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Kuala Lumpur, Malaysia

Comments on the Public Consultation for the OECD Guiding Principles for State-owned Enterprise

IDEAS has studied the recommended changes in the public consultation document for the revision of the OECD Guiding Principles for State-owned Enterprises. We note the significant inclusion of sustainability related guidelines in the new Chapter VII, which aligns with commitments to the United Nations Sustainable Development Goals (SDGs). We agree in principle with the revisions recommended, with comments and reservations on specific areas provided below:

Section	Comment
<p>p.7, 1st paragraph and p.8, 4th paragraph</p> <p>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.</p> <p>...</p> <p>“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.</p> <p>SOEs’ operations may include economic activities or a mix of economic and non-economic activities.”</p>	<p>The definition of public corporations with “an economic nature” is particularly important in countries that have statutory bodies that have public service objectives which may also participate in economic activities. A state-owned utilities provider should be considered an SOE if it is a statutory body that collects fees with a pricing mechanism.</p> <p>The definition of “economic activities” does not clarify whether a state-owned monopoly for provision of public goods (e.g. energy or water) is an SOE. Although it is implied in the first part of the paragraph, the second part of the paragraph (as quoted on the left) has a more ambiguous effect. The sentence “Economic activities mostly take place in markets where competition with other enterprises already occurs or where competition given existent laws and regulations could occur” is contradictory with the previous statement that market structure is not decisive. The sentences would be less ambiguous if there is a treatment of state-owned monopolies with respect to economic activities in the definition.</p>

<p>P.8 2nd paragraph</p>	<p>We welcome greater clarity in the definition of the state’s ownership and control of SOEs. In particular it is important to note that institutional investors may collectively own a sufficient proportion of shares in a corporation and act in concert to influence the direction of the corporation, even if they own less than 10% individually.</p>
<p>P.8, 6th paragraph (Public policy objectives)</p> <p>“Public policy objectives’ public interest should be made clear and decided transparently before the objectives are formulated”</p>	<p>We express concern that public policy objectives can also include SOEs being forcibly assigned unviable “public interest” projects which in reality represent vested political or corrupt interests.</p> <p>The wording “Public policy objectives’ public interest should be made clear and decided transparently before the objectives are formulated” does not reinforce that the nature of the public interest should also be justified and financially viable prior to assignation, and not just transparent. There may be cases where an objective is assigned and an SOE faces political pressure for feasibility or impact studies to prove public interest and viability in a non-independent manner.</p> <p>Consider adding the word “towards” after Public policy objectives. Needs further elaboration on this point as the sentence is hanging. For example “..decided transparently based on costs and revenue structure, etc”</p>
<p>P.10</p> <p>“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.”</p>	<p>We fully support the addition of this statement which extends the scope of the Guidelines to include statutory bodies which may not have direct commercial activity nor shareholdings, but which may be holding entities that control subsidiary SOEs on behalf of the government. Such intermediate entities should also be subject to equivalent principles of governance.</p>
<p>Pg.11, Guideline I.C</p> <p>“The ownership policy should be subject to appropriate procedures of political political accountability and disclosed to the general public. The government</p>	<p>We disagree with the removal of political accountability from the guideline. While it is understandable that the guidelines cater to a wide range of political and governance systems, political accountability is a fundamental principle in the governance of SOEs. The principle is applicable even if international organisations are restricted in assessing the specific jurisdiction’s political system or standard of</p>

<p>should review at regular intervals its ownership policy and evaluate its implementation”</p> <p>Point A.to maximise long-term value</p>	<p>accountability.</p> <p>Therefore, the addition of the following sentence to the annotation (pg.23) is important and we fully support its finalisation as the sentence calls for periodic legislative review of rationales in the ownership policy: “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.”</p> <p>Consider to replace long-term value for society with a clearer/more concrete term</p>
<p>Pg.15, Guideline E.III.4</p> <p>“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”</p>	<p>This implies that the state should establish a policy on dividend returns. Consider that social policy objectives may impact the rate of return, and there is a strong public interest motive to set lower requirements for SOEs that are providing goods and services with equal access obligations. It is noted that there is a guideline to ensure separate funding for social policy obligations in Guideline III.C.2, which provides a structural solution to the contradiction in objectives. An appropriate cross reference can be made in the Annotations to ensure the connection between these complementary guidelines is reinforced.</p>
<p>Pg.17, Guideline V.A</p>	<p>Consider also that dividend policies or beneficial ownership arrangements should be disclosed, particularly where the state does not have a centralised publicly disclosed policy on dividends.</p>
<p>Pg.18, Guideline E</p> <p>“....through digital communications”</p>	<p>Consider to elaborate on the need for digitalisation in SOE governance in this sentence</p>
<p>Pg.22, Guideline VII.D.3</p> <p>“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</p>	<p>The wording “take action” is unclear as to the level of authority and commitment implied in the action. An action could be a legal or policy measure – for example, a legal requirement backed by enforcement; or an ad hoc measure. More specific wording is recommended to indicate a higher level of commitment for this point.</p>

conduits for political finance, patronage or personal or related-party enrichment.”	
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