to the audited SOE as well as periodic rotation of audit partners ~~or~~, tendering of the external audit assignment and prohibiting or restricting non-audit services procured by external auditors for their audit clients, such as tax services. Additional guidance, including regarding auditor qualification, under G20/OECD Principles of Corporate Governance [OECD/LEGAL/0413] IV.C should apply.

Moreover, the external audit should not be confused with or substituted by the internal audit and controls. The independent external audit of SOEs' financial statements provides assurance to shareholders and stakeholders around the SOEs' financial position, performance and prospects. Its direct reporting relationship and accountability should be to an independent audit committee.

C. SOEs should ~~develop efficient internal audit procedures and~~ establish an internal audit function that has the capacity, autonomy and professionalism needed to duly fulfil its function. It should be ~~that is~~ monitored by and report~~s~~ directly to the board and to the audit committee or the equivalent corporate organ.

As in large listed companies, it is necessary for large SOEs to put in place an internal audit system. This function can play a critical role in providing ongoing support to the audit committee of the board or an equivalent body of its comprehensive oversight of the internal controls and operations of the company. The role and functions of internal audit vary across jurisdictions, but they can include assessment and evaluation of governance, risk management, and internal control processes. Internal auditors are also important to ensure an efficient and robust disclosure process ~~and proper internal controls in the broad sense~~. Specifically, they may assess the completeness, integrity, accuracy, timeliness and frequency of reporting on all material information. They should define procedures to collect, compile and present sufficiently detailed information. ~~They should also ensure that SOE procedures are adequately implemented.~~

It is a board's responsibility to ensure that SOEs establish an internal audit function. To increase its independence and authority, internal auditors should work on behalf of, and report directly to, the board and its audit committee. Internal auditors' ~~should have unrestricted~~ access to the Chair and members of the entire board and its audit committee should be unrestricted. Their reporting is important for the board's ability to evaluate actual company operations and performance. The roles of both internal and external audit should be clearly articulated to ensure that the board receives the quality of assurance needed to oversee the risk management of the company. Consultation between external and internal auditors should be encouraged. ~~Finally, it is also recommended as good practice that an internal control report is included in the financial statements, describing the internal control structure and procedures for financial reporting~~. Material findings from the internal audit should be reported to the board and, where applicable, its audit committee. It is considered good practice for the head of internal audit to affirm the organisational independence of the internal audit function to the board on an annual basis. This includes communicating incidents where independence may have been impaired and the actions or safeguards employed to address the impairment.

D. SOEs should have risk management systems to identify, manage, control and report on risks. Risk management systems should be treated as integral to the achievement of objectives and thus embody a coherent and comprehensive set of internal controls, ethics and compliance programmes or measures.

Risk management is a core component of corporate governance and is closely related to the corporate strategy. The risk management system is established to allow SOEs to identify, manage and report on risks to the achievement of an SOEs' operational and financial objectives. Risk management processes underpin how an SOE controls for those risks, promotes integrity within the SOE and encourages compliance with relevant laws or regulations.

The risk management system should be regularly monitored by the board, reassessed and adapted to the SOEs' circumstances, with a view to establishing and maintaining the relevance and performance of internal controls, policies and procedures. Though it may receive support from specialised committees – most commonly the audit committee or equivalent body and sometimes the risk committee – the board retains the collective responsibility for the effectiveness of the risk management system and the internal controls therein. There should be a segregation of duties between board oversight, those that manage risks and those that provide independent assurance within the SOE (e.g. internal audit).

With regard for capacity and size of an SOE, the risk management system should include regular, tailored risk assessments in line with the good practices presented in the Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises. SOE representatives responsible for risk assessments within the company should have sufficient authority to fulfil their role.

An SOE's risk management should deal with significant external company-relevant risks, such as health crises, supply chain disruptions and geopolitical tensions. These frameworks should work ex ante (as companies should foster their resilience in the event of a crisis) and ex post (as companies should be able to set up crisis management processes at the onset of a sudden negative event).

Risk processes underpin the set of internal controls, ethics and compliance programmes or measures, which should be applicable to all levels of the corporate hierarchy and all entities over which a company has effective control, including subsidiaries. This may include establishing codes of conduct or similar, integrating them into human resource or other relevant corporate policies and establishing clear rules and procedures, such as whistleblowing processes, to encourage reporting concerns to the board without fear of retribution. They should extend, where possible, to third parties. The incentive structure of the business needs to be aligned with its ethical and professional standards so that adherence to the SOE's values is rewarded and breaches of law are met with dissuasive consequences or penalties.

The risk management system and integrated set of controls will moreover help the SOE to be compliant with applicable laws, including those related to responsible business conduct including human rights and labour, digital security, tax, competition, data privacy and personal data protection, health and safety and sustainability. This includes compliance with statutes criminalising the bribery of foreign public officials, as required under the OECD Convention Combatting Bribery of Foreign Public Officials International Transactions [OECD/LEGAL/0378], and other forms of bribery and corruption.

Internal controls, ethics and compliance programmes or measures should also extend to subsidiaries and where possible to third parties, such as agents and other intermediaries, consultants, representatives, distributors, contractors and suppliers, consortia, and joint venture partners.

E. The ownership entity should develop consistent reporting on SOEs and publish annually an aggregate report on SOEs including on financial performance and non-financial performance, such as information related to sustainability, governance aspects, as well as on the achievement of public policy objectives. ~~Good practice calls for the use of web-based~~ The information should give a full, clear and reliable picture of the SOE portfolio, be of high quality, comparable, concise and accessible to stakeholders and the public including through digital communications ~~to facilitate access by the general public.~~

The ownership entity should develop aggregate reporting that covers all economically significant SOEs and make it a key disclosure tool directed to the general public, the legislature and the media. This reporting should be developed in a way that allows all readers to obtain a clear view of the overall performance and evolution of the SOEs. In addition, aggregate reporting is also instrumental for the ownership entity in deepening its understanding of SOE performance and in clarifying its own policy. This improves setting metrics to better monitor and evaluate the achievement of ownership objectives and can enhance performance management systems where reporting includes evaluating the fulfilment of individual SOEs' objectives – including against financial and non-financial targets set by the state-owner – and where applicable, disclosure of non-commercial assistance.

The ~~aggregate~~ reporting should result in an annual aggregate report issued by the state. The report should give the full picture of the SOE portfolio's size and sectoral distribution when appropriate and the portfolio's and individual SOEs' performance for the reporting period, in comparison with past performance. The report could also include "forward looking" elements that support value creation in the SOE sector. This aggregate report should ~~primarily~~ moreover give an overview of the value of the sector when appropriate and cover ~~focus on~~ financial performance and the value of ~~the~~ individual SOEs, but should also include information on performance related to key relevant non-financial indicators. It should at least provide an indication of the total value of the state's portfolio. It should also include a general statement on the state's ownership policy and information on how the state has implemented this policy. Information on the organisation of the ownership function should also be provided including on the nomination, composition, qualifications and remuneration of state-owned governing bodies, as well as an overview of the evolution of SOEs, aggregate financial information and reporting on changes in SOEs' boards. The aggregate report should provide key financial indicators including turnover, profit, cash flow from operating activities, gross investment, return on equity, equity/asset ratio and dividends, share of employment and other information bearing on environmental, social and governance practices. Disclosure of aggregate-level sustainability-related information regarding their SOE portfolios and a systematic analysis and disclosure of portfolio-level exposure to sustainability-related risks and opportunities can support a more informed understanding on sustainability expectations set for their SOE portfolio and how the overall portfolio aligns with broader national sustainability commitments. Annual aggregate reports should include key indicators that can be measured over time. If fiscal risks are material to understanding the broader portfolio performance, state-ownership entities might consider identifying the main sources of fiscal risks of the portfolio and adding some analysis of the main risk elements of the portfolio by sector or by enterprise. The ownership entity should strengthen disclosure on stakeholder relations by having both a clear policy and developing aggregate disclosure to the general public. The report should also include updates on recent developments related to the portfolio such as relevant legislation.

