

OECD Corporate Governance Committee
CorporateGovernance&CorporateFinance@oecd.org

Rabat, September 11, 2023

Re: Public Consultation on the draft revisions to the OECD Guidelines on Corporate Governance of State-Owned Enterprises (“SOE Guidelines”)

Dear Committee Members

The Institute of Moroccan Directors (IMA) welcomes the opportunity to comment on the draft revision to the OECD Guidelines on Corporate Governance of State-Owned Enterprises. (SOE Guidelines)

The Moroccan Institute of Directors (IMA) was created in 2009 as a non-profit organization by the National Commission on Corporate Governance "Corporate Governance", with the purpose of providing board members with the right training, information and expertise necessary to fulfill their mandates and to promote good governance practices. IMA is positioned as a center of expertise on corporate governance, issuing regular surveys on corporate governance practices of public debt issuers; providing tailored trainings to board members in Morocco, and expanding its programs to West African countries (Ivory Coast, Burkina Faso, Niger). It also serves as a platform of exchange and dialogue to a network including more than 600 directors from its various certificate programs, and it is a trusted stakeholder of public authorities in public consultations on corporate governance frameworks. In 2018, it became a member of the National Commission on Corporate Governance in charge of amending Morocco corporate governance codes. For more information visit: www.institutma.ma

OECD provided an important support to the elaboration of the Moroccan Codes in 2008 through the Global Corporate Governance Platform (OECD-IFC). OECD Corporate Governance Principles underpinned both the Moroccan Code of Good Corporate Governance Practices issued in 2008 and the Code of Corporate Governance of State-Owned Enterprises issued in 2012. Morocco codes were the results of a broad consultation effort that brought together both public and private stakeholders, in addition to civil society actors and were tailored to Morocco environment and companies' ownership specificities. G20/OECD Principles represent a benchmark to the current amendment of the various codes undertaken by the National Commission on corporate governance, which launched a public consultation of its revised SOE code in July 2023, that is planned to be enacted as a decree, to ensure its enforcement.

In this letter, we have the pleasure to provide comments related to some sections of the SOE Guidelines.

Applicability and definitions

The definition of control underpinning the definition of an SOE might be further detailed to be consistent with international financial accounting standards¹. The State can exert financial control even if it holds less than 50% of interest in share capital, if it has the rights to the majority of benefits or economic gains. The economic substance prevails over the legal ownership status. In assessing the economic substance of the relationship, the impact of potential voting rights held by the State and by other parties is also taken into account. Under the operational control approach the State has operational control if it has directly or indirectly (through state-owned holding entities) the full authority to introduce and implement operating policies.

V. Transparency and accountability

We welcome in annotation C.2 to the new chapter VII: SOEs and sustainability, the consideration for annual assurance for sustainability reporting provided by independent, competent and qualified attestation service provider. The assurance supports the State in 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”. Thus, we believe that SOE Guidelines would make a stronger case about the importance of sustainability assurance if it was also integrated in section V. Disclosure, Transparency and accountability in point B, along with the statement about the importance of conducting external audit of financial statements. We did welcome that this point is duly raised in Annotations to Chapter VII, C.2 as following “with due regard to their size and operational conditions, the state should require SOEs sustainability disclosure to be reviewed by an independent and qualified assurance provider (...)”. We also think that it is important to acknowledge it in the Disclosure, Transparency and Accountability chapter, given the growing focus of institutional investors on assurance as part of quality reporting in establishing stronger links between financial reporting and sustainability risks².

It can be acknowledged that sustainability assurance is still limited and that international agreed standards are emerging and increasingly adopted across many jurisdictions, although some regulations only require limited assurance and not reasonable assurance³.

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

The “Good practice mentioned in point F to separate role of the Chair from that of the CEO” is sometimes difficult to sustain in state-owned enterprises. In Morocco in particular, the laws reforming the governance of SOEs didn’t prohibit political appointees (ministers) to serve as board members. Although we do understand the underpinnings of the recommendation to separate the two functions (potential conflicts of interest, concentration of power...), and acknowledge that it is critical, we also think that it needs to be made on a comply or explain basis, in order to reflect specific conditions and different “ownership scenarios” of SOEs.

¹ In Morocco the definition of SOE has yet to be defined by regulation. The Law 82-20 establishing the ownership entity identified 57 SOEs deemed to be strategic for the State as an owner, with different levels of ownership; full, majority or minority shareholding.

