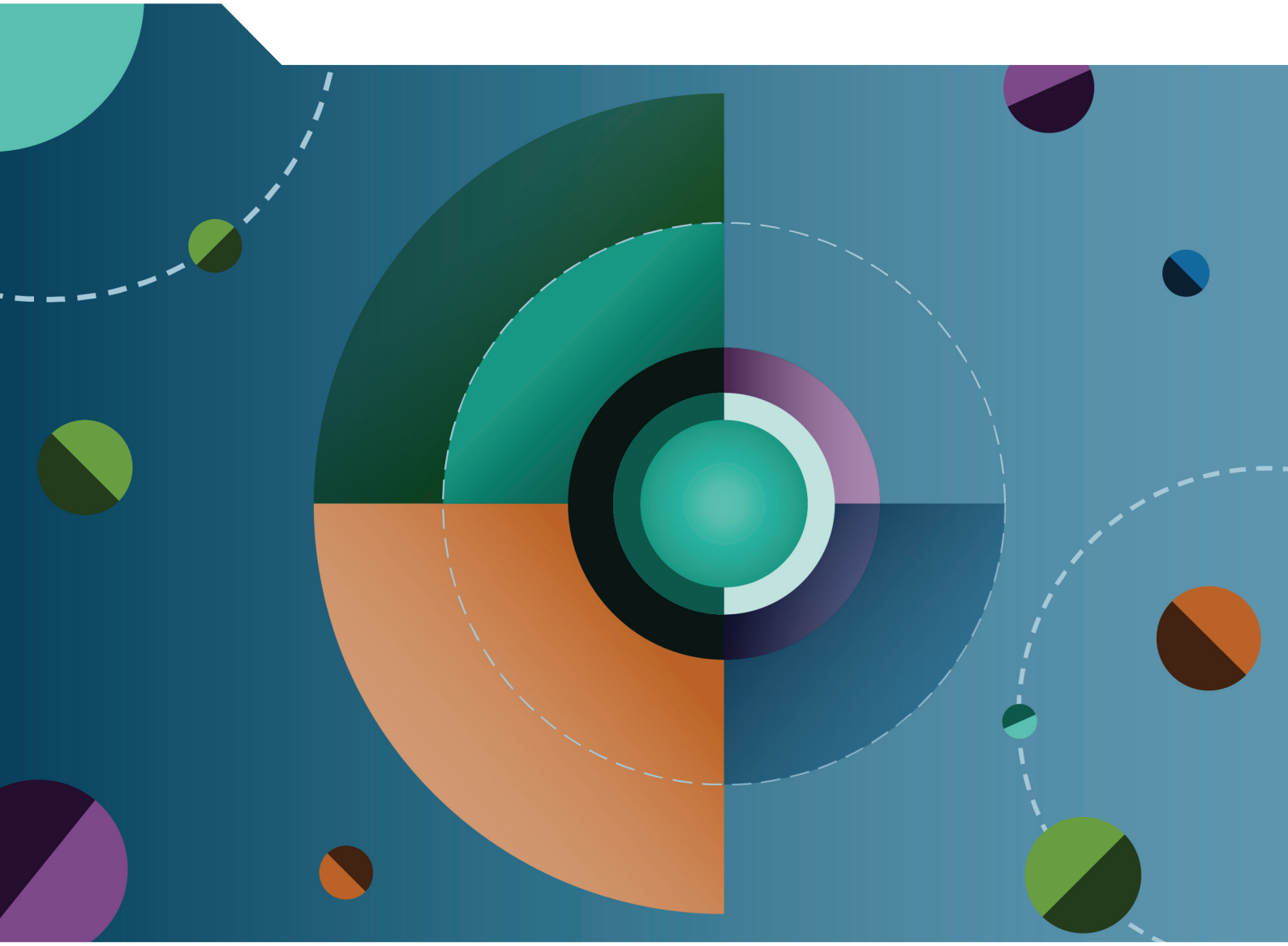
OECD Guidelines on Corporate Governance of State-Owned Enterprises



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OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024

The OECD Guidelines on Corporate Governance of State-Owned Enterprises are set out in the Appendix to the OECD Recommendation on Guidelines of Corporate Governance of State-Owned Enterprises [OECD/LEGAL/0414] adopted by the OECD Council on 8 July 2015 and revised on 3 May 2024. For access to the official text of the Recommendation, as well as other related information, please consult the Compendium of OECD Legal Instruments at https://legalinstruments.oecd.org.

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Preface

The *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (the *Guidelines*) are the leading international standard for policymakers to design effective ownership and corporate governance frameworks for SOEs. Complementary to the *G20/OECD Principles of Corporate Governance*, they aim to address the unique challenges and opportunities faced by state ownership in view of fostering transparency, accountability, integrity and efficiency within the state-owned sector. They have become a cornerstone for countries in reforming their institutional, legal, and regulatory frameworks to boost competition, professionalise ownership practices, and enhance SOE performance.

The 2024 revision of the *Guidelines* builds on nearly two decades of implementation experience, and will enhance their ambition and relevance by reflecting the latest OECD standards and best practices. With the growing role of SOEs in the marketplace, the revised *Guidelines* aim to further ensure competition on a level playing field between SOEs and private enterprises. To ensure sound SOE governance, the revised *Guidelines* emphasise the need for the state to act as an active, informed and professional owner. This includes clearly defining the rationales and expectations for SOEs, especially with regard to their public policy objectives. The revised *Guidelines* also call for boards to have the necessary competencies, integrity and objectivity to carry out their functions; and for high standards of transparency, disclosure and accountability towards shareholders and stakeholders to be observed.

The revision recognises the role that SOEs and their owners can play in leading by example on sustainability. This includes, for SOE owners, integrating sustainability considerations into ownership policies, and for SOEs, setting ambitious and concrete sustainability goals, while using risk management and responsible business conduct to ensure resilience and long-term value creation.

The *Guidelines* will remain a valuable tool for governments to promote transparent, accountable and sustainable governance practices within the state-owned sector. The OECD will continue to work with all countries and partners to promote the implementation of the *Guidelines* globally.

Mathias Cormann,

OECD Secretary-General

Foreword

The *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (the *Guidelines*) are the leading international standard for the corporate governance of state-owned enterprises (SOEs). They provide guidance to help policy makers evaluate and improve the legal, regulatory and institutional frameworks for the ownership and governance of SOEs. They identify the key building blocks to ensure professionalised ownership and governance, and offer practical guidance for implementation at the national level.

First adopted in 2005 and revised in 2015, the *Guidelines* were revised again in 2024 in light of recent evolutions in corporate governance and reflecting the latest OECD standards and best practices. The revised *Guidelines* were adopted by the OECD Council at Ministerial level in May 2024 (the *Guidelines* are embodied in the OECD *Recommendation on Corporate Governance of State-Owned Enterprises* [OECD/LEGAL/0414]). They complement the *G20/OECD Principles of Corporate Governance*, and the *OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises*.

The revised *Guidelines* aim to ensure that SOEs contribute to sustainability, economic security and resilience, by maintaining a global level playing field and high standards of integrity and business conduct. They include a new Chapter on "State-owned enterprises and sustainability" which provides recommendations on how SOEs and their owners can lead by example by taking into account climate-related and other sustainability opportunities and risks. This new Chapter also incorporates Chapter V on "Stakeholder relations and responsible business" of the previous version of the *Guidelines*. A significant amount of new recommendations have also been integrated within the existing chapters of the *Guidelines*, whose structure remains otherwise unchanged. Moreover, the "Applicability and Definitions" section further clarifies key concepts and definitions relevant for the implementation of the *Guidelines*.

The 2024 revision of the *Guidelines* was undertaken by the OECD Working Party on State Ownership and Privatisation Practices, chaired by Mr. Charles Donald. OECD Member and Partner countries actively contributed to an inclusive and transparent review process. Important contributions were received from the OECD's regional SOE roundtables in Asia and Latin America, and from Business at OECD (BIAC) and the Trade Union Advisory Committee (TUAC). The review also benefitted from inputs of a broad set of stakeholders and policy communities. An online public consultation and hybrid stakeholder consultation were held, and the review involved experts from relevant international organisations, notably the International Monetary Fund, the World Bank Group, and the European Bank for Reconstruction and Development.

The OECD and relevant stakeholders will now endeavour to promote and monitor the effective implementation of the revised *Guidelines* globally. This will include promoting policy dialogue on their implementation, conducting country and peer reviews, and regularly publishing the report *Ownership and Governance of State-Owned Enterprises* which assesses implementation of the *Guidelines* in a large number of countries.

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About the Guidelines

Most industrialised economies are characterised by open and competitive markets firmly rooted in the rule of law, with private enterprises as the predominant economic actors. However, in some countries, including many emerging economies, state-owned enterprises (SOEs) represent a substantial share of gross domestic product (GDP), employment and market capitalisation. Even in countries where SOEs play only a minor role in the economy, they are often prevalent in utilities and infrastructure industries, such as energy, transport, telecommunications and in some cases also hydrocarbons, other extractive industries, technology and finance. Thus, SOE performance is of great importance to broad segments of the population and to other parts of the business sector. Consequently, good governance of SOEs is critical to ensure their positive contribution to public policy objectives, sustainable development, including the low carbon transition, economic efficiency and competitiveness. Experience shows that market-led development is the most effective model for efficient allocation of resources. A number of countries are in the process of reforming the way in which they organise and exercise ownership of their SOEs and have in many cases taken international best practices such as the present *Guidelines* as points of departure or even benchmarks. The *Guidelines* aim to: (i) professionalise the state as an owner; (ii) make SOEs operate with similar efficiency, transparency, integrity and accountability as good practice private enterprises; (iii) ensure that competition between SOEs and private enterprises is conducted on a level playing field; and (iv) contribute to SOEs' sustainability, resilience and long-term value-creation.

The *Guidelines* do not address whether certain activities are best placed in public or in private ownership, which depends on a number of factors related to the national economy as well as domestic policy choices. However, if a government decides to divest SOEs, then good corporate governance, backed by high levels of transparency and integrity are important prerequisites for economically effective privatisation, enhancing SOE valuation and hence bolstering the fiscal proceeds from the privatisation process.

The rationale for state ownership of enterprises varies among countries and industries. It can typically be said to comprise a mix of social, economic and strategic interests. Examples include public policy objectives, regional and sustainable development, the supply of public goods and services as well as the existence of so called "natural" monopolies where competition is not deemed feasible. Over the last few decades however, globalisation of markets, technological changes and deregulation of previously monopolistic markets have led to readjustment and restructuring of the state-owned sector in many countries. Moreover, SOE participation in international trade and investment has grown significantly. While SOEs were once principally engaged in providing basic infrastructure or other public services within their domestic markets, the relative importance of state-ownership has increased. SOEs are increasingly becoming important actors in the global marketplace, including operating in strategic sectors of the economy and relevant to the low carbon transition. In tandem with this development is the proliferation of state-owned investment vehicles and holding companies, which adds complexity to the relationship between governments and the enterprises they own. These developments are surveyed in a number of OECD reports that have served as input to these *Guidelines*.

SOEs face some distinct governance challenges. On the one hand, SOEs may suffer from undue hands-on and politically motivated ownership interference, leading to unclear lines of responsibility, a lack of

accountability and integrity and efficiency losses in their corporate operations. On the other hand, a lack of any oversight due to overly passive or distant ownership by the state can weaken the incentives of SOEs and their staff to perform in the best interest of the enterprise and the general public who constitute its ultimate shareholders and raise the likelihood of self-serving behaviour by corporate insiders. SOEs' management may also be protected from two disciplining factors that are considered essential for policing management in private sector corporations, i.e. the possibility of takeover and the possibility of bankruptcy. At the level of the state, the enforcement of commercial laws and regulations against SOEs can create unique challenges because of intra-governmental friction resulting from regulators bringing enforcement actions against entities controlled by the government. Additional governance issues arise when SOEs fulfill a public policy role together with other activities; or whose concentration in certain sectors makes SOEs more susceptible to certain risks and opportunities to operate according to responsible business conduct and high standards of integrity as addressed in relevant OECD standards.

More fundamentally, corporate governance difficulties derive from the fact that the accountability for the performance of SOEs involves a complex chain of agents (management, board, ownership entities, ministries, the government and the legislature), without clearly and easily identifiable, or with remote, principals; parties have intrinsic conflicts of interest that could motivate decisions based on criteria other than the best interests of the enterprise and the general public who constitute its shareholders. Addressing this complex web of accountabilities in order to ensure efficient decisions and good corporate governance of SOEs requires profound attention to the same three principles that are paramount for an attractive investment environment and for competitive neutrality: transparency, evaluation and policy coherence.

The *Guidelines on Corporate Governance of State-Owned Enterprises* (the *Guidelines*) were first developed to address these challenges in 2005, and revised in 2015. In 2022, the OECD Corporate Governance Committee asked its subsidiary Working Party on State Ownership and Privatisation Practices to review and revise this instrument in the light of the changing nature of the corporate governance landscape, almost two decades of experiences with its implementation, and to ensure it is fit for purpose and complementary to other OECD standards. A number of reports have previously taken stock of changes in corporate governance and state ownership arrangements in OECD and partner countries since 2005. Reforms have resulted in, *inter alia*, more professionalised and active ownership, exposing SOEs to the same standards of transparency and accountability as listed companies, and equipping boards of directors with appropriate levels of autonomy and independence to ensure they add value. Despite good practices, the level of implementation of the *Guidelines* still varies considerably between jurisdictions. Based on this, the Working Party concluded that the *Guidelines* should continue to set high levels of aspiration for governments and continue to serve as the leading international standard designed to assist policy makers in the area of SOE reform.

The *Guidelines* aim to provide a robust, aspirational and flexible reference for policy makers to develop their frameworks for SOE ownership, governance and SOEs' role in the marketplace. The *Guidelines* are non-binding and do not aim to provide detailed prescriptions for national legislation. The *Guidelines* are not a substitute for nor should they be considered to override domestic law and regulation. The *Guidelines* seek to identify best practices and suggest various means for achieving desired outcomes, typically involving elements of policy making, legislation, regulation, rules, self-regulatory arrangements, and voluntary commitments. A jurisdiction's implementation of the *Guidelines* will depend on its policy, legal and regulatory context, the size, circumstances and commercial orientation of SOEs and other related factors which might be relevant to the *Guidelines*' implementation.

In carrying out its ownership responsibilities, governments can also benefit from the following recommendations, notably the revised *G20/OECD Principles of Corporate Governance* (the *Principles*) [OECD/LEGAL/0413] and the *OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises* (the *ACI Guidelines*) [OECD/LEGAL/0451]. The Guidelines are intended as a complement to the *Principles* and *ACI Guidelines*, with which they are fully compatible. Other relevant OECD legal

instruments include the *OECD Declaration on International Investment and Multinational Enterprises* [OECD/LEGAL/0144], of which the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* form an integral part; and the *OECD Recommendation on Competitive Neutrality* [OECD/LEGAL/0462]. Auxiliary guidance may also be sought from other sources, such as the *OECD Policy Framework for Investment* and the *OECD Competition Assessment Toolkit*. The *Guidelines* provide advice on how governments can ensure that SOEs are at least as accountable to the general public as a listed company should be to its shareholders.

The remainder of the document is divided into two main parts. The *Guidelines* presented in the first part cover the following chapters: I) Rationales for state ownership; II) The state's role as an owner; III) State-owned enterprises in the marketplace; IV) Equitable treatment of shareholders and other investors; V) Disclosure, transparency and accountability; VI) The composition and responsibilities of the boards of state-owned enterprises; and VII) State-owned enterprises and sustainability. Each chapter is headed by a single Guideline that appears in bold italics and is followed by a number of supporting Guidelines and their sub-Guidelines in bold. In the second part, the *Guidelines* are supplemented by annotations that contain commentary on the Guidelines and sub-Guidelines and are intended to help readers understand their rationale. The annotations may also contain descriptions of dominant or emerging trends and offer a range of implementation methods and examples that may be useful in making the *Guidelines* operational. The *Guidelines* are further complemented by more detailed implementation guidance that may be found in OECD reports and publications.

Applicability and definitions

The *Guidelines* are addressed to governments and those government officials that are charged with state-ownership responsibilities. They may also provide useful guidance for SOE boards and management, as well as relevant stakeholders. They provide recommendations regarding the governance of individual SOEs, as well as regarding state ownership practices and the regulatory and legal environment in which SOEs operate.

The *Guidelines* are generally applicable to SOEs, whether they operate domestically or internationally. The *Guidelines* recognise that no one size fits all and different legal and administrative traditions may call for different arrangements. The *Guidelines* are therefore outcomes-based, meaning that it is the role of governments to decide how to achieve the outcomes that they recommend. This section reviews some of the questions and issues that the government bodies with state-ownership responsibilities need to address in order to decide on the relevance and applicability of the *Guidelines*.

The definitions below are provided solely for the purposes of these *Guidelines*.

Definitions

Defining an SOE. Any undertaking 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 large parts of their activities, are of an economic nature.

Ownership or control. The *Guidelines* apply to SOEs that are owned and/or controlled by the state. Ownership comprises direct majority ownership and, provided that control exists, includes other types of direct and indirect ownership. Control can be exercised if an ownership entity (or several ownership entities acting in concert):

- is the ultimate beneficiary owner of the majority of voting rights; or
- otherwise exercises an equivalent degree of control.

An equivalent degree of control may derive from various legal or factual arrangements that confer decisive influence. This would include legal stipulations, corporate articles of association or arrangements under private or public law which ensure continued state control over an enterprise, including veto rights on matters that confer decisive influence exercised by the state. This can be the case when the state has the power to appoint a majority of the members of the board of directors, or equivalent management body, or has 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 preferential and long-term use of the ownership or right to use all or substantial parts of its assets, and in exceptional cases, through rights or contracts conferring decisive influence on commercial or other decisions of the undertaking.

Whether the state exercises such decisive influence may need to be addressed on a case-by-case basis, taking into account all circumstances of the specific case. For example, whether special rights, shares or legal provisions (in some jurisdictions referred to as 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 additional factors show the enterprise is controlled by the state, such as if corporate or shareholding structures confer effective controlling influence on the state (e.g. through shareholders' agreements), or in cases where direct and indirect equity stakes combine to exercise control. Monopoly rights granted by the state to an enterprise may in some cases result in *de facto* control by the state. Conversely, state influence over corporate decisions exercised via bona fide regulation would normally not be considered as control.

Undertakings not covered by the above criteria, and in which the government assigns voting rights, held indirectly via asset managers or institutional investors such as pension funds, would also not be considered as SOEs. For the purpose of these *Guidelines*, undertakings which are owned or controlled by a government for a limited and well-defined 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 "state-owned" is understood to imply state-owned or controlled and the term SOE is understood to imply state-owned or controlled enterprise, except if stated otherwise.

Corporate group structures. SOEs can also be owned or controlled by the state through corporate group structures such as parent SOEs or a similar legal entity or holding company that is state-owned. The determination of control in a corporate group structure should be identified at each layer and it may require a detailed assessment. In corporate group structures, the rights of the parent SOE are akin to those held by any parent (private or public) company toward its subsidiaries. In such cases, some provisions in the *Guidelines* concerning "ownership entities" would apply to parent SOEs and not directly to the state. *This is in each case indicated in the annotations*.

Economic activities. An economic activity is one that involves offering goods or services in 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 (i.e. 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.

Commercial considerations. Commercial considerations mean 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 or other enterprise operating under market-oriented conditions in the relevant business or industry.

Public policy objectives. Public policy objectives are objectives benefitting the public interest within the jurisdiction concerned. These could include carrying out of public service obligations as well as other special obligations undertaken in the public interest which can be set in addition to 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 service obligations (PSO). PSOs are obligations placed upon providers of public services in order to ensure the intended users' appropriate access to essential economic or social services, which would not be provided by the market, or in a manner sufficient to fulfil the PSO, under commercial considerations. While the design and mechanisms for the implementation of PSOs can vary greatly amongst jurisdictions, PSOs may for example consist of universal service and/or affordability requirements imposed on providers of public services.

The governing bodies of SOEs. Board structures and procedures vary both within and among jurisdictions. Some jurisdictions have two-tier boards that separate the supervisory (non-executive) and management function into different bodies. Such systems typically have a "supervisory board" composed of non-executive board members, often including employee representatives, and a "management board" composed entirely of executives. Other jurisdictions have "unitary" boards, which bring together executive directors and non-executive directors. The *Guidelines* do not advocate for any particular board structure, recognising that both systems can facilitate the achievement of the outcomes-oriented recommendations contained herein.

The *Guidelines* are intended to apply to whatever board structure is charged with the functions of governing the enterprise and monitoring management. In the typical two-tier system, found in some jurisdictions, "board" as used in the *Guidelines* refers to the "supervisory board" while "key executives" refers to the "management board".

Many boards include "independent" members 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 directly or indirectly, from the enterprise or its group other than directorship fees); or free of 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 create a conflict of interest that could jeopardise their exercise of objective judgement. Independent board members should be selected based on merit, be in possession of an independent mindset and sufficient competencies to carry out the board duties.

The term "chair" is used in the *Guidelines* to denote the chairperson of the board of directors in a unitary system and the chairperson of the supervisory board of a two-tier system. A chief executive officer (CEO), generally, is the enterprise's highest ranking executive officer (e.g. head of the management board in a two-tier system), responsible for managing its operations and implementing corporate strategy. The CEO should be accountable to the board of directors in a unitary system and to the supervisory board in a two-tier system.

Listed SOEs. Some parts of the *Guidelines* are specifically oriented towards "listed SOEs". "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. *The Guidelines' application to listed SOEs should also ensure compatibility with the G20/OECD Principles of Corporate Governance and the applicable corporate governance frameworks for listed companies.*

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, a government ministry or another public entity 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 Ownership entity is used without prejudice to the choice of ownership model. Where adherents to the *Guidelines* have not assigned a government institution or SOHC to play a predominant ownership role this need not affect the implementation of the remainder of the recommendations, unless otherwise indicated.

Stakeholders. The term stakeholders generally refers to non-shareholder stakeholders and includes, among others, the workforce, creditors, customers, suppliers and affected communities.

Applicability

The *Guidelines* are applicable to all SOEs pursuing economic activities, including state-owned banks and other financial institutions. Activities undertaken in the general interest on a non-profit or cost recovery basis are generally not economic activities. Their application should be based on the concept of flexibility and proportionality taking into account SOEs' size, circumstances and degree of commercial orientation. The *Guidelines* are generally not applied to entities whose purpose is to carry out a function usually attributed to general government (e.g. central banks; regulatory agencies), even if the entities concerned have a corporate legal form. SOEs 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, including with regards to fair competition in the marketplace.

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 rationales that justify state ownership and subject these to a recurrent review.

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

I.B. The government should develop an ownership policy. The policy should, *inter alia*, define the overall rationales and goals for state ownership, the state's and other shareholders' 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.

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

I.D. The state should define the rationales for owning individual SOEs and subject these to recurrent review. The rationales for ownership, and any public policy objectives that individual SOEs, or groups of SOEs, are required to achieve should be clearly linked to their main line of business, 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.

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

II.B. The state should clearly define owners' expectations, allow SOEs full operational autonomy to achieve them and refrain from intervening in the management of SOEs. The state as a shareholder should redefine SOE expectations in a transparent manner and only in cases where there has been a fundamental change of mission.

II.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.

II.D. The exercise of ownership rights should be clearly identified within the state administration and be centralised in a single ownership entity. If this is not possible, relevant ownership functions should be co-ordinated by a designated body with a clear mandate to act on a whole of-government basis.

II.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 have clearly defined and transparent relationships with relevant public entities.

II.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 or control. Prime responsibilities of the ownership entity include:

II.F.1. Being represented at the general shareholders meetings and effectively exercising voting rights.

II.F.2. Establishing and safeguarding well-structured, merit-based and transparent board nomination processes, actively participating in the nomination of all SOEs' boards, and contributing to gender and other forms of board and management diversity.

II.F.3. Setting and monitoring the implementation of broad mandates and expectations for SOEs, including on financial targets, capital structure objectives, risk tolerance levels and sustainability consistent with the state's rationales for ownership.

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

II.F.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.

II.F.6. When appropriate and permitted by the legal system and the state's level of ownership, maintaining continuous dialogue with external auditors and specific state control organs.

II.F.7. Ensuring that ownership rights are exercised on a co-ordinated basis when these are allocated to several ownership entities acting in concert.

II.F.8. Establishing a clear and transparent 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, regulatory and policy framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs engage in economic activities.

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

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

III.C. Where SOEs carry out public service obligations, they should be transparently and specifically identified, allowing for an accurate attribution of costs and revenue. In particular:

> **III.C.1.** High standards of transparency and disclosure regarding their costs and revenue must be maintained.
>
> **III.C.2.** Net costs related to carrying out public service obligations should be separately funded, proportionate and disclosed, ensuring that compensation is not used for cross-subsidisation.

III.D. As a general rule, state-owned enterprises should not be used to subsidise or grant advantages to other commercial undertakings. If SOEs are used to allocate support measures in line with their public policy objectives, care should be taken to ensure that: (i) support measures are consistent with applicable competition and trade rules; (ii) support measures and their funding are clearly defined and publicly disclosed; and (iii) support measures do not cause unfair disadvantages to other commercial undertakings.

III.E. The state should not exempt SOEs, when engaging in economic activities, from the application and enforcement of laws, regulations and market-based mechanisms, and should ensure tax, debt and regulatory neutrality to prevent undue discrimination between SOEs and their competitors.

III.F. SOEs' economic activities should face market consistent conditions including with regard to debt and equity finance. In particular:

> **III.F.1.** All business relations of SOEs, including with financial institutions, should be based on purely commercial grounds.
>
> **III.F.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, lenient tax treatment or preferential trade credits.
>
> **III.F.3.** SOEs' economic activities should not receive or provide in-kind inputs such as goods, energy, water, real estate, data access, land or labour or arrangements (such as rights-of-way, or

concessions) at prices or conditions more favourable than those available to privately owned competitors.

III.F.4. SOEs' economic activities should be required to earn sustainable rates of return that are comparable to those obtained by competing private enterprises operating under similar conditions, except with respect to the carrying out of public service obligations.

III.G. When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be open, competitive, based on fair and objective selection criteria, promote supplier diversity and be safeguarded by appropriate standards of integrity and transparency, ensuring that SOEs and their potential suppliers or competitors are not subject to undue advantages or disadvantages.

III.H. When SOEs' economic activities affect trade, investment or competition they should conduct all business, other than carrying out public service obligations, in accordance with commercial considerations. They should conduct all business according to responsible business conduct and high standards of integrity.

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, including minority and foreign shareholders, and ensure shareholders' equitable treatment and equal access to corporate information.

IV.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:

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

IV.A.2. SOEs should observe a high degree of transparency, including equal and simultaneous disclosure of up-to-date information, towards all shareholders.

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

IV.A.4. The participation and exercise of voting and other rights of all, including minority, shareholders in shareholder meetings should be facilitated so they can take part in fundamental corporate decisions such as board election. General shareholder meetings allowing for remote shareholder participation should be permitted by jurisdictions as a means to facilitate and reduce the costs to shareholders of participation and engagement. Such meetings should be conducted in a manner that ensures equal access to information and opportunities for participation of all shareholders.

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

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

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

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

V. Disclosure, 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.

V.A. SOEs should report and disclose all material matters regarding the enterprise, in line with high-quality, internationally recognised accounting and disclosure standards, which may include areas of significant concern for the state as an owner and the general public. Channels for disseminating information should provide for free and timely public access. With due regard to enterprise capacity and size, examples of such information include:

V.A.1. A clear statement to the public of enterprise objectives and their fulfilment, including any mandate expected by the state ownership entity.

V.A.2. Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public service obligations.

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

V.A.4. The remuneration of board members and key executives.

V.A.5. Composition of the board and its members, including board member qualifications, selection process, board diversity policies, roles on other company boards or in the state and, if applicable, classification as independent.

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

V.A.7. Any direct or indirect 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.

V.A.8. Any material transactions with the state and other related entities.

V.A.9. Information on material liabilities such as debt contracts, including the risk of non-compliance with covenants.

V.A.10. Sustainability-related information.

V.B. 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.

V.C. SOEs should establish an internal audit function that has the capacity, autonomy and professionalism needed to duly fulfil its function. It should be monitored by and report directly to the board and to the audit committee or equivalent corporate organ where existing.

V.D. 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 and audit control procedures do not substitute for an independent external audit.

V.E. The ownership entity should develop consistent reporting on SOEs and publish annually an aggregate report on SOEs, on material issues, including information related to sustainability, governance aspects, as well as on the achievement of public policy objectives. The information should give a full, clear and reliable picture of the SOE portfolio and be high quality, comparable, concise and accessible publicly, including through digital communications.

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

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

VI.A. The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the enterprise's performance. The role and duties of SOE boards should be clearly defined in legislation, preferably according to company law. Board members should act on a fully informed basis, in good faith, with due diligence and care, and act in the best interest of the enterprise and the shareholders, taking into account the interests of stakeholders.

VI.B. SOE boards should effectively carry out their functions of reviewing and guiding corporate strategy and supervising management based on broad mandates and expectations set by the shareholders. They should have the power to appoint and remove the CEO. They should align executive remuneration levels with the longer term interests of the enterprise and its shareholders.

VI.C. SOE board composition should allow the exercise of objective and independent judgement. All board members, including any public officials, should be nominated or appointed based on qualifications relevant to the enterprise's sector of activity and business profile, and have equal legal responsibilities.

VI.D. An appropriate number of independent board members should be on boards and on specialised board committees.

VI.E. Mechanisms should be implemented to avoid conflicts of interest preventing any board member from objectively carrying out their board duties and to limit political interference in board processes. Politicians who are in a position to materially influence 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 they are nominated based on merit and conflict of interest requirements apply to them.

VI.F. Good practice calls for 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.

VI.G. 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.

VI.H. SOE boards should consider setting up specialised committees, composed of independent and qualified members, to support the full board in performing its functions, in particular the audit committee –

or equivalent body – for overseeing disclosure, internal controls and audit-related matters. Other committees, such as remuneration, nomination, risk management or sustainability may provide support to the board depending upon the SOE'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.

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

VI.J. SOE boards should actively oversee 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

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 the role of the board, disclosure and transparency and responsible business conduct. The ownership policy should fully recognise SOEs' responsibilities towards stakeholders.

VII.A. Where the state has set sustainability goals, they should be integral to the state's ownership policy and practices. This includes:

> **VII.A.1.** Setting concrete and ambitious sustainability-related expectations for SOEs that are consistent with the ownership policy and practices. In doing so, the state should respect the rights and fair treatment of all shareholders.
>
> **VII.A.2.** Communicating and clarifying the state's expectations on sustainability through regular dialogue with the boards.
>
> **VII.A.3.** Assessing, monitoring and reporting on SOEs' alignment with sustainability-related expectations and performance on a regular basis.

VII.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 the enterprise level:

> **VII.B.1.** SOE boards should review and guide the development, implementation and disclosure of material sustainability-related objectives and targets as part of the corporate strategy.
>
> **VII.B.2**. SOEs should integrate sustainability considerations into their risk management and internal control systems, including by conducting risk-based due diligence.
>
> **VII.B.3.** SOE boards should consider sustainability matters when assessing and monitoring management performance.

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

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

VII.D. The state as an owner should set high expectations for SOEs' observance of responsible business conduct standards together with effective mechanisms for their implementation, should fully recognise SOEs' responsibilities towards stakeholders and should request that SOEs report on their relations with stakeholders. Such owner's expectations should be publicly disclosed in a clear and transparent manner. In particular:

VII.D.1. Governments, state ownership entities and SOEs should recognise and respect stakeholders' rights established by law or through mutual agreements. Where stakeholder interests are protected by law, the workforce and other stakeholders should have the opportunity to obtain effective redress for violation of their rights at a reasonable cost and without excessive delay.

VII.D.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.

VII.D.3. Mechanisms for employee participation should be permitted to develop. Where employees and other stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

VII.D.4. 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 rationales that justify state ownership and subject these to a recurrent review.

The members of the public whose government exercises the ownership rights 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, sustainable 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 being provided by government agencies or contracted out to private operators; (2) the operation of natural monopolies where market regulation is deemed infeasible or inefficient; and (3) support for limited economic and strategic goals in the national interest, such as maintaining specific industries or sectors under national ownership, or shoring up failing companies of systemic importance. Such rationales should be well-defined, 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 line of business and rationales for ownership. The objectives should be assigned in a transparent way and subject to high levels of accountability.

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

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 adds long-term value for its shareholders, and to the members of the public that are its ultimate owners, in an efficient and sustainable manner. 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 through measures such as regulation, subsidies, taxes, public procurement, concessions, or the establishment of government agencies.

Where SOEs are expected to achieve public policy objectives, including by carrying out public service obligations, a number of efficiency considerations impose themselves. The public is best served if services are delivered in an efficient, 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 objectives, including public service obligations. Where SOEs are engaged in economic activities, they serve the public interest by best

maximising long-term value, in a sustainable manner, and generating an adequate revenue stream for the national treasury.

I.B. The government should develop an ownership policy. The policy should, *inter alia*, define the overall rationales and goals for state ownership, the state's and other shareholders' 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.

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 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 and goals for state enterprise ownership and for individual (parent) SOEs, the state's and other shareholders' 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. In some jurisdictions, it may be necessary to anchor the rationales for ownership and ownership policy in a legal framework, which also covers other aspects related to the state's role as an owner.

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 and role as a shareholder. The ownership policy should be available in an easily accessible digital format.

The ownership policy should, *inter alia*, define the SOEs portfolio, include the state's goals as an owner such as the creation of long-term value, the achievement of public policy objectives, 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, they should in any case be clearly defined for each SOE. Where the state's goals 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 identify and prevent preferential treatment.

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 synthesise 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, and should ideally identify a list of SOEs to which the policy applies.

Multiple and contradictory or unclear rationales or objectives 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.

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

The ownership policy should ideally be developed on a whole-of-government basis by the relevant ownership entity. In developing and updating the state's ownership policy, governments should make appropriate use of public consultation, which should involve notifying and soliciting input from the general public or their representatives. They should, *inter alia*, consult 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 and enhancing transparency. 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 state's commitment can be further strengthened by relying on proper oversight and accountability mechanisms to relevant representative bodies 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, and may include undertaking comparisons and benchmarks of SOEs, making use of external evaluation, and ensuring the policy itself is built on transparent objectives. The evaluation should also consider whether state ownership is still the best instrument to safeguard the public interest.

Any change, including of an ad hoc nature, in the ownership policy should be disclosed fully and transparently at the time of the change, including the rationales behind the need for an update.

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.

I.D. The state should define the rationales for owning individual SOEs and subject these to recurrent review. The rationales for ownership, and any public policy objectives that individual SOEs, or groups of SOEs, are required to achieve should be clearly linked to their main line of business, 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 carry out important public service obligations, while others remain state-owned for strategic reasons, or because they operate in sectors with natural monopoly characteristics. To clarify the respective rationales underpinning their maintenance in state ownership, it can sometimes be useful to classify those SOEs into separate categories and define their rationales accordingly. Such rationales should be subject to recurrent review, and publicly disclosed. Where such rationales may be found in the founding documents and governing legal instruments of an SOEs, the state as an owner should ensure adequate disclosure of these documents.

SOEs are sometimes expected to fulfil public policy objectives. These objectives should be clearly mandated and aligned with national laws and regulations, and clearly linked to their main line of business. Further, the public interests which the public policy objectives are intended to benefit need to be made clear and transparent. Public policy objectives could also be incorporated into corporate bylaws and subsequently transposed by SOEs in their corporate strategy. The market, non-state shareholders, and the general public should be clearly informed about the nature and extent of these obligations, as well as their overall impact on the SOEs' resources and economic performance, and where feasible, their impact on the market.

Countries differ in respect of the authorities that are mandated to communicate specific public policy objectives to SOEs. In some cases, only the 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 the state is not the sole owner of an SOE, and of all relevant sections when it is the sole owner of an SOE. 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.

II.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, such as employees whose remuneration may be fixed by regulatory acts or bodies who benefit from specific pension rights and protection against redundancies equivalent to those provided to civil servants.

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.

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 shareholders and/or to some stakeholders, more particularly, the workforce; (iv) disclosure requirements; and (v) the extent to which they are subjected to insolvency and bankruptcy procedures. SOEs' legal form and the definition of their activities should in general not prevent them from diversifying or extending their activities in new sectors or overseas, especially if engaged in economic activities and acting in accordance with commercial considerations. Limits on expanding SOEs' mandate are often relevant if the SOE carries out important public policy objectives or public service obligations, and are aimed 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 relate to the SOEs' main line of business, while also ensuring that they 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 privileged status or special protections, when this is not absolutely necessary for achieving the public policy objectives imposed on the enterprise. Standardising the legal form of SOEs enhances transparency, accountability and facilitates oversight through benchmarking. The standardising should particularly target SOEs engaged in economic activities, using the same means and instruments usually available to private owners also 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.

II.B. The state should clearly define owners' expectations, allow SOEs full operational autonomy to achieve them and refrain from intervening in the management of SOEs. The state as a shareholder should redefine SOE expectations in a 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 expectations for SOEs, a structured board nomination process and an effective exercise of established ownership rights. The state's broad mandates and expectations 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 due to changing circumstances, the state should refrain from modifying them too often and should ensure that the procedures involved are transparent and in the public interest.

Some government shareholders may formalise their broad mandate and expectations for SOEs to the board through owners' expectations, letters of expectation, performance contracts or other means, while also engaging in regular dialogue with the governing bodies of SOEs. Their formalisation into a clear set of expectations helps to safeguard board autonomy, and prevent ad hoc government intervention. It also can serve as a means to hold SOEs accountable.

II.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 and accountable manner with respect to all state and non-state shareholders.

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 government intervention in SOE management.

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. 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 interest 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 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 administrative, civil or criminal liabilities resulting from corporate misconduct. Ownership entities should respect the confidentiality of board discussions. Furthermore, strict limitations on the dissemination of this information should be put in place. The state as shareholder should have no greater access to information, than what its shareholding provides as a right.

The state ownership entity should establish and maintain appropriate frameworks for communication with SOEs' highest governing body, and typically through the chair. Public policy objectives, including public service obligations, 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 with due regard to corporate confidentiality. If there are non-state shareholders, SOEs' public policy objectives, including public service obligations should be approved by the annual general shareholders meeting if they are not already public. Accurate records of communication between the ownership entity and SOEs should be maintained. 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 appears to be irregular, SOEs should be able to seek advice or to report it through established reporting channels.

II.D. The exercise of ownership rights should be clearly identified within the state administration and be centralised in a single ownership entity. If this is not possible, relevant ownership functions should be co-ordinated by a designated body with a clear mandate to act on a whole of-government basis.

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 on the company shares on behalf of the government.

Centralisation can be 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 policy-making as mentioned in Guideline III.A below, provided that the ownership can be sufficiently well resourced, and its operations shielded from irregular practices. As such, in jurisdictions with weak rule of law, poor governance or high levels of perceived corruption, pooling large amounts of corporate powers in a centralised ownership entity may be accompanied with risks which should be considered when deciding upon an appropriate framework for state-ownership.

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 setting the state's rationale and objective as an owner for each SOE, nominating directors, evaluating SOEs' operations and vote at the general meeting. The ownership entity is also responsible for setting and monitoring broad mandates and expectations for SOEs based on its ownership policy, co-ordinating (when relevant) its decisions with other government stakeholders, and defining applicable frameworks and important matters relating to the governance of SOEs.

The centralised ownership entity 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 exercising state ownership in a professional and consistent manner, while also facilitating the development of aggregate reporting on state ownership.

If ownership is not centralised, governments should establish a strong co-ordinating entity. The co-ordinating entity should have 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. This will help to ensure that each SOE has a clear mandate and receives a coherent message in terms of ownership expectations 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, ideally, 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 or performance monitoring.

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’s holdings 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 under applicable company law, its corporate form may allow for it to 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 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.

II.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 have clearly defined and transparent relationships with relevant public entities.

The ownership entity should have the requisite capacities, personnel, and competencies to effectively carry out its duties. It should be supported by formal regulations, procedures, and an adequate legal framework that effectively and efficiently guides the state’s role as shareholder consistent with those applicable to the companies in which it exercises the state’s ownership rights. In some jurisdictions, this may require enacting a legal framework, consistent with other applicable laws, that transparently establishes the institutional arrangements, and guiding principles and rules needed for the state to exercise its ownership rights over SOEs. The framework may include a clear delineation of roles and responsibilities among state institutions to avoid conflicts of interest, reporting and disclosure requirements and requisite accountability mechanisms.

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 and transparently defined. A number of state bodies, ministries, 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. When appropriate, co-operation and dialogue with state bodies with responsibility over public finance can be considered good practices to ensure effective financial oversight related to fiscal risk monitoring and evaluation.

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.

II.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 or 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, which must be clearly separated from policy, regulatory or other types of government functions to avoid potential conflicts of interest. 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, including any public service obligations that some SOEs under their supervision are required to undertake.

The ownership entity should moreover have competencies with regard to and be attentive to digital technologies and the risks and opportunities 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. As technologies evolve and may serve to strengthen corporate governance practices, the ownership and 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.

Prime responsibilities of the ownership entity include:

The applicability of these responsibilities depends on the degree of ownership or control 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.

II.F.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.

II.F.2. Establishing and safeguarding well-structured, merit-based and transparent board nomination processes, actively participating in the nomination of all SOEs' boards, and contributing to gender and other forms of board and management diversity.

The ownership entity should ensure that SOEs have efficient and well-functioning professional boards, with the requisite mix of competencies to fulfil their responsibilities. This will involve establishing a structured nomination and appointment process, safeguarded from undue political influence, respecting other shareholders' rights 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 transparent in the form of a clearly structured process and based on a board profile and 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 goal-oriented boards. A merit-based nomination and appointment process should also ensure that board selection is decoupled from electoral, partisan or any other potential conflict of interest that may detract from board independence.

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. Proposed nominations should be disclosed in advance of the general shareholders meeting (where this is the highest governing body), with adequate information about, *inter alia*, the professional background, integrity and expertise of the respective candidates. Where the nomination and appointment are taken directly by the ownership entity in the absence of a general shareholder meeting the same guidance shall apply.

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.

II.F.3. Setting and monitoring the implementation of broad mandates and expectations for SOEs, including on financial targets, capital structure objectives, risk tolerance levels and sustainability consistent with the state's rationales for ownership.

The state as an active owner should, as mentioned above, define and communicate broad mandates and expectations 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. 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 expectations to SOEs, including with regards to sustainability, 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, including any public 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, sustainability goals and expectations, 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.

II.F.4. Setting up reporting systems that allow the ownership entity to regularly monitor 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 in line with internationally recognised financial accounting standards, enabling it to react on time and to be selective in its intervention. Such reporting systems should also be designed to ensure that appropriate government bodies can monitor and evaluate any fiscal risks, particularly where state support is large and depending on SOEs' level of systemic importance which may affect public finances or financial stability.

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, external and internal auditors 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.

II.F.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 internationally-accepted good practice, national listing requirements, including corporate governance codes. 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, shareholders 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, including the use of easily accessible and digital platforms for disclosure. 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.

II.F.6. When appropriate and permitted by the legal system and the state's level of ownership maintaining 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 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, elect and even appoint the external auditors. Regarding 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. Overall, the practice that external auditors are recommended by an independent audit committee of the board or an equivalent body and that external auditors are elected, appointed or approved either by that committee/body or by the shareholders' meeting directly can be regarded as good practice since it clarifies that the external auditor should be accountable to the shareholders.

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.

II.F.7. Ensuring that ownership rights are exercised on a co-ordinated basis when these are allocated to several ownership entities acting in concert.

The state should directly exercise ownership rights on a co-ordinated basis. Where these rights are allocated to several ownership entities, directly or indirectly, acting in concert, as appropriate, shareholders should be allowed and encouraged to cooperate and co-ordinate 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 behaviour, abusive actions, and ensure shareholders' equitable treatment in line with recommendations covered under Chapter IV of the *Guidelines*.

Such co-operation or co-ordination should not come at the expense of ownership entities' ability to fulfil any fiduciary duties, to avoid conflicts of interest in the exercise of their responsibilities towards their stakeholders. 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.

II.F.8. Establishing a clear and transparent 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 and transparent overarching remuneration policy is important to set broad guidelines or principles on remuneration, typically set out in the ownership policy. Such a policy may provide guidance on the levels of remuneration, the role of remuneration committees, and mechanisms for public disclosure and accountability. There is a strong case for aligning the remuneration of board members of SOEs with 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.

To attract qualified and professional candidates, competitive remuneration schemes reflecting market conditions are hence strongly encouraged. These moreover can add to board integrity. In particular, 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. In some jurisdictions, good practice calls for board remuneration levels to be formally approved by the annual shareholders meeting, being ideally proposed or approved by a committee established by the board or the general shareholders meeting, or set by the ownership entity based on market practices 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 key executives, 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.

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

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

When SOEs engage in economic activities 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 fulfil non-trivial public policy objectives. In addition to specific challenges such as ensuring legal, administrative, tax, debt and regulatory neutrality come some more overarching issues, including identifying the cost of public service obligations and, where feasible, separation of economic from non-economic activities. *Neutrality* should be ensured in line with the *OECD Recommendation on Competitive Neutrality*. 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, such as those caused by discriminatory activities of SOEs.

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

When the state plays a role of policy maker, market regulator and owner of SOEs with economic activities, 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. Complete and transparent separation of responsibilities for policy making, 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. It is also essential for averting 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 functions that are responsible for policy making, regulating the market or relevant industry are separate from government functions that have ownership responsibilities over SOEs in the relevant industry. Another important case is when SOEs are used as delivery vehicles for specific public policy objectives, such as the advancement of sustainable development, 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 public policy and ownership need not prevent necessary co-ordination between the relevant bodies. It will enhance the identification of the state as an owner and will favour transparency in defining objectives, monitoring performance, and ensuring policy coherence particular as it relates to sustainability.

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.

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

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, and other interested parties including competitors should have access to efficient redress, and be able to challenge SOEs and the state as an owner in courts or tribunals, or, if mutually agreed, alternative dispute resolution mechanisms (e.g. arbitration, mediation) and be treated fairly and equitably in such cases by the legal and 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 and insolvency rules equivalent to those for comparable competing private enterprises.

III.C. Where SOEs carry out public service obligations, they should be transparently and specifically identified, allowing for an accurate attribution of costs and revenue.

Where SOEs carry out public service obligations, it is particularly important to fully disclose all public service obligations, their reasoning, scope and related compensation or advantages. A structural or accounting separation of those activities should facilitate the process of identifying, costing and funding public service obligations accurately and transparently.

In particular:

III.C.1. High standards of transparency and disclosure regarding their costs and revenue must be maintained.

Public service obligations should be transparently and specifically identified and disclosed. Ideally, 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.

When public service obligations remain integrated with other economic activities they typically share costs, assets or liabilities. Ensuring a level playing field then requires a high level of transparency and disclosure regarding the cost structure. This point is further accentuated where SOEs are subject to government subsidies or other preferential treatment. A separation of costs and assets between accounts corresponding to public service obligations and (other) economic activities should be undertaken to avoid market-distorting cross-subsidisation between public service obligations and other types of activities.

III.C.2. Net costs related to carrying out public service obligations should be separately funded, proportionate and disclosed, 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 carrying out of public service obligations, 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, this can lead them to be less efficient 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 can jeopardise the viability of the enterprise and can put it at a disadvantage relative to competitors.

It is therefore important that any net costs related to the carrying out of public service obligations be clearly identified, disclosed and adequately compensated 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 in addition to economic activities. It is important that compensation provided to SOEs be calibrated to the net costs of fulfilling well-defined public service obligations and not be used to offset any financial or operational inefficiencies. Compensation should never be used for financing SOEs' economic activities other than public service obligations, including in other markets, or for cross-subsidisation of other SOEs or private companies. The funding and fulfilment of public service obligations should be monitored, evaluated through the overall performance monitoring system and periodically reviewed. Establishing or maintaining independent oversight by relevant state control bodies and monitoring should ensure that funding arrangements for public service obligations are calculated based on clear targets and objectives, proportionate, transparent and are based on efficiently incurred costs, including capital costs.

III.D. As a general rule, state-owned enterprises should not be used to subsidise or grant advantages to other commercial undertakings If SOEs are used to allocate support measures in line with their public policy objectives, care should be taken to ensure that: (i) support measures are consistent with applicable competition and trade rules; (ii) support measures and their funding are clearly defined and publicly disclosed; and (iii) support measures do not cause unfair disadvantages to other commercial undertakings.

SOEs should, as a general rule, not be used to subsidise commercial undertakings and should ensure that any such support measures are both transparent and consistent with trade and competition obligations.

However, public policy obligations may sometimes lead SOEs to allocate grants, loans or other advantages to other commercial undertakings. The decision on whether to assign such a role to SOEs should take into account similar considerations to 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 without legal basis or disproportionate.

Examples of advantages that may cause concern include subsidies, such as favourable loans, loan guarantees, investment in capital or equity, as well as in-kind support or below-market prices such as for 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 rules. Where the support granted via SOEs to carry out public policy objectives is to ensure the provision of goods and services for which there is no commercial market or for which the private sector is unwilling to provide, concerns about the competitive landscape should normally not arise. When intervening in markets where competition actually or potentially exists, care must be taken to assess the impact on market efficiency and its economic costs. Consistent with the above, subsidies or advantages that are granted in relation 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.

III.E. The state should not exempt SOEs, when engaging in economic activities, from the application and enforcement of laws, regulations and market-based mechanisms, and should ensure tax, debt and regulatory neutrality to prevent undue discrimination between SOEs and their competitors.

When SOEs engage in economic activities, 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), should be avoided.

SOEs and their private competitors should generally be treated equally, including under national treatment and market access rules. This includes the *OECD Declaration on International Investment and Multinational Enterprises*, the *OECD Code of Liberalisation of Current Invisible Operations* [OECD/LEGAL/0001] and the *OECD Code of Liberalisation of Capital Movements* [OECD/LEGAL/0002], where applicable.

When SOEs benefit from undue advantages due to their state 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 to market-based mechanisms (e.g. carbon pricing mechanisms or emissions trading schemes aimed at mitigating carbon emissions). The same is true when standards of responsible business conduct are not observed, which can also affect competition.

III.F. SOEs' economic activities should face market consistent conditions including with regard to debt and equity finance.

Measures should be implemented to ensure that SOEs' economic activities, including the purchase and sale of all goods and services, and conditions regarding access to, granting of and receiving debt and equity finance 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:

III.F.1. All business relations of SOEs, including with financial institutions, should be based on purely commercial grounds.

Creditors sometimes 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 interest 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 or make transparent any measures it may extend necessitated by an emergency or crisis. 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.

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

III.F.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, lenient tax treatment or preferential trade credits.

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. There should 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 should generally not benefit from "off market" funding arrangements from other SOEs or the state, such as trade credits or below-market equity infusions. Such arrangements, unless they are fully consistent with regular corporate practices, amount to preferential financing. 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 Guideline III.F.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, 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 policy maker to achieve the same goal. Ad hoc support measures should always provide for a transparent exit plan.

Competitive neutrality should be ensured in line with the *OECD Recommendation on Competitive Neutrality*.

III.F.3. SOEs' economic activities should not receive or provide in-kind inputs such as goods, energy, water, real estate, data access, land or labour or arrangements (such as rights-of-way, or concessions) 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 at prices or conditions more favourable than those available to privately-owned competitors operating at arm's length in accordance with commercial considerations, except as compensation for the carrying out of public service obligations. SOEs and private sector companies should negotiate, and get access to, concessions on equal terms.

III.F.4. SOEs' economic activities should be required to earn sustainable rates of return that are comparable to those obtained by competing private enterprises operating under similar conditions, except with respect to the carrying out of public service obligations.

SOEs' economic activities should be expected to earn rates of return (RoR) comparable, in the long run, to those of competing companies under similar conditions. This does not imply that RoR should necessarily be identical for SOEs and private companies.

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 RoR 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 may lower RoR requirements to compensate SOEs for such public service obligations that they are charged with. This should only be pursued if lowering RoR requirements is directly linked to the attainment of the public service obligations. The return target should be a reflection of the risk profile and capital structure of the SOE, in line with Guideline I.A.

III.G. When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be open, competitive, based on fair and objective selection criteria, promote supplier diversity and be safeguarded by appropriate standards of integrity and transparency, ensuring that SOEs and their potential suppliers or competitors 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 bidding regimes that in principle are fair, open and transparent, in line with the *OECD Recommendation on Public Procurement* [OECD/LEGAL/0411]. Whether or not such rules are limited to procurement by the general government or are also extended to procurement by SOEs differs between countries; either way it is important that SOEs are transparent about the rules and frameworks under which they engage in procurement. When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be transparent, competitive and based on fair and objective selection criteria, promote supplier diversity and be safeguarded by appropriate standards of 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 procedures in line with best practices. Monopolies administered by SOEs should follow the same procurement rules applicable to the general government sector. SOEs as procurers should be encouraged to use open tenders, but be allowed a margin of appreciation on the right procurement method for their commercial activities if they compete with private sector companies in their market segment to ensure they are not subject to undue disadvantage. The use of digital technologies, such as e-procurement, may be encouraged to enhance transparency and integrity.

III.H. When SOEs' economic activities affect trade, investment or competition they should conduct all business, other than carrying out public service obligations, in accordance with commercial considerations. They should conduct all business according to responsible business conduct and high standards of integrity.

This Guideline focuses specifically on the actions or activities of SOEs themselves in the context of business conduct. A growing number of SOEs economic activities affect or could affect trade, investment or competition. States should pay attention to their SOEs' impact on trade, investment or 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 related markets.

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. First, state intervention in these sectors, especially industrial sectors, plays a significant upstream and downstream role in international value chains. Second, a high degree of cross-border trade and investment takes place in most of these sectors. Third, SOEs in the network industries often operate as vertically integrated structures with monopolies in parts of their value chains. This means they can have an impact on the entry conditions of potential competitors across a number of commercial activities.

At the same time, further nuance is necessary with regard to public service obligations. As an exception to the general rule, the requirement of commercial considerations should not apply when an SOE is carrying out public service obligations. When carrying out public service obligations, SOEs should not discriminate in their purchases, and may only discriminate in their sales if it is necessary based on the nature of the public service obligations. For a discussion on public procurement, refer to Guideline III.G and the *OECD Recommendation on Public Procurement*. All economic and non-economic activities should be conducted in line with relevant OECD standards bearing on integrity and responsible business conduct.

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, including minority and foreign shareholders, and ensure shareholders' equitable treatment and equal access to corporate information.

The state has an interest in ensuring that all shareholders are treated equitably in all enterprises where it has a stake. 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. On the contrary, the state should establish itself as exemplary and follow best practices regarding the treatment of shareholders.

IV.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:

IV.A.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 effective 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 does not 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.

IV.A.2. SOEs should observe a high degree of transparency, including equal and simultaneous disclosure of up-to-date 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 SOEs 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.

IV.A.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 background information on issues that will be subject to decision that is reliable, comparable and sufficient to make informed decisions. SOE boards are responsible for ensuring 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. Further guidance is provided under the relevant provisions of the *G20/OECD Principles of Corporate Governance.*

IV.A.4. The participation and exercise of voting or other rights of all, including minority shareholders, in shareholder meetings should be facilitated so they can take part in fundamental corporate decisions such as board election. General shareholder meetings allowing for remote shareholder participation should be permitted by jurisdictions as a means to facilitate and reduce the costs to shareholders of participation and engagement. Such meetings should be 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 (e.g. asking questions to the board, placing items on the agenda of general meetings, and proposing resolutions) 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 treatment, access to information and opportunities for the participation and exercise of voting and other rights 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. Further guidance, including regarding the selection and use of virtual platform providers, is set out in the *G20/OECD Principles of Corporate Governance*.

IV.A.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, including state-owned financial institutions, should take place according to commercial considerations. 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 preventing 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.

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

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, allowing for shareholders, the market and relevant stakeholders to evaluate an SOEs' alignment with the relevant code.

IV.C. Where SOEs are required to pursue public policy objectives that may have a material effect on the enterprise'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 and updated throughout the duration of the investment.

IV.D. When SOEs engage in co-operative projects such as joint ventures and public-private partnerships, the contracting parties 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. These arrangements should not be used as mechanisms to force or coerce the transfer of technology from private partners to SOEs. Other relevant OECD standards bearing on public governance of public-private partnerships and the governance of infrastructure may apply. One of the key recommendations from these standards is 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. These co-operative projects and joint ventures entered into by SOEs should be consistent with the state ownership policy, without prejudice to the ordinary company law framework regarding the powers and the responsibility of the SOE's board.

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, 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 around all material matters regarding the enterprise 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 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 objectives, disclosure requirements should not 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 performance of the enterprise.

V.A. SOEs should report and disclose all material matters regarding the enterprise, in line with high-quality, internationally recognised accounting and disclosure standards, which may include areas of significant concern for the state as an owner and the general public. Channels for disseminating information should provide for free and timely public access.

All SOEs should at least annually disclose all material matters regarding the enterprise, and large and listed ones should do so according to high-quality internationally recognised accounting and disclosure standards, or national accounting standards consistent with these standards. All other SOEs should apply these standards to the extent possible. Material information can be defined as information whose omission or misstatement can reasonably be expected to influence an investor's assessment of a company's value. Material information can also be defined as information that a reasonable investor would consider important in making an investment or voting decision. While corporate disclosure should thus focus on what is material to investors' decisions and may include an assessment of a company's value, it may also help improve public understanding of the structure and activities of enterprises, corporate policies and performance with respect to environmental, social and governance matters.

Easily accessible and user-friendly company websites also provide the opportunity for improving information dissemination, and most jurisdictions now require or recommend companies to have a website that provides relevant and significant information about the company itself. SOE board members should sign financial reports, and the CEOs and CFOs should certify that these reports appropriately and fairly present the operations and financial condition of the SOE.

To the extent possible, relevant authorities should carry out a cost-benefit analysis to determine which SOEs should be submitted to high-quality internationally recognised standards. This will promote consistency and comparability across the entire portfolio. High-quality domestic standards can be achieved by making them consistent with one of the internationally recognised accounting standards. 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 and interim reports 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. All 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 annual financial 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 high level of disclosure is 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 impact on sustainability-related matters or the global marketplace.

With due regard to enterprise capacity and size, SOEs should be subject to 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 matters regarding the enterprise, such as their financial and operating results, non-financial information, remuneration policies and actual remuneration of board members and key executives, related party transactions including those with the government and related entities, 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 performance, it is considered good practice to adhere to internationally accepted reporting standards.

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

V.A.1. A clear statement to the public of enterprise objectives and their fulfilment, including any mandate expected 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, state owners' expectations should be made clear to all other investors, the market and the general public. Such disclosure obligations will encourage SOE officials to clarify the expectations to themselves, and could also increase management's commitment to fulfilling them. 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 performance indicators. When the SOE is also used for public policy objectives, it should also report on how these are being achieved.

V.A.2. Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public service obligations.

Like private corporations, SOEs should disclose information on their financial, operational and non-financial performance. For example, this could include the main financial statements, such as those contained in the balance sheet, profit and loss statement, cash flow statement and notes to the financial statements, as well as other key financial information that the company deems relevant, such as dividend and debt values (including information on outstanding debt, the maturity profile and the currency split), capital employed, EBITDA, 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. Such disclosures should enable the reader to gauge key financial information regarding commercial and non-commercial orientations. Sufficient information should also accompany key financial figures to provide shareholders with an understanding of the messages that the figures are intended to convey, how the figures are calculated and how they relate to the financial statements they accompany. In addition, when SOEs are expected to fulfil specific public service obligations, information on the costs of related activities 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 a report on internal control over financial reporting accompanies the financial statements. 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.

V.A.3. The governance, ownership, and legal and voting structure of the enterprise or group as well as any significant 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 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 any significant 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.

V.A.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 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. SOEs are generally expected to disclose timely information including material changes on the remuneration policies applied to board members and key executives as well as remuneration levels or amounts on a standardised and comparable basis. The information should, where applicable, include *inter alia* termination and retirement provisions, and any specific benefits, incentive schemes or in-kind remuneration provided to board members and key executives. The use of sustainability indicators in remuneration may also warrant disclosure that allows shareholders to assess whether indicators are linked to material sustainability risks and incentivise a long-term view.

V.A.5. Composition of the board and its members, including board member qualifications, selection process board diversity policies, roles on other company boards or in the state and, if applicable, classification as independent.

Full transparency surrounding board member qualifications is especially important for SOEs and should be fully aligned with the *OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises*. In fully-owned SOEs, SOE board member nomination and appointment 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 and appointment 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.

Many jurisdictions require or recommend the disclosure of the composition of boards, including on gender diversity. Such disclosure may also extend to other criteria such as age and other demographic characteristics, in addition to professional experience and expertise. Some jurisdictions that have established such requirements or recommendations in codes also request disclosure on a "comply or explain" basis. In some cases, this includes the disclosure of key executive and other senior management positions. Relevant policies to promote diversity in board and executive-level positions should also be disclosed.

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

Severe difficulties arise when SOEs do not clearly identify, assess, control for or report on risks. Without adequate reporting of material risk factors, SOEs may give a false representation of their financial situation, 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' risk management system. SOEs should report according to new and evolving standards. When appropriate, such reporting could cover risk management strategies as well as systems put in place to implement them. 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 and other technology related 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.

Disclosed information on material foreseeable risk factors may be particularly useful for shareholders and stakeholders when SOEs operate in newly de-regulated and increasingly

internationalised industries, new jurisdictions or high-risk sectors, where they may face new or different risks, including those mentioned above.

V.A.7. Any direct or indirect 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, budget loans or 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. Payments made by SOEs to the state budget should also be disclosed as part of such reporting on transactions with the government, covering taxes, dividends, royalties, and other payments. For loan guarantees and on-lent credit, SOEs should disclose the terms and conditions embedded in the contracts (including regarding the starting and maturity dates, original currency, committed values, disbursed and outstanding debt, amortisation schedule, interest rate value and type). 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 budget loans and 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.

V.A.8. Any material transactions with the state and other related entities.

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. Related parties should at least include entities that control or are under common control with the company, significant shareholders including members of their families and key management personnel. While the definition of related parties in internationally accepted accounting standards provides a useful reference, the corporate governance framework of SOEs should ensure that all related parties are properly identified and that in cases where specific interests of related parties are present, material transactions with consolidated subsidiaries are also disclosed. 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 any material contractual relations and transactions with state-owned financial institutions, since these have a high risk of conflict of interest.

V.A.9. Information on material 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 material liabilities such as 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.

V.A.10. Sustainability-related information.

SOEs should disclose material information on policies, activities, risks, objectives and performance metrics related to sustainability matters in line with high-quality internationally recognised standards as elaborated in Chapter VII.C.

V.B. 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 inform how an SOE can use internal controls to manage risks and mitigate their potential impact, promote integrity within the SOE and encourage 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). SOE representatives responsible for risk assessments within the company should have sufficient authority to fulfil their role.

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 relevant provisions of the *Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises*. An SOE's risk management system 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). It should moreover entail risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts of the business and account for how these impacts are addressed, in accordance with the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*.

Risk processes inform the establishment and maintenance of internal controls, ethics and compliance programmes or measures. Pursuant to the relevant details on internal control in the *Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises*, such compliance programmes or measures should be applicable to all levels of the corporate hierarchy and all entities over which an SOE has effective control, including subsidiaries. These programmes or measures may include *inter alia* establishing codes of conduct or similar and integrating them into human resource or other relevant corporate policies, and establishing clear rules and procedures, such as whistleblower protection, 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 related set of internal 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 on Combating Bribery of Foreign Public Officials in International Business Transactions* [OECD/LEGAL/0293], 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.

V.C. SOEs should establish an internal audit function that has the capacity, autonomy and professionalism needed to duly fulfil its function. It should be monitored by and report directly to the board and to the audit committee or equivalent corporate organ where existing.

The role and functions of internal audit vary across jurisdictions, but they most often include assessment and evaluation of an SOE's governance, risk management and internal control processes. As in large, listed companies, large SOEs should normally put in place an internal audit function. Depending on their size, structure, complexity and risk profile, other SOEs are encouraged to establish an internal audit function to the extent possible.

This function can play a critical role in providing ongoing support to the audit committee of the board or an equivalent body in its comprehensive oversight of the internal controls and operations of the company. Internal auditors are important to ensuring an efficient and robust disclosure process. Specifically, they may assess the completeness, integrity, accuracy, timeliness and frequency of reporting on all material information. They should have procedures in place to determine that the SOE's management has procedures to collect, compile, and present sufficiently detailed information in its disclosures. Good practice calls for establishing an internal audit charter that sets out the purpose, roles and responsibilities and procedures of the internal audit function.

It is a board's responsibility to ensure that SOEs establish an internal audit function. To ensure their independence and authority, internal auditors should report directly to the board and its audit committee. Internal auditors should have full access to the SOEs' records, and there should be no limitations to the scope of their activities. Internal auditors' 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. To enhance integrity and accountability, internal audit function's stature, independence and resources, as well as performance should be made public by the audit committee.

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. 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 objectivity of the internal audit function to the board on an annual basis. This includes communicating incidents where objectivity may have been impaired and the actions or safeguards employed to address the impairment.

V.D. 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 and audit 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.

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 auditing, ethical and independence standards.

The independent external auditor provides an opinion as to whether the SOE's financial statements present fairly, in all material respects, the financial position and financial performance of an SOE in accordance with an applicable financial reporting framework. In some jurisdictions, the external auditors are also required to report on a company's corporate governance or internal controls over financial reporting.

Adequate procedures should be developed for the selection of external auditors and it is crucial that they are independent from the SOE and its affiliates including its management as well as large shareholders (i.e. the state in the case of SOEs) if the applicable ethical and independence standards do not include them. Moreover, external auditors should be subject to the same criteria of independence as for private sector companies. This requires the close supervision 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 auditors (either partners or in some cases the audit company), or tendering of the external audit assignment.

The practice that external auditors are recommended by an independent audit committee of the board or an equivalent body and are elected, appointed or approved either by that committee/body or by the shareholders' meeting directly can be regarded as good practice since it clarifies that the external auditor should be accountable to the shareholders. Depending on the legislation, the ownership entity may thus be entitled, through the annual shareholders' meeting, to nominate, elect and even appoint the external auditors. However, its direct reporting relationship and accountability should be to an independent audit committee or equivalent corporate organ, which oversees the overall relationship with the external auditor and may also play a role in the appointment, reappointment and compensation of external auditors. Additional guidance, including regarding auditor qualification, set out in the *G20/OECD Principles of Corporate Governance* should apply.

Moreover, the external audit should not be confused with or substituted by the activities of internal audit or internal controls. SOEs should strive to have their financial statements audited within the same timeframe as listed companies. The independent external auditor's reports should accompany the SOE's annual report and be publicly disclosed in their full extent and within a reasonable timeframe, in line with applicable reporting frameworks. Repeated qualified opinions should be considered a red flag.

Existing state auditing bodies and other intragovernmental control instances such as specialised state or "supreme" audit institutions, even if they inspect both SOEs and the ownership entity, 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. The audit findings of the supreme audit institution should be deliberated by the legislature in a timely manner that accords with the budgetary cycle and be made public.

V.E. The ownership entity should develop consistent reporting on SOEs and publish annually an aggregate report on SOEs, on material issues, including information related to sustainability, governance aspects, as well as on the achievement of public policy objectives. The information should give a full, clear and reliable picture of the SOE portfolio and be of high quality, comparable, concise and accessible publicly, including through digital communications.

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 the ownership policy, goals and expectations and can enhance performance management systems where reporting includes evaluating the fulfilment of individual SOEs' expectations – including against targets set by the state-owner – and where applicable, disclosure of non-commercial assistance.

The reporting should result in an annual aggregate report of material information 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 moreover give an overview of the value of the sector when appropriate and cover financial performance and the value of 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 and appointment, 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 be provided on the methods used to aggregate data. The aggregate report could 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 the performance of the SOE portfolio. 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, which allows for easy access to information. Many ownership entities have websites that provide one-stop-shop information on the organisation of the ownership function, the general ownership policy, as well as the annual aggregate report.

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 the boards of SOEs have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance, risk management oversight and monitoring of management. They should act with and promote 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, other shareholders and the company. They carry the ultimate responsibility, through their fiduciary duty, for the SOEs' performance and their shareholders' interests 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. The state should, depending on its respective degree of ownership and control, 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 and promote integrity.

VI.A. The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the enterprise's performance. The role and duties of SOE boards should be clearly defined in legislation, preferably according to company law. Board members should act on a fully informed basis, in good faith, with due diligence and care, and act in the best interest of the enterprise and the shareholders, taking into account the interests of stakeholders.

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 or appointed by the state or by 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 becoming rubberstamping entities. A directors' report should be provided along with the annual statements and submitted to the external auditors. The directors' report should give information and comment on the organisation, financial and non-financial performance, material risk factors, sustainability-related matters, significant events, relations with the workforce and other relevant stakeholders, and the effects of directions from the ownership entity.

VI.B. SOE boards should effectively carry out their functions of reviewing and guiding corporate strategy and supervising management based on broad mandates and expectations set by the shareholders. They should have the power to appoint and remove the CEO. They should align executive remuneration levels with the longer term interests 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 other risks related to human rights, anti-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 oversee 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. Even in such situations it is considered good practice for the board to retain ultimate responsibility for the CEO selection procedure. The state should express an expectation that the board apply high standards for hiring and conduct of key executives and other members of senior management, who should be appointed based on professional criteria.

If the state is involved in a decisive role in appointing the CEO in fully-owned SOEs despite of this recommendation, particular attention should be paid that appointments are based on professional criteria and a competitive selection procedure led by the board, 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 of key executives 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 other 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. In some jurisdictions, while the board may have a specialised committee responsible for the nomination of the CEO, it should not be confused with the nomination committee established by the general shareholders meeting responsible for submitting recommendations to the general shareholders meeting regarding the nomination of board members.

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 remuneration of the CEO and other key executives. Remuneration packages for key executives should be competitive, but carefully balanced to avoid incentivising key executives in a way inconsistent with the long-term interest of the enterprise, its owners and the public good. Where relevant, SOE boards should ensure that the remuneration of key executives is linked to material risk and company strategy, and tied to performance. SOE boards should also ensure 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 may reduce the risk of excessive pay that could compromise the company's reputation. Remuneration schemes should also be based on high-quality data and metrics. Key performance indicators should incentivise a long-term perspective, be linked to material elements of the SOE's strategy, and be based on high-quality, preferably audited and/or assured, 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.

The introduction of malus and claw-back provisions is considered good practice. They grant the enterprise the right to withhold and recover 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.

VI.C. SOE board composition should allow the exercise of objective and independent judgement. All board members, including any public officials, should be nominated or appointed based on qualifications relevant to the enterprise's sector of activity and business profile and have equivalent legal responsibilities.

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 selected on the basis of merit, 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). Board members should be selected on the basis of core competences (such as business acumen, financial literacy, and expertise in audit and controls), and possess knowledge and acquired experience in the enterprise's line of business. Further guidance on the board selection, nomination and appointment process is provided in Guideline II.F.2. 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 or appointed 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 in senior management and key executive positions – including with regards to gender, age, geographical, professional and educational background. Board members need 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 additional 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.

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.

VI.D. An appropriate number of independent board members should be on boards and on specialised board committees.

To enhance the objectivity of SOE boards, an appropriate minimum number of independent board members on SOE boards should be required. Details on the appropriate number of independent board members in specialised committees are provided in Guideline VI.H. Further to the characteristics of independence laid out in the definition of “the governing bodies of SOEs” in the *Guidelines*, it is also considered good practice to exclude persons with marital, family or other personal relationships with the enterprise’s executives or controlling shareholders. 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 should include qualifications related to the SOE’s sector of activity and business profile.

VI.E. Mechanisms should be implemented to avoid conflicts of interest preventing any board member from objectively carrying out their board duties and to limit political interference in board processes. Politicians who are in a position to materially influence 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 they are nominated based on merit and conflict of interest requirements apply to them.

Anti-corruption and public integrity laws should be fully applicable to members of SOE boards. The board should oversee the implementation and operation of policies to identify potential conflicts of interest. Board members and key executives should make declarations to the competent authorities without delay regarding actual or potential conflicts of interest and regarding their assets, liabilities, investments, activities, employment, and benefits. Declarations to competent authorities may be made public when the individuals submitting the declarations are legally considered to be "public officials". During board tenure, declarations should be kept up to date and all board members and key executives should disclose any actual or potential conflicts of interest that arise without delay to the board, which must decide how they should be managed or mitigated.

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 and substantiated 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.

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.

Politicians who are in a position to materially influence 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, persons linked directly with the executive powers – i.e. heads of state, heads of government, 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.

SOE 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 provisions in the *OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises* and the *OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions* and related instruments. 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.

VI.F. Good practice calls for 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.

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. The chair can also provide the ownership entity with input from the board's annual self-assessments, to identify skills gaps in the composition of the current board, to assist the ownership entity in board nomination and appointment procedures.

Separating 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 chair and the CEO helps prevent situations where the separation might give rise to inefficient opposition between the two enterprise officers. The head of the management board (where applicable) 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.

VI.G. 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, information and diversity. Employee representatives should have the same duties and responsibilities as all other board members, should act in the best interests of the enterprise taking into

account stakeholder interests where appropriate 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 ensure 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.

VI.H. SOE boards should consider setting up specialised committees, composed of independent and qualified members, to support the full board in performing its functions, in particular the audit committee – or equivalent body – for overseeing disclosure, internal controls and audit-related matters. Other committees, such as remuneration, nomination, risk management or sustainability may provide support to the board depending upon the SOE'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, 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 interest, 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, adds value to boards including in the fields of audit, remuneration, nomination, strategy, ethics, risk, sustainability, digital transformation and procurement.

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 power to meet with any officer of the enterprise. 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 require a minimum number or be composed entirely of independent members. Good practice, however, calls for the share of independent members to account for the majority of specialised board committees, and for committees to be chaired by an independent board member. The proportion of independent members will depend on the type of committee, the sensitivity of the issue to conflicts of interest and the SOE sector. The audit committee, for example, should be composed of financially literate board members and a majority of independent board members. To ensure efficiency, the composition of board committees should include qualified and competent members with adequate technical expertise. Where board committees include outside experts not appointed to the board, fiduciary duties could, in some jurisdictions, 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 according to law or the conditions set forth by the board of directors.

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. Specialised board committees should have written and publicly disclosed terms of reference that define their duties, 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.

VI.I. SOE boards should, under the chair's oversight, regularly carry out a well-structured evaluation to appraise their performance and efficiency, and assess whether they collectively 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 a collegial body. 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. Good practice calls for the evaluation to lead to a mandatory remedial action plan and for performance against that plan to be reviewed annually or on a regular basis.

Board evaluation should be carried out under the responsibility of the chair and according to evolving best practices. 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 from the ownership entity. Good practice calls for the board to conduct an evaluation of the board chair, board as a whole, its committees and individual directors regularly, as well as an external review at least once every three years.

The outcomes of board evaluations can also serve as a helpful source of information for future board nomination and appointment 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.

VI.J. SOE boards should actively oversee 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.

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 its 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. To this end, boards should ensure that they have adequate processes in place within their risk management frameworks to deal with significant external company-relevant risks. Moreover, the board should ensure that the risk management system entails risk-based due diligence to help companies in identifying, preventing and mitigating actual and potential adverse impacts of the business and account for how these impacts are addressed.

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. However, the board should retain final responsibility for oversight of the company's risk management system and for ensuring the integrity of the reporting systems. 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.

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 goals, the state as owner should set concrete and ambitious, sustainability-related expectations for SOEs, including on the role of the board, disclosure and transparency and responsible business conduct. The ownership policy should fully recognise SOEs' responsibilities towards stakeholders.

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 seizing opportunities to improve 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, manage potential risks and grasp opportunities associated with such transition pathways. The state as owner has a responsibility and interest to ensure that SOEs are equipped to adjust to developments and face new shocks, and should provide appropriate incentives for SOEs to make decisions and manage their risks and opportunities in a way that contributes to their sustainability and resilience and ensures long-term value creation. In addition to state owners' expectations, SOEs may also set voluntary goals or otherwise adopt good practices in response to the growing demands from non-state shareholders, market participants and stakeholders.

While SOEs often play a central role in their economies, they appear also particularly vulnerable to sustainability-related risks. Notably, due to the nature and sectorial distribution of their activities and governance structures, including their high concentration in hard-to-abate sectors, SOEs' operations generally account for a substantial share of global greenhouse gas emissions and face heightened environmental, human rights and corruption risks. Furthermore, SOEs appear strongly exposed to climate physical and transition risks, including risks of carbon-intensive lock-in, 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. Importantly, such risks may also impact SOE's long-term performance and value creation as well as the achievement of public policy objectives, with direct consequences on the state's budget and on individuals and businesses that rely on SOEs' goods and services.

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. Consistent with the *OECD Recommendation on the Role of Government in Promoting Responsible Business Conduct* [OECD/LEGAL/0486], governments should lead by example and take measures to promote and exemplify responsible business conduct in their role as economic actors and in their commercial activities. By extension, SOEs should be held to 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 and responsible business practices within the corporate governance framework of SOEs – including in its own ownership policies and practices. Practically, the state should expect stakeholder engagement to be a core responsibility of SOEs at the corporate level, and also facilitate stakeholder dialogue regarding its own ownership policy, to exchange views on relevant economic, social, or environmental aspects.

VII.A. Where the state has set sustainability goals, they should be integral to the state's ownership policy and practices.

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 into owners' expectations for their SOE portfolio as part of their role as active owner.

This includes developing an overall strategy – including a detailed action plan and a clear timeline – 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 goals in view of maximising long-term value for shareholders, and ultimately society. As part of its sustainability strategy, the state owner may *inter alia* encourage public-private partnerships and invite SOEs to promote sustainable innovations, circular economy, renewable energy and energy efficiency, amongst others. To the extent that the state has adopted relevant sustainability goals or commitments for its wholly owned SOEs, the state should, as appropriate, encourage SOEs to develop credible climate transition plans, including adaptation plans, and expect them 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, for example. Such sustainability risk assessments should be made available to SOEs and their boards for their consideration.

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 co-ordination with relevant government entities and in consultation with relevant 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:

VII.A.1. Setting concrete and ambitious sustainability-related expectations for SOEs that are 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 be reflected in the state ownership policy and/or other relevant policy documents, and align with the state's broader sustainability goals and commitments, including international commitments, where applicable. These include, but are not limited to, expectations related to disclosure and transparency, the role and responsibilities of the board, as well as any expectations that the state has with respect to the observance of responsible business conduct standards by SOEs and stakeholder engagement. The state may also set expectations with regards to board governance arrangements (i.e. establishment of sustainability committee) and composition (i.e. board-level qualifications to include sustainability) for enterprises of a certain size and/or risk profile for example.

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-related expectations, it should remain the responsibility of the boards of directors to develop the SOEs' objectives and implementation frameworks towards sustainability. State expectations should not be understood as a ceiling for the sustainability efforts of SOE portfolios and should leave room for them to lead by example.

Where the state is not the sole owner, the state should share its expectations in a transparent manner through its state ownership policy, through general shareholders meetings and effectively exercising shareholder rights. In doing so, the state should respect the rights and fair treatment of other 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 expectations through sectorial regulations, letters of 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, such obligations should be clearly defined and disclosed to the general public. Their net costs should be covered in a transparent manner.

VII.A.2. Communicating and clarifying the state's expectations on sustainability through regular dialogue with the boards.

State ownership entities should follow-up on high-level expectations by actively engaging with individual SOE boards and other shareholders where applicable, in view of ensuring mutual understanding and managing potential trade-offs. Such dialogue, which may warrant several rounds of discussions and clarifications with shareholders, can also support implementation by making sure that SOE boards effectively translate sustainability-related expectations 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 expectations 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.

VII.A.3. Assessing, monitoring and reporting on SOEs' alignment with sustainability-related expectations and performance on a regular basis.

The state should monitor the implementation of general expectations for SOEs related to sustainability issues. To this effect, the state should adequately integrate sustainability-related expectations 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 expectations and their attainment to the general public, including in 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 and devise expectations on an informed basis.

VII.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, SOEs should strive to be at the forefront of global trends and take initiatives that would benefit the company's long-term performance and resilience. SOEs should keep abreast of international developments and best practices, notably by regularly engaging in continuous education and regular exchanges and dialogues with the workforce and other relevant stakeholders.

The state should ensure that SOE boards 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 performance and be subject to appropriate reporting and monitoring mechanisms. In particular, SOE boards should formulate their own sustainability policies and objectives in line with their overall corporate strategy; 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,, that are aligned with the risk management framework, which can include due diligence processes. 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 corporate (sustainability) strategy, SOEs should also concentrate their efforts in risks relating to their own activities, and as relevant, those linked to their operations, products or services or business relationships, including in their subsidiaries and along their supply chain.

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

VII.B.1. SOE boards should review and guide the development, implementation and disclosure of material sustainability-related objectives and targets as part of the corporate strategy.

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, including those of the workforce, in their development, together with the interests of the company and its shareholders. 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".

Objectives and targets linked to sustainability should be based on consistent, comparable and reliable metrics, and in line with shareholders' expectations, as well as applicable legal, contractual and regulatory requirements. This helps to ensure credibility of the information for users, including investors and relevant stakeholders such as the workforce. 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.

VII.B.2. SOEs should integrate sustainability considerations into their risk management and internal control systems, including by conducting risk-based due diligence.

Overseeing the management and mitigation of risks, including sustainability-related risks, is a key responsibility of the board of directors and is critical for the long-term success of a business.

An SOE's risk management system should deal with significant external company-relevant risks (e.g. health crises). It should also entail risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts of the business and account for how these impacts are addressed in accordance with the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* which are applicable to SOEs. Effective risk-based due diligence should be supported by additional efforts to embed responsible business conduct into policies and management systems.

Undertaking risk-based due diligence ensures that the SOE goes beyond simply identifying and managing material risks to the enterprise itself, to include the risks of adverse impacts. This includes actual and potential adverse impacts on human rights, labour rights (ex. child labour, forced or compulsory labour) and on the environment (ex. climate change, 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 in cross-border activities also raise increasing concerns over social and environmental risks in their global supply chains. Consequently, SOEs should take into consideration 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.

VII.B.3. SOE boards should consider sustainability matters when assessing and monitoring management performance.

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 or opportunities could be of material importance to the company.

Some SOE boards may provide further incentives to key 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, boards should follow the remuneration and incentive practices outlined in VI.B.

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 a similar disposition may encourage boards to take into account sustainability factors by protecting 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.

VII.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, the workforce and other relevant stakeholders including the general public. They are also important for strengthening the accountability of SOE boards and management in the sustainability area and enable 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 material information on sustainability-related policies, activities, risks, objectives and performance metrics in a timely and accessible manner, in line with high-quality internationally recognised standards. Further to the description of materiality provided in the annotations to Guideline V.A, material information may, for example, cover environmental, social and governance matters, and 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. Consistency and interoperability between regional or national sustainability-related disclosure frameworks and internationally recognised standards can still allow for flexibility of complementary local requirements, including on matters where specific geographical characteristics or jurisdictional requirements may influence materiality.

In addition and as appropriate, SOEs should provide information on key issues relevant to employees and other stakeholders that may materially affect the 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 communities affected by the SOEs' activities, with particular attention paid to marginalised and vulnerable groups.

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.

VII.C.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 and disclosure 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. For this, state ownership entities should keep abreast of evolving internationally recognised standards, including the *G20/OECD Principles of Corporate Governance* and the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, the *UN Guiding Principles on Business and Human Rights*, and *the Global Compact* and the *2030 Agenda*. The use of science-based target metrics should be encouraged, especially when disclosing data related to transition plans (e.g. greenhouse gas emissions reductions, biodiversity loss). For the state, greater harmonisation can support its role as an active and informed owner by allowing comparisons of sustainability information between SOEs and other enterprises.

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 should be disclosed in a timely manner and include retrospective and forward-looking material information in alignment with internationally recognised reporting standards.

SOEs should ensure consistency between sustainability reporting, financial reporting and other corporate information. Relatedly, 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 favoured as it can be useful in demonstrating the link between a firm's strategy and its commitment to sustainable development.

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

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 shareholders and relevant stakeholders, including the workforce, and protect the company from litigation risks. For the state, assurance

can support its role as an active and informed owner by enhancing the degree of confidence around and credibility of sustainability reporting 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 expect SOEs to obtain limited or reasonable assurance over their sustainability disclosures, performed 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, although it remains important to ensure its reliability and compliance with relevant legal requirements. 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. To elevate the board's confidence in the integrity of the SOE's