Information should ~~also~~ be provided on the methods used to aggregate data. The aggregate report could ~~also~~ include individual reporting on the most significant SOEs. It is important to underline that aggregate reporting should not duplicate but should complement existing reporting requirements, for example, annual reports to the legislature. Some ownership entities could aim at publishing only "partial" aggregate reports, i.e. covering SOEs active in comparable sectors. It is important for the annual aggregate report to be transparent about the applied reporting standards applicable to individual SOEs and by the ownership entity when presenting aggregate information by the portfolio. Internationally recognised reporting standards, such as IFRS standards, can also be applied as feasible, when aggregating information for the SOE portfolio. If the accounting standards differ across the portfolio or if the level of the quality of disclosure varies across the portfolio, this should also be disclosed and explained, aiming at providing a fair, clear and unified picture, in financial terms, of the SOE portfolio.

Best practice would call for the aggregate report to take the form of an annual narrative report with information regarding both financial and non-financial performance. Some jurisdictions may produce an annual aggregate report as part of their regular reporting to the legislature or as a part of the annual budget process. Others may produce an online inventory of financial (and non-financial) indicators, which depending on the level of detail may fulfil the same function. *Ad hoc* reporting is generally not considered to fulfill the same accountability and transparency function as a "classic" aggregate report. The use of digital technologies may support features allowing users to interact with the aggregate data, making it searchable and downloadable in either aggregate or disaggregate format. The annual aggregate report should be made available to the public ~~The ownership entity~~

~~should consider eveloping a website~~, which allows for ~~the general public~~ easy access to information. Many ownership entities have ~~Such~~ websites ~~can~~ that provide one-stop-shop information ~~both~~ on the organisation of the ownership function, ~~and~~ the general ownership policy, as well as the annual aggregate report ~~information about the size, evolution, performance and value of the state sector~~.

Moreover, the annual aggregate report can be an important element of the overall accountability framework of an ownership entity when utilised as a mechanism to report back to the legislature or other representative bodies.

Annotations to Chapter VI: The composition and responsibilities of the boards of state-owned enterprises

The state should ensure that ~~T~~the boards of SOEs should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance, risk management and monitoring of management. They should act with integrity and be held accountable for their actions.

Boards play a central function in SOE governance. In fully or majority-owned SOEs, boards act as an intermediary between the state as a shareholder, if applicable other shareholders, and the company and its executive management. They carry the ultimate responsibility, through their fiduciary duty, for the SOEs' performance and their shareholders' as well as taking into account, among other things, stakeholders' interests.

Empowering and improving the quality and effectiveness of SOE boards is a fundamental step in ensuring a high quality of corporate governance of SOEs. ~~It is important~~ The state should ensure that SOEs have strong boards that can act in the interest of the enterprise and its owners, effectively monitor management and protect management from interference in day-to-day operations. To this end, it is necessary to ensure the competency of SOE boards, enhance their independence and improve the way they function. It is also necessary to give them explicit and full responsibility for carrying out their functions and ensure that they act with integrity.

A. The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the enterprise's performance. The role of SOE boards should be clearly defined in legislation, preferably according to company law. The board should be fully accountable to the owners, act in the best interest of the enterprise, taking into account the interests of stakeholders, and treat all shareholders equitably.

The responsibilities of SOE boards should be articulated in relevant legislation, regulations, the government ownership policy and the corporate charters. It is essential and should be emphasised that all board members have the legal obligation to act in the best interest of the enterprise and to treat all shareholders equitably. Good practice calls for boards to take account of, among other things, the interests of stakeholders, when making business decisions in the interest of the company's long-term success and performance and in the interest of its shareholders. It is also a key principle for board members who are working within the structure of a group of companies: even though a company might be controlled by another company, the duty of loyalty for a board member relates to the company and all its shareholders and not to the controlling company of the group. The collective and individual liability of board members should be clearly stated. There should not be any difference between the liabilities of different board members, whether they are nominated by the state or any other shareholders or stakeholders. Training should be required in order to inform SOE board members of their responsibilities and liabilities.

To encourage board responsibility and in order for boards to function effectively, the organisation of boards of directors should be consistent with best practices developed for the private sector. They should be limited in size, comprising only the number of directors necessary to ensure their effective functioning.

Experience further indicates that smaller boards allow for real strategic discussion and are less prone to become rubberstamping entities. A ~~D~~directors’ ~~R~~report should be provided along with the annual statements and submitted to the external auditors. The ~~D~~directors’ ~~R~~report should give information and comment on the organisation, financial and non-financial performance, material risk factors, sustainability-related matters, significant events, relations with stakeholders, and the effects of directions from the ownership entity.

B. SOE boards should effectively carry out their functions of setting strategy and supervising management, based on broad mandates and objectives set by the ~~government~~ shareholders. They should have the power to appoint and remove the CEO. They should set executive remuneration levels that ~~are~~ incentivise managers to act consistent within~~in~~ the long-term interest of the enterprise and its shareholders.

In order to carry out their role, SOE boards should actively (i) formulate or approve, monitor and review corporate strategy, within the framework of the overall corporate objectives; (ii) establish appropriate performance indicators and identify key risks; (iii) develop and oversee effective risk management policies and procedures with respect to financial and operational risks, but also with respect to i.e. human rights, corruption, equal opportunity, labour, digital security, personal data protection and data privacy, competition, environmental and tax-related issues, and health and safety; (iv) monitor disclosure and communication processes, ensuring that the financial statements fairly present the affairs of the SOE and reflect the risks incurred; (v) assess and monitor management performance; and (vi) decide on CEO remuneration and develop effective succession plans for key executives, with a view to ensuring business and public policy continuity. While comprising contingency mechanisms, succession planning could also be a long-term strategic tool to support talent development and diversity.

One key function of SOE boards should be the appointment and dismissal of CEOs. Without this authority it is difficult for SOE boards to fully exercise their monitoring function and assume responsibility for SOEs’ performance. In some cases, this might be done in concurrence or consultation with the ownership entity and other shareholders. The state should express an expectation that the board apply high standards for hiring and conduct of top management and other members of the executive management, who should be appointed based on professional criteria.

~~Some countries deviate from this good practice and in the case of fully- state owned SOEs allow the state to appoint directly a CEO. To ensure that the integrity of the board is maintained, good practice would at least require consultations with the board.~~ If the state is involved in a decisive role in appointing the CEO in fully-owned SOEs despite of this recommendation, ~~Regardless of the procedure,~~ particular attention should be paid that appointments ~~should be~~are based on professional criteria and a competitive selection procedure, as in all other appointment procedures, and that appointment periods are independent from election cycles.

Particularly for large SOEs engaged in economic activities, the use of independent experts to manage the selection procedure is considered a good practice. Boards may also be assisted by a nomination committee which may be tasked with defining the profiles of the CEO and board members key executives, and making recommendations to the board on their appointment, with all or a majority of committee members being independent directors. The nomination committee may also help guide talent management and review policies related to the selection of key executives. Rules and procedures for nominating and appointing the CEO should be transparent and respect the line of accountability between the CEO, the board and the ownership entity. Any shareholder agreements with respect to CEO nomination should be disclosed.

It follows from their obligation to assess and monitor management performance that SOE boards should decide, subject to applicable rules established by the state, on the ~~compensation~~ remuneration of the CEO. They should ensure that the CEO's remuneration is tied to performance and duly disclosed. ~~Compensation~~ Remuneration packages for senior executives should be competitive, but care should be taken not to incentivise management in a way inconsistent with the long-term interest of the enterprise ~~and~~, its owners and the public good. Where relevant, SOEs boards should ensure that the remuneration of key executives is tied to performance, and that the annual remuneration is duly disclosed. The introduction of limits on SOE executive remuneration, in absolute terms or on certain remuneration components, may limit potential negative effects of schemes that are not consistent with the owners' expectations or reduce the risk of excessive pay that could compromise the company's reputation. The introduction of limits on SOE executive remuneration as well as malus and claw-back provisions ~~is considered good practice. They~~ grant the enterprise the right to withhold and recover ~~compensation~~ remuneration from executives in cases of managerial fraud and other circumstances, for example when the enterprise is required to restate its financial statements due to material non-compliance with financial reporting requirements. ~~A number of governments have put in place limits on SOE executive remuneration, graduated according to enterprise size and sector of operation.~~

C. SOE board composition should allow the exercise of objective and independent judgement. All board members, including any public officials, should be nominated based on qualifications relevant to the enterprise's sector of activity and business profile and have equivalent legal responsibilities. Boards members' professionality and independence should be ensured, for instance through competitive remuneration.

A central prerequisite in empowering SOE boards is to compose and structure them so that they can effectively exercise objective and independent judgement, be in a position to monitor senior management and take strategic decisions. All board members should be ~~nominated through a transparent process and it should be clear that it is their duty to act in the best interests of the enterprise as a whole~~ selected on the basis of personal integrity and professional qualifications, using a clear, consistent and predetermined set of criteria for the board as a whole, for individual board positions and for the chair, and subject to transparent procedures that should include diversity, background checks and, as appropriate, mechanisms aimed at preventing future potential conflicts of interest (e.g. use of asset declarations). These conflicts of interest mechanisms are particularly relevant for independent board members who are not appointed by government, but belong to private interest groups in the field of the company's operations. They should not act as individual representatives of the constituencies that appointed them, which could be the state as an owner, the parent SOE in case of indirectly held SOEs or state and non-state shareholders together in accordance to company law. SOE boards should also be protected from political interference that could prevent them from focusing on achieving the objectives agreed on with the government and the ownership entity or which could detract from their independence. Any state representatives nominated to serve on SOE boards should have equivalent legal responsibilities as other board members. For instance, they should not enjoy *de jure* or *de facto* exemptions from individual responsibility.

It is considered good practice to strive toward diversity in board composition and senior management – including executive board members in two-tier systems – including with regards to gender, age, geographical, professional and educational background. ~~Persons linked directly with the executive powers – i.e. heads of state, heads of government and ministers – should not serve on boards as this would cast serious doubts on the independence of their judgment. For SOEs engaged in~~

~~economic activities, it is recommended that b~~Board members~~ have~~ need ~~sufficient~~ commercial, financial and sectoral expertise to effectively carry out their duties. In this respect, private sector experience can be useful. Board members may need to acquire appropriate skills upon appointment through training or other means. Thereafter, such measures may also support board members to remain abreast of relevant new laws, regulation and changing commercial and other risks. To attract qualified and professional candidates, competitive remuneration schemes reflecting market conditions are hence strongly encouraged. These moreover can add to board integrity. State owners should find an appropriate balance between remuneration schemes falling below market levels that hamper the recruitment of qualified candidates, and remuneration levels perceived as being too high which could cause a public controversy over excessive pay in the public sector or provide wrong incentives not linked to the SOE's and the shareholders' long-term interests. Board remuneration levels should be formally approved by the annual shareholders meeting, being ideally proposed by either a remuneration committee established by the board or the general shareholders' meeting, or set by the ownership entity based on private sector benchmarks to reflect the complexity of the SOE's operations. Depending on the size and orientation of the SOE, remuneration levels can also be set by law or based on public sector wage grids, but care should be taken that they remain competitive. Good practice calls for performance-based remuneration components to not be granted to board members, as it may closely align their interest with those of executive management, and may compromise their independence by encouraging management to take excessive short-term risks. In cases where board members receive variable remuneration, careful consideration should be given to the amount of their pay that is linked to performance targets.

Mechanisms to evaluate and maintain the effectiveness of board performance and independence should be developed. These can include, for example, limits on the term of any continuous appointments, limits on the possible number of reappointments, limits on the number of board position an individual board member can hold as well as resources to enable the board to access independent information or expertise. SOEs should also engage in board and committee evaluation and training.

D. An appropriate number of ~~i~~Independent board members, ~~where applicable, should~~non-state and non-executive, should be on each board and on specialised board committees. Good practice calls for the share of independent members to account for the majority of board members. Independent board members should be free of any material interests or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgement.

To enhance the objectivity of SOE boards, an ~~certain~~ appropriate minimum number of independent board members – non state and non executive – on SOE boards and on specialised board committees should be required. This would amount to a majority in cases where specialised committees are required to be composed of a majority of independent board members, as mentioned in the annotations to VI.H. ~~Some countries require that SOEs apply the same rules for independent board members that apply to listed companies. What is understood by "independence" varies significantly across countries.~~ Independent board members, like all board members, should be free of any material interests or relationships with the enterprise, its management or its ownership that could jeopardise the exercise of objective judgement. ~~It is also considered good practice to exclude p~~Persons ~~based on~~ with marital, family or other personal relationships with the enterprise's executives or controlling shareholders should also be excluded. Independent board members should be sufficient counterweight in case of the presence of representatives of the state on boards.

Independent board members should have the relevant competence and experience to enhance the effectiveness of SOE boards. In SOEs engaged in economic activities it is advisable that they be recruited from the private sector, which can help make boards more business-oriented. Their expertise sh~~c~~ould ~~also~~ include qualifications related to the SOE's sector of activity and business profile ~~specific obligations and policy objectives~~.

E. Mechanisms should be implemented to avoid conflicts of interest preventing all board members from objectively carrying out their board duties and to limit political interference in board processes. Politicians who are in a position to influence materially the operating conditions of SOEs should not serve on their boards. Former such persons should be subject to predetermined cooling-off periods. Civil servants and other public officials can serve on boards under the condition that qualification and conflict of interest requirements apply to them.

The state should express an expectation that the boards apply high standards for hiring and conduct of top management and other members of the executive management, who should be appointed based on professional criteria. Special attention should be given to managing conflicts of interest and, relatedly, movement of actors between public and private sectors (also known as "revolving door" practices), including through introducing appropriate cooling off periods for former politicians and public officials before their appointments to boards. To minimise conflict of interest, opportunities for political intervention and other undue influence by the state, boards should be responsible for maintaining their independence from the government owner and other related government functions.

Members of SOE boards should make declarations to the relevant bodies regarding (potential) political conflicts of interests and regarding their investments, activities, employment, and benefits from which a potential conflict of interest could arise at the time of appointment. The declarations should be kept up to date during board tenure. Further, any collective and individual liabilities of board members should be clearly defined. All board members should have a legal obligation to act in the best interest of the enterprise, cognisant of the objectives of the shareholder and should have to disclose any personal ownership they have in the SOE and follow the relevant insider trading regulation.

~~Since all SOE board members may become subject to conflicts of interest, measures should also be implemented to address conflicts of interest if they do arise~~. All board members should disclose any conflicts of interest to the board which must decide how they should be managed. ~~Particular measures should be implemented to prevent political interference on the boards of SOEs. In SOEs carrying out important public service obligations a case can be made for a certain political oversight. Conversely, in SOEs engaged in economic activities without public policy objectives it is good practice to avoid board representation by the highest levels of political power including from within the government and the legislature. This does not imply that civil servants and other public officials should not serve on boards.~~

Politicians who are in a position to influence materially the operating conditions of SOEs should not serve on their boards. Former such persons should be subject to predetermined cooling-off periods. Civil servants and other public officials can serve on boards under the condition that qualification and conflict of interest requirements apply to them. Moreover, ~~P~~persons linked directly with the executive powers – i.e. heads of state, heads of government, ~~and~~ ministers, secretaries of state, heads of regulatory agencies, and their deputies – should not serve on boards as this would cast serious doubts on the independence of their judgment.

SOEs board members should not abuse their position for the purposes of political finance, patronage, or personal or related-party enrichment. State owners should act in accordance with international best practices and apply relevant recommendations in the OECD Recommendation on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises [OECD/LEGAL/0451] and the OECD Convention on Combatting Bribery of Foreign Public Officials International Transactions [OECD/LEGAL/0378]. Specific legal measures that prohibit patronage, political financing or personal or related-party enrichment should be applied to SOEs across a variety of criminal and administrative laws, including applying anti-bribery legislation to SOEs. Related party transactions should be made transparent and publicly disclosed.

F. Good practice calls for t~~T~~he Chair to be independent with a role separate from that of the CEO. The Chair should assume responsibility for boardroom efficiency and, when necessary in co-ordination with other board members, act as the liaison for communications with the state ownership entity. ~~Good practice calls for the Chair to be separate from the CEO.~~

The Chair has a crucial role to play in promoting board efficiency and effectiveness. It is the Chair's task to build an effective team out of a group of individuals. This requires specific skills, including leadership, the capacity to motivate teams, the ability to understand different perspectives and approaches, the capacity to diffuse conflicts as well as personal effectiveness and competence. The Chair of the board should act as the primary point of contact between the enterprise and the ownership entity in fully-owned SOEs. In case of other shareholders, the Chair should integrate these into the communications, although not being the exclusive contact point for these. The Chair can also play an essential role in board nomination procedures by assisting the ownership entity, with input from the board's annual self-assessments, to identify skills gaps in the composition of the current board.

~~It is regarded as good practice that the Chair is separate from the CEO.~~ Separating~~on of the two roles~~the Chair from the CEO helps to ensure a suitable balance of power, improves accountability and reinforces the board's ability to make objective decisions without undue influence from management. An adequate and clear definition of the functions of the board and of its Chair helps prevent situations where the separation might give rise to inefficient opposition between the two enterprise officers. ~~It is similarly considered good practice that the~~The head of the management board (where applicable) ~~does~~ should moreover not become the Chair of the supervisory board upon retirement.

Separation of the Chair from the CEO is particularly important in SOEs, where it is usually considered necessary to empower the board's independence from management. The Chair has a key role in guiding the board, ensuring its efficient running and encouraging the active involvement of individual board members in the strategic guidance of the SOE. When the Chair and the CEO are separate, the Chair should also have a role in agreeing with the ownership entity on the skills and experience that the board should contain for its effective operation.

G. ~~If~~ Where employee representation on the board is mandated or commonplace, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence.

The purpose of employee representation on SOE boards is to strengthen accountability towards employees as stakeholders and to facilitate information sharing between employees and the board. Employee representation can help enrich board discussions and facilitate the implementation of board decisions within the enterprise. When employee representation on SOE boards is mandated by the law or collective agreements, it should be applied so that it contributes to the SOE boards' independence, competence and information. Employee representatives should have the same duties and responsibilities as all other board members, should act in the best interests of the enterprise and should treat all shareholders equitably. Employee representation on SOE boards should not in itself be considered as a threat to board independence.

Procedures should be established to facilitate access to information, training and expertise, and the independence of employee board members from the CEO and management. These procedures should also include adequate, transparent and democratic appointment procedures, rights to report to employees on a regular basis – provided that board confidentiality requirements are duly respected – training, and clear procedures for managing conflicts of interest. A positive contribution to the board's work will also require acceptance and constructive collaboration by other members of the board as well as by management.

H. SOE boards should consider setting up specialised committees, composed of independent and qualified members, to support the full board in performing its functions, ~~particularly in respect to~~ in particular the audit committee – or equivalent body – for overseeing disclosure, internal controls and audit-related matter. Other committees, such as remuneration, nomination, ~~and~~ risk management, sustainability or other ad-hoc or special committees may provide support to the board depending upon the company's size, structure, complexity and risk profile. Their mandate, composition and working procedures should be well defined and disclosed by the board which retains full responsibility for the decisions taken. The establishment of specialised committees should improve boardroom efficiency and should not detract from the responsibility of the full board.

The establishment of board committees can be instrumental in enhancing the efficiency of SOE boards, ~~reinforcing~~ strengthening their competency, focus on specific areas, and underpinning their critical responsibility. They may also be effective in changing the board culture and reinforcing its independence and legitimacy in areas where there is a potential for conflicts of interests, such as with regards to procurement, related party transactions and remuneration issues. The use of specialised board committees, especially in large SOEs, in line with practices in the private sector, ~~is considered a good practice. Special committees that may~~ add~~s~~ value to boards includ~~e those~~ing in~~in~~the fields of: audit, remuneration, nomination, strategy, ethics, risk, sustainability, digital transformation and procurement.

In some jurisdictions, while the board may have a specialised committee responsible for the nomination of the CEO, a nomination committee established by the largest shareholders also exists and is responsible for submitting recommendations to the general shareholders' meeting regarding the nomination of board members.

In the absence of specialised board committees, these fields should still be clearly covered by the board competency and assigned to board members, and the ownership entity may develop guidelines to define in which cases SOE boards should consider establishing specialised board committees. These guidelines should be based on a combination of criteria, including the size of the SOE and specific risks faced or competencies which should be reinforced within SOE boards.

~~Large~~ SOEs should at least be required to have an audit committee or equivalent body, with a majority of independent board members, for overseeing disclosure as well as the effectiveness and integrity of the internal control system including internal audit and audit-related matters. They should have the with power~~s~~ to meet with any officer of the enterprise. Relevant regulation should establish binding rules for the conduct and functions of an independent audit committee. Functions often include responsibility for oversight of risk management, unless shared with or assigned to a risk committee where existing or required by regulation. The need for a separate risk committee will depend upon the company's size, structure, complexity and risk profile. Depending on the applicable codes or regulation, jurisdictions may recommend nomination and remuneration committees, on a "comply or explain" basis.

It is essential that specialised board committees be chaired by a non-executive and include a sufficient number of independent members. The proportion of independent members as well as the type of independence required (e.g. from management or from the main owner) will depend on the type of committee, the sensitivity of the issue to conflicts of interests and the SOE sector. The audit committee, for example, should be composed of only independent and financially literate board members. To ensure efficiency, the composition of board committees should include qualified and competent members with adequate technical expertise. In cases where board committees include outside experts not appointed to the board, fiduciary duties should apply to them as well. When established, committees should have access to the necessary information to comply with their duties, receive appropriate funding and engage outside experts or counsels.

To align their general sustainability policy with state ownership practices, SOEs may consider the establishment of sustainability committees or at least a clear assigned responsibility within boards for sustainability matters, with requisite competencies to advise the board on social and environmental risks, opportunities, goals and strategies, including related to climate. Ad hoc or special committees can also be temporarily set up to respond to specific needs or corporate transactions.

Committees have monitoring and advisory roles, and it should be well understood that the board as a whole remains fully responsible for the decisions taken unless legally defined otherwise, and its oversight and accountability should be clear.~~The existence of specialised board committees should not excuse the board from its collective responsibility for all matters~~ Specialised board committees should have written and publicly disclosed terms of reference that define their duties, ~~authority~~mandate, working procedures and composition. Specialised board committees should report to the full board and the minutes of their meetings should be circulated to all board members.

I. SOE boards should, under the Chair's oversight, carry out an annual, well-structured evaluation to appraise their performance and efficiency, and assess whether they possess the right mix of background and competences, including with respect to gender and other forms of diversity.

A systematic evaluation process is a necessary tool in enhancing SOE board and specialised committees' professionalism, since it highlights the responsibilities of the board and the duties of its members. It is also instrumental in identifying necessary competencies and board member profiles. This may be based on diversity criteria such as gender, age, or other demographic characteristics as well as on experience and expertise, for example on accounting, digitalisation, sustainability, risk management or specific sectors. To enhance gender diversity, SOEs should disclose the gender composition of boards and of senior management and alignment with applicable quotas or voluntary targets. SOEs should also consider additional and complementary measures to strengthen the female talent pipeline throughout the company and reinforce other policy measures aimed at enhancing board and management diversity. Complementary measures may emanate from government, private and public-private initiatives and may, for example, take the form of advocacy and awareness-raising activities; networking, mentorship and training programmes; establishment of supporting bodies (women or other business associations); certification, awards or compliant company lists to activate peer pressure; the review of the role of the nomination committee and of recruitment methods. SOEs could establish guidelines or requirements intended to ensure consideration of other forms of diversity, such as with respect to experience, age and other demographic characteristics.

It is also a useful incentive for individual board members to devote sufficient time and effort to their duties as board members. The evaluation should focus on the performance of the board as an entity. It could also include the effectiveness and contribution of individual board members. However, the evaluation of individual board members should not impede the desired and necessary collegiality of board work.

Board evaluation should be carried out under the responsibility of the Chair and according to evolving best practices. ~~External or independent expertise should be called upon as necessary.~~ The board evaluation should provide input to the review of issues such as board size, composition and remuneration of board members. The evaluations could also be instrumental in developing effective and appropriate induction and training programmes for new and existing SOE board members. In carrying out the evaluation, SOE boards could seek advice from external and independent experts as well as the ownership entity.

The outcomes of board evaluations can also serve as a helpful source of information for future board nomination processes. However, a balance needs to be struck: board evaluations may be used to alert the ownership entity to a need to recruit future board members with specific skills that are needed in a given SOE board. But they should generally not be used as a tool for "deselecting" individual existent directors which could discourage them from playing an active, and perhaps critical, role in the board's discussions.

J. SOE Boards should actively oversee, and ensure implementation of, risk management systems. Boards should ensure that these systems are reassessed and adapted to the SOEs' circumstances with a view to establishing and maintaining the relevance and performance of internal controls, policies and procedures. ~~SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent corporate organ~~.

The state should encourage that SOE boards and oversight bodies oversee, and that management implements, risk management systems commensurate with state expectations and where appropriate in line with requirements for listed companies. To the extent that shareholders set expectations in this regard, the board should be accountable to those shareholders for its risk management oversight.

Establishing a company's risk appetite and culture, and overseeing its risk management system, including internal control processes, are of major importance for boards and are closely related to corporate strategy. It involves oversight of the accountabilities and responsibilities for managing risks, specifying the types and degree of risk that a company is willing to accept in pursuit of its goals and how it will manage the risks it creates through its operations and relationships. The board's oversight thus provides crucial guidance to management in handling risks to meet the company's desired risk profile.

When fulfilling these key functions, the board should ensure that material sustainability matters are considered. It is the board's responsibility to also ensure that they have adequate processes in place within their risk management frameworks to deal with significant external company-relevant risks, both ex ante and ex post if the risk materialises. OECD due diligence standards on responsible business conduct are also designed to help companies in identifying and responding to environmental and social risks and impacts stemming from their operations and supply chains.

To support the board in its oversight of risk management, some companies have established a risk committee and/or expanded the role of the audit committee, following regulatory requirements or recommendations on risk management and the evolution of the nature of risks. Some jurisdictions have provided for the chair of the board to report on the internal control process. Companies with large or complex risks (financial and non-financial), including company groups, should consider introducing similar reporting systems, including direct reporting to the board, with regard to group-wide risk management and oversight of controls.

~~As in large listed companies, it is necessary for large SOEs to put in place an internal audit system. Internal auditing provides independent and objective evaluations to help SOEs improve risk management, control and governance. Internal auditors are important to ensure an efficient and robust disclosure process and proper internal controls in the broad sense. They should define procedures to collect, compile and present sufficiently detailed information. They should also ensure that SOE procedures are adequately implemented.~~

~~To increase their independence and authority, the internal auditors should work on behalf of, and report directly to, the board and its audit committee, or the audit boards when these exist. Internal auditors should have unrestricted access to the Chair and members of the entire board and its audit committee. Their reporting is important for the board's ability to evaluate actual company operations and performance. Consultation between external and internal auditors should be encouraged. Finally, it is also recommended as good practice that an internal control report is included in the financial statements, describing the internal control structure and procedures for financial reporting. Material findings from the internal audit should be reported to the board and, where applicable, its audit committee.~~

Annotations to Chapter VII: State-owned enterprises and sustainability

The corporate governance framework should provide incentives for state ownership entities and SOEs to make decisions and manage their risks in a way that contributes to SOEs' sustainability and resilience and ensures long-term value creation. Where the state has sustainability commitments, the state as owner should set concrete and ambitious, sustainability-related expectations for SOEs, including on disclosure and transparency, the role of the board and stakeholder engagement.

There is a marked increase in governments' and businesses' commitment to sustainability and responsible business conduct. Recent crises have highlighted the importance of identifying emerging risks and improving resilience to unexpected shocks through the adoption of more sustainable and resilient policies, strategies and overall practices. Consequently, a growing number of jurisdictions worldwide have placed sustainability high on their agendas and have made high-level commitments to transition to a sustainable and resilient, net-zero/low-carbon economy in line with the Paris Agreement and the Sustainable Development Goals. This requires companies, including SOEs, to respond to a rapidly changing regulatory and business environment, and manage the potential risks and opportunities associated with such transition pathways. The state as owner has a responsibility and interest to ensure that SOEs are equipped to face new shocks and developments and should provide appropriate incentives for SOEs to make decisions and manage their risks in a way that contributes to their sustainability and resilience and ensures long-term value creation. Independently, SOEs may also set voluntary goals or otherwise adopt good practices in response to the growing demands from market participants and stakeholders.

While SOEs often play a central role in their economies, they appear also particularly vulnerable to sustainability-related risks. In particular, due to the nature and sectorial distribution of their activities and governance structures, SOEs' operations generally account for a substantial share of global greenhouse gas emissions and face heightened human rights and corruption risks. Furthermore, SOEs appear strongly exposed to climate physical and transition risks, often being large-scale infrastructure providers or carbon-intensive companies. Such risks can be transferred to the state by virtue of state ownership, for example via lower or more volatile dividends, debt that cannot be serviced if implicitly or explicitly guaranteed, or through transition risks that can lead to high-carbon stranded assets. The exposure to such risks may therefore be an obstacle for meeting ambitious national and international sustainability-related commitments, particularly those relating to climate change. More importantly, such risks may also impact SOE's long-term performance and value creation, with direct consequences on the state's budget and on individuals and businesses that rely on their goods and services. However, under the right circumstances and incentives, SOEs including state-owned banks and other public financial institutions can also play a crucial role in fostering sustainable development and facilitating a just transition, including by providing or financing low-carbon alternatives.

In fact, a growing number of countries around the world already recognise that SOEs can, and should, lead by example. This also stems from the general assumption that the state exercises the ownership of SOEs in the interest of the general public who constitute their ultimate shareholders. By extension, SOEs should be held to the highest standards of responsible business conduct to address, avoid or mitigate any potential harmful impact on the environment and the society. In certain circumstances, the state may also decide to set specific environmental and social goals for SOEs that would support the government's sustainability agenda, especially in areas relative to energy, employment or transport. Such goals, if they amount to public service obligations, should be clearly mandated by law or regulation and subject to proper transparency and disclosure regarding their costs and funding mechanisms to ensure a level playing field.

The state as owner should encourage and promote sustainable and responsible business practices of SOEs and long-term value creation, notably through the development of adequate sustainability-related policies and the integration of sustainable practices within the corporate governance framework of SOEs – including in its own ownership policies and practices. Although the state should expect stakeholder engagement to be a core responsibility of SOEs at the corporate level, the state should also facilitate stakeholder dialogue regarding its own ownership policy, to exchange views on relevant economic, social, or environmental aspects.

A. Where the state has set sustainability commitments, they should be integral to the state's ownership policy and practices, and aligned with the state's broader national objectives and commitments related to sustainability.

To ensure policy coherence, the state's ownership policy and practices should be aligned with broader national objectives on sustainable development, including international commitments. State ownership entities may also, on a voluntary basis, decide to integrate sustainability objectives and goals in their SOE portfolio as part of their role as active owner.

This includes developing an overall strategy aimed at ensuring SOEs adopt appropriate investment, infrastructure and technologies to support the transition to a sustainable and resilient economy. The strategy should include ensuring appropriate investment, capital structure and budget allocation plans aimed at optimising the use of resources available for the advancement of sustainability objectives in view of maximising long-term value for shareholders, and ultimately society. As part of its sustainability strategy, the state owner may encourage SOEs to promote sustainable innovations, circular economy and energy efficiency, amongst others. To the extent that the state has set relevant sustainability goals for its wholly owned SOEs, the state should expect SOEs to be encouraged to take an active role in decarbonisation efforts, as well as more generally on climate action such as nature restoration and water conservation amongst other aspects. Importantly, the state as an owner should also factor sustainability-related goals into its long-term shareholder and investment strategy, while paying particular attention to its portfolio-level exposure to sustainability risks, such as through lost dividends, future debt burdens, or where transition risks can lead to high-carbon stranded assets.

The state may recognise SOEs' potential in driving the sustainability agenda, including with regards to providing low-carbon alternatives and leading sustainability-related research and development, amongst other aspects. In addition, state-owned banks and other public financial institutions may also play a role by mainstreaming sustainability-related considerations in their lending and financing practices. Care should be paid, however, to maintaining a level playing field when providing incentives for SOEs or other market players to avoid competition distortions. Sustainability justifications should not be used, to justify distortive impacts on the competitive landscape.

It follows that, due to their multidimensional aspects, sustainability-related policies and strategies should be developed on a whole-of-government basis - in coordination with relevant government entities and in consultation with stakeholders. Efficient co-ordination at a broader state level should help reduce potential risks of conflicts of interest or political intervention within SOEs, and thus safeguard the separation of the state's ownership role from its other government functions particularly its role as economic regulator or policy maker.

This includes:

1. **Setting concrete and ambitious sustainability-related expectations and objectives for SOEs, consistent with the ownership policy and practices. In doing so, the state should respect the rights and fair treatment of all shareholders;**

The state as an active owner should define and communicate ambitious expectations for SOEs aimed at supporting their sustainability and resilience as well as long-term value creation. Such high-level expectations should align with the state's broader sustainability commitments, including international commitments, where applicable. These include, but are not limited to, any expectations that the state has with respect to responsible business conduct by SOEs.

However, while the state is responsible for setting expectations and ensuring a legal and regulatory framework conducive for SOEs to attain the government's sustainability objectives, the state should expect that it remains the responsibility of the boards of directors to develop the SOEs' objectives and implementation frameworks towards sustainability.

Where the state is not the sole owner, it should raise its expectations by being represented at general shareholders meetings and effectively exercising shareholder rights. In doing so, the state should respect the rights and fair treatment of minority shareholders. Although expectations may differ between companies where the state is a full, majority, or minority shareholder, clarity and transparency of owner's expectations is an important step for supporting the integration of sustainability-related goals in the operations and decision making of individual SOEs. Without a clear framework, SOEs may have an incentive to avoid compliance.

High-level expectations should cover the entire SOE portfolio and contain both cross-cutting and more sectorial-specific considerations, where relevant. Depending on the ownership framework and practices in place, the state may also set more specific sustainability-related objectives through sectorial regulations, letters of objectives or expectations, dialogue and/or SOEs' individual mandates. In this process, the state should refrain from excessive or passive intervention in the management of the SOEs and should allow SOEs' full operational autonomy to achieve their defined objectives.

If new sustainability requirements lead to a fundamental change of an SOE's overall mission or when the enterprise is charged with new responsibilities that amount to public service obligations (i.e. that go beyond the generally accepted norm for commercial considerations), such obligations should be clearly defined and disclosed to the general public. Their costs should be covered in a transparent manner.

2. **Communicating and clarifying shareholders' expectations on sustainability through regular dialogue with the boards, with due consideration for stakeholder interests;**

State ownership entities should follow-up on high-level expectations actively engaging with individual SOE boards and other shareholders where applicable, in view of ensuring mutual understanding and managing potential trade-offs between their established objectives. Such dialogue can also support implementation by making sure that SOE boards effectively translate sustainability-related expectations and objectives into meaningful strategies and targets for company management.

To this effect, state ownership entities should facilitate regular dialogue with boards of directors of individual SOEs to communicate expectations where applicable, and exchange views on sustainability objectives and/or risks and opportunities. In partly state-owned enterprises, the state should communicate and/or clarify expectations by exercising shareholder rights, in the general shareholders meeting or board meetings, with due respect to other shareholders.

3. **Assessing, monitoring and reporting on sustainability objectives and performance of SOEs on a regular basis;**

The state should monitor the implementation of general expectations and objectives for SOEs related to sustainability issues. To this effect, the state should adequately integrate sustainability-related objectives and targets within the existing reporting system, to be able to regularly assess and monitor SOE performance and oversee their compliance with high-level expectations and applicable legal and regulatory requirements. The state should communicate reporting expectations to all SOEs in a clear manner and disclose sustainability-related objectives and their attainment to the general public, including in its the annual aggregate report.

Regular performance reviews can support ownership entities with developing a clear understanding of the sustainability issues related to their portfolios and individual companies, as well as setting or adjusting new performance targets on an informed basis. In addition, the state should also consider evaluating the performance of its portfolio as a whole and consider how it can contribute to long-term value creation. To support its analysis, the state may measure its portfolio-level exposure to sustainability-related risks and/or benchmark sustainability performance of SOEs across the portfolio or among peer companies, amongst other aspects. This should help the state evaluate and prioritise sustainability risks and opportunities.

B. The state should expect SOE boards to adequately consider sustainability risks and opportunities when fulfilling their key functions.

While the state as owner has an important role to play in setting up the tone from the top, the state should expect SOEs themselves have the responsibility to ensure that the state's high-level expectations are effectively incorporated into the company's strategy and operational activities. Even if there is no formal high-level expectation with regards to sustainability, the state should expect SOEs to strive to be at the forefront of global trends and take initiatives that would benefit the company's long-term performance and resilience.

The state should ensure that SOE boards should have full operational autonomy to achieve their strategic objectives, including those related to sustainability. They should be assigned a clear mandate and ultimate responsibility for the enterprise's financial and non-financial performance and be subject to appropriate reporting and monitoring mechanisms. In particular, SOE boards should formulate their own sustainability policies and strategies to align with their overall corporate objectives; and, where relevant, identify and report on a set of strategic indicators and targets on sustainability to measure performance.

SOE boards should also ensure that effective governance and internal controls are in place, including due diligence, that are aligned with the risk management framework. These should aim at identifying and managing financial and operational risks but also with respect to human rights, labour, environmental and tax-related issues. For an effective sustainability strategy, SOEs should also concentrate their efforts in their subsidiaries and along their supply chain.

The following prerequisites are essential for ensuring effective sustainability management at the enterprise level:

1. **SOE boards should develop, implement and disclose sustainability-related strategies, objectives and targets based on verifiable metrics, and in line with shareholders' expectations, as well as applicable legal and regulatory requirements;**

Boards of directors should effectively integrate shareholders' expectations and objectives with regards to sustainability into their business strategies and develop specific targets and indicators to this effect. Sustainability strategies and/or plans should be integral to and aligned with the overall business strategy of the enterprise. They should also align with applicable legal and regulatory requirements, including reporting requirements, and consider stakeholder interests in their development. Effective sustainability plans and strategies can help translate sustainability expectations into meaningful improvements in business practices and therefore help avoid the pervasive acts of "greenwashing" or "social washing".

Strategic targets linked to sustainability should be based on consistent, comparable and reliable metrics to ensure credibility of the information for users, including investors and stakeholders. They should be regularly disclosed to allow shareholders, investors and stakeholders to assess the credibility of the announced goal and management's progress towards meeting it. The disclosure may include, for instance, the definition of interim targets when a long-term goal is announced, annual consistent disclosure of relevant sustainability metrics and possible corrective actions the company intends to take to address the underperformance against a target.

2. **SOEs should integrate sustainability considerations into their risk management and internal control systems;**

Managing and, where needed, mitigating sustainability-related risks is a key responsibility of the board of directors and is critical for the long-term success of a business. High standards of responsible business conduct call for SOEs to ensure that effective governance and internal controls are in place, including due diligence and risk management frameworks, to effectively avoid and address adverse impacts throughout their operations, supply chains and business relationships.

In accordance with the OECD Guidelines for Multinational Enterprises, which are fully applicable to SOEs, effective due diligence should be risk-based and supported by efforts to embed responsible business conduct into policies and management systems, however it should go beyond simply identifying and managing material risks to the enterprise itself, to include the risks of harm related to matters covered by the OECD due diligence guidance for responsible business conduct. This includes potential adverse impacts on human rights (ex. Child labour, exploitation of workers) and on the environment (ex. Pollution, biodiversity loss). Effectively preventing and mitigating adverse impacts may in turn help SOEs maximise long-term value for society, improve stakeholder relationships and protect their reputation. SOEs can also carry out due diligence in view of meeting legal requirements pertaining to specific areas such as inter alia labour, environmental, corporate governance, criminal or anti-bribery laws.

The growing participation of SOEs on global markets and cross-border activities also raises increasing concerns over social and environmental risks in their global value chains. Consequently, SOEs should observe the numerous legal and regulatory developments that are currently under discussion in various jurisdictions, particularly with regard to human rights and environmental due diligence in supply chains.

3. **SOE boards should effectively assess and monitor management performance, including on sustainability. Where boards introduce specific remuneration schemes, such incentives should be carefully balanced and linked to relevant and material risks and the company's strategy.**

In the exercise of its functions, the board should effectively assess and monitor management performance and ensure that it appropriately pursues the strategic objectives of the company, including objectives related to sustainability. SOE boards should ensure that the management of the enterprise has the appropriate skillset to understand and manage sustainability-related risks and opportunities, and to guide the company towards value-enhancing strategies, particularly if such risks are of material importance to the company.

Some SOE boards may provide further incentives to senior executives to act in the long-term interest of the enterprise, and its shareholders by introducing sustainability-related criteria in executive compensation plans. In such cases, and subject to applicable requirements, SOE boards may decide upon the exact remuneration schemes and key performance indicators (KPIs) including on sustainability, ensuring an appropriate balance of incentives. KPIs should incentivise a long-term perspective, be linked to material elements of the firm's sustainability strategy, and be based on high-quality data and metrics. While qualitative objectives and targets may be useful or necessary in certain cases, good practice calls for them to be quantifiable, transparent and auditable, in view of ensuring their credibility.

Balancing shareholder interests with long-term sustainability goals is often complex for company boards and management because long-term sustainability objectives are difficult to measure and data is often unclear and uncertain. The introduction of a business judgment rule or similar regulation that shifts the boards' margin of discretion towards advancing SOEs' sustainability can encourage boards to take into account sustainability factors. Such schemes generally protect board members and management against litigation, if they made a business decision diligently, with procedural due care, on a duly informed basis and without any conflicts of interest.

C. The state should expect SOEs to be subject to appropriate sustainability reporting and disclosure requirements, based on consistent, comparable and reliable information:

Sound reporting and disclosure standards for SOEs on sustainability-related governance, strategy, risk management and non-financial performance, including sustainability-related information and metrics (ex. greenhouse gas emissions, collective bargaining coverage) are of increasing relevance and importance for shareholders, investors and stakeholders including the general public. They are also important for strengthening the accountability of SOE boards and management in the sustainability area and enables the state to act as an informed owner by providing a clearer picture of SOEs' performance.

The state should expect SOEs to engage in non-financial reporting and disclosure to demonstrate how they address sustainability expectations, and in so doing how they deliver value for the state, shareholders and citizens. They should be explicitly required to adequately report and disclose clear, accurate and complete information on sustainability-related activities, risks and objectives in a timely and accessible manner.

1. Sustainability reporting and disclosure should be aligned with high-quality internationally recognised standards that facilitate the consistency and comparability of sustainability-related disclosure across markets, jurisdictions and companies;

While acknowledging that a "one-size-fits-all" approach has its limitations, state ownership entities may decide to harmonise or standardise reporting standards and performance indicators to ensure greater consistency, reliability and comparability of sustainability disclosures across companies and markets. To this effect, reporting regulations may provide a minimum set of pre-defined indicators linked to existing frameworks or request the use of (specific) internationally-accepted reporting standards to ensure the quality of reporting and limit the discrepancy in reporting practices. Many jurisdictions recommend or require that materiality based on the perspective of a reasonable investor should be the standard for SOEs, while others recommend or require that double materiality should be the standard for SOEs. The information disclosed should include retrospective and forward-looking material in alignment with internationally recognised reporting standards.

In addition, the state should also provide SOEs with guidance on where sustainability-related disclosures should be presented, such as in the primary annual report (i.e. integrated report) or separately. This should include clear expectations regarding publication and accessibility of reports. To the extent possible, an integrated reporting approach should be favored as it can be useful in demonstrating the link between a firm's strategy and its commitment to sustainable development.

SOEs should ensure consistency between sustainability reporting, financial reporting and other corporate information.

2. **Phasing in of expectations or requirements should be considered for annual assurance attestations by an independent, competent and qualified attestation service provider, in accordance with high-quality internationally recognised assurance standards;**

Independent assurance of sustainability reporting increases trust around the accuracy and quality of the reported data and helps therefore enhance the accountability of both SOEs and the state to the public. For companies, assurance services can help reduce costs and legal risks associated with sustainability reporting. It can also help satisfy stakeholders and protect the company from litigation risks. For the state, assurance can support its role as an active and informed owner by allowing comparisons of sustainability information between SOEs and other enterprises and by providing a more accurate assessment of sustainability risks and opportunities within its portfolio.

With due regard to their size and operational conditions, the state should require SOEs' sustainability disclosures to be reviewed by an independent and qualified assurance provider based on robust methodologies aimed at ensuring the accuracy and quality of SOEs' sustainability reporting. The review should preferably focus on the company's sustainability performance rather than purely on the report itself. When assurance for all disclosed sustainability information might not be possible or too costly, mandatory assessment for the most relevant sustainability-related metrics or disclosures, such as GHG emissions, should be considered. However, greater convergence of the level of assurance between financial statements and sustainability-related disclosures should be the long-term goal.

D. The state as an owner should set high expectations for SOEs' responsible business conduct; and should fully recognise SOEs' responsibilities towards stakeholders. Such expectations should be disclosed in a clear and transparent manner.

Like private companies, SOEs are subject to an evolving legal and regulatory landscape around responsible business conduct (RBC) and thus have a commercial interest in minimising reputational risks and being perceived as "good corporate citizens". Beyond this, RBC is also increasingly perceived as a central element to a sustainable and resilient economy, as it promotes harmonious relations between business and other segments of society and serves the goal of long-term value creation.

Consequently, SOEs should observe high standards of responsible business conduct across business operations and along the entire supply chain, including with regards to the environment, workforce, gender equality, anti-corruption, consumer interests, science and technology, competition, taxation, public health and safety, and human rights. Their actions should be guided by relevant international standards, including the OECD Guidelines for Multinational Enterprises, the ILO Declaration on Fundamental Principles and Rights at Work; the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the UN Guiding Principles on Business and Human Rights.

Of central importance to corporate governance is stakeholder engagement, which is also a key feature of RBC. State ownership entities and SOEs should acknowledge the importance of stakeholder relations for building sustainable, financially sound and responsible enterprises. Stakeholder relations are particularly important for SOEs as they may be critical for the fulfilment of public service obligations whenever these exist. Moreover, due to the nature of their activities, SOEs may have a vital impact on the country's macroeconomic development and on the communities in which they are active. Moreover, many investors increasingly consider stakeholder-related issues in their investment decisions and appreciate potential litigation risks linked to stakeholder issues. It is therefore important that the ownership entity and SOEs recognise the impact that an active stakeholder policy may have on the enterprise's sustainability and resilience as well as in the attainment of its long-term strategic goals and reputation.

It is best practice to grant certain stakeholders specific rights in SOEs through legal status, regulations, mutual agreements/contracts or distinct governance structures, such as employee representation on SOE boards for instance. Any specific rights granted to stakeholders or influence on the decision-making process should be explicit. The legal framework should be transparent and not impede the ability of stakeholders to communicate and obtain redress for the violation of rights at a reasonable cost and without excessive delay. In addition, whistleblowers, individuals or organisations that report legal misconduct (e.g. regarding social or environmental regulations, corruption, human rights) of either the state or SOEs should be protected by law.

Whatever rights granted to stakeholders by the law or other means that have to be fulfilled by the SOE in this regard, the company organs, principally the general shareholders meeting and the board, should retain their decision-making powers.

In particular:

1. **Governments, state ownership entities and SOEs should recognise and respect stakeholders' rights established by law or through mutual agreements;**

As a dominant shareholder, the state may control corporate decision making and be in a position to take decisions to the detriment of stakeholders. It is therefore important to establish mechanisms and procedures to protect stakeholder rights. The ownership entity and SOEs should have a clear policy in this regard. To encourage active and long-term ~~wealth~~ value-creating co-operation with stakeholders, SOEs should ensure that stakeholders have access to relevant, sufficient and reliable information on a timely and regular basis to be able to exercise their rights, such as to effective redress in the event their rights are violated.

SOEs should report on stakeholder issues, demonstrating their willingness to operate transparently, and their commitment to co-operation with stakeholders. This will foster trust and improve their reputation.

Mechanisms for employee participation should be encouraged to be developed when considered relevant with regard to the importance of stakeholder relations for some SOEs. However, when deciding on the relevance and desired development of such mechanisms, the state should give careful consideration to the inherent difficulties in transforming entitlement legacies into effective performance enhancing mechanisms. Examples of mechanisms for employee participation include employee representatives on boards and governance processes such as trade union representation and works councils that consider employee viewpoints in certain key decisions. International conventions and norms also recognise the rights of employees to information, consultation and negotiation.

2. **SOEs should develop and encourage meaningful stakeholder engagement in advancing sustainability and ensuring a just transition, particularly from persons or groups that may have an interest in or could be impacted by an enterprise's activities;**

Regular and continuous stakeholder dialogue should inform management's decision-making and be reflected in the SOEs' business strategy. A meaningful stakeholder engagement can support a transition to a more sustainable economy, by securing inter alia workers' rights and livelihoods. While such dialogue may be useful for a range of issues, this is notably important for decisions to improve a company's sustainability and resilience, which may represent short-term cash outflows while generating long-term benefits. Such dialogue may also prove helpful for the company to assess which sustainability matters are of such relevance that they should be addressed and disclosed.

Relevant platforms for stakeholder dialogue and engagement should be provided based on laws or regulations. Meaningful stakeholder engagement generally refers to ongoing engagement with stakeholders that consists of an interactive process involving two-way communications; depends on good faith of participants on both sides and is responsive (i.e. there is a follow-through on outcomes).

Furthermore, mechanisms should further be introduced to promote anonymous reporting of legal misconduct. Unethical and illegal practices by corporate officers may not only violate the rights of stakeholders but also be detrimental to the company in terms of reputational effects. It is therefore important for companies to establish a confidential whistleblowing policy with procedures and safe-harbours for complaints by workers, either personally or through their representative bodies, and others outside the company, concerning illegal and unethical behaviour. The board should be encouraged to protect these individuals and representative bodies and to give them confidential direct access to someone independent on the board, often a member of an audit or an ethics committee. Some companies have established an ombudsman to deal with complaints. Relevant authorities have also established confidential phone and e-mail facilities to receive complaints. While in certain jurisdictions representative workforce bodies undertake the tasks of conveying concerns to the company, individual workers should not be precluded from, or be less protected, when acting alone. In the absence of timely remedial action or in the face of reasonable risk of negative ~~employment~~ action to a complaint regarding contravention of the law, employees ~~workers~~ are encouraged to report their *bona fide* complaint to the competent authorities. Many jurisdictions also provide for the possibility to bring cases of alleged violations of the OECD *Guidelines for Multinational Enterprises* to the relevant National Contact Point. The company should refrain from discriminatory or disciplinary actions against such workers or bodies.

Stakeholders differ depending on the enterprise and its activities. For an effective decision-making process, firms should prioritise all stakeholders equally, even those they do not have contractual relations with, as they may run the risk of leaving out key issues when elaborating the content of their sustainability policies, objectives and reports.

3. **State ownership entities and SOEs should take action to ensure high standards of integrity in the state-owned sector and to avoid the use of SOEs as conduits for political finance, patronage or personal or related-party enrichment.**

State ownership is concentrated in high-risk sectors, such as the extractive industries and infrastructure, where public and private sectors intersect via valuable concessions and large public procurement projects. SOEs in many economies also continue to provide essential public services and some SOEs still operate as public institutions despite having economic objectives and competing in the market. This confluence of factors may make SOEs particularly vulnerable to corruption and exploitation for political finance, patronage, and personal or related party enrichment. The cost to the public purse and the perverse effects of misallocated resources related to corruption in the SOE sector can undermine citizens' trust in public institutions.

State-owners should take the measures necessary to prohibit use of SOEs as vehicles for financing political activities and for making political campaign contributions and expect that SOEs adhere to laws related to lobbying for example by declaring a meeting in the appropriate register. Appropriate measure should address other high-risk areas such as the procurement of goods and services as well as, inter alia: board and senior/top management remuneration, conflicts of interest, hospitality and entertainment, charitable donations and sponsorships, gifts, favouritism, nepotism or cronyism, and facilitation payments, solicitation and extortion.

The state and SOEs are encouraged to implement the OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises to the fullest extent possible. The provisions contained therein work as a complement and supplement to this instrument.