² See *Investor Expectations for Paris-aligned accounts*, Institutional Investor Group on Climate Change, November 2020: <https://www.iigcc.org/download/investor-expectations-for-paris-aligned-accounts/?wpdmdl=4001&masterkey=5fab4d15595d>

³ According to IFAC report (The State of Play: Sustainability Disclosure and Assurance: 2019-2021 Trends & Analysis, IFAC, February 2023): 64% of large companies obtain some assurance/verification over some of the sustainability information they provide in 2021 and among them: the percentage of firms that applied ISAE 3000 (Revised standard for non-financial information assurance issued by the International Auditing and Assurance Standards Board), was 70% in 2021, against 72% in 2020 and 68% in 2019.

It is sometimes more efficient to have a CEO⁴ rather than two separate functions in SOEs operating in competitive sectors. The revised Moroccan Code of Corporate Governance for Public Establishments and Enterprises (code de gouvernance des entreprises et établissements publics) recommends separating the two functions but also recommends the appointment of a Lead Independent Director, in case there is no separation, in order to ensure effectiveness and efficiency of SOEs' governance. It would be useful to acknowledge this state of play and to issue recommendations mitigating conflicts of interest (through the appointment of a Lead independent director or a minimum threshold of 30% of independent board members...).

It would also be useful to ensure that state representatives appointed in SOEs' boards do not have hierarchical links with one another.

Annotations to chapter II; the State's role as an owner

We welcome the reference to the G20/OECD Principles of Corporate Governance as applying to both public and state-owned companies. Morocco chose to issue a specific code of corporate governance for SOEs, although it holds similarities with its general code of corporate governance. We think it is critical to remind the applicability of the G20/OECD Principles to ensure equitable treatment of minority shareholders when the state is not the sole owner.

C. It would be useful to provide examples of "good practices" from other jurisdictions on established reporting channels that would enable SOEs to "seek advice or report when representatives of government, including those of the ownership entity⁵, overstep their role or act in a way that appears to be irregular".

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

A.3: "where institutional investors are among shareholders of SOEs, due consideration should be given to the G20/OECD Principles of Corporate Governance, Principle III.A.

We think that stewardship should be explicitly referred to in the SOE Guidelines as new mainstream complementary mechanism to support engagement by institutional investors with their investee companies. Stewardship codes have mainly taken root in common law jurisdictions and are still relatively uncommon in civil law jurisdictions. It would be relevant to add a strong paragraph to further explain what "due consideration" given to Principle III.A means, when SOEs include institutional investors as shareholders. given that stewardship policies are not a well-established practice in Morocco for instance among domestic institutional investors, it would be useful to explain the fiduciary duties of institutional investors that underpins stewardship policy and address what stewardship encompasses in practice: monitoring, engaging, voting and reporting.

SOEs need to be aware of those investors' expectations (see ICGN Global Stewardship Principles) and be prepared to enhance their reporting and disclosure practices and to better understand their portfolio decision-making in pre and post investment phases. This is of particular importance for SOEs willing to privatize or to open their capital to minority international institutional investors.

Annotations to Chapter VII: State-owned enterprises and sustainability

3.B.1: Managing sustainability related risk starts with successful governance structure: the board should first ensure that there is an effective risk governance at the highest level with board and senior executives. It should ensure that risk governance structures are allocating responsibilities to specified senior and competent executives.

⁴ The recent framework law n° 50-21 related to the reform of public sector stipulates in its article 16 that "... it will be proceeded to the transformation of any public establishment operating a commercial activity into a limited liability company with a board of directors, pursuant to the principle of the continuity of the legal entity. The Board of Directors of this company will be chaired, whenever necessary, by a Chief Executive Officer...".

⁵ Morocco established an ownership entity: the Agence nationale chargée de la gestion stratégique des participations de l'Etat (National Agency for the Strategic Management of State Holdings), following the publication of law no. 82-20. It will have an important role to play in professionalizing the governance of strategic SOEs under its supervision.

C.1: “Regulations may provide (...) or request the use of specific internationally accepted reporting standards to ensure the quality of reporting and limit the discrepancy in reporting practices”.

We also think that it would be useful to recommend the use of science-based target metrics that are of particular importance when it comes to disclosing credible target data and transition plans to investors related to GHG (greenhouse gas) reduction emissions and biodiversity loss.

It would also be relevant to recommend the non-delayed publication of sustainability and financial reports. Indeed, we noticed that some SOEs who publish sustainability reports tend not to publish them as the same time as the financial annual reports. (In Morocco the majority of companies publish stand-alone ESG reports and not integrated reports).

Thank you for the opportunity to comment on SOE Guidelines. For further information or questions, you can contact us directly at: contact@institutma.ma or elbouanani@institutma.ma

Yours faithfully,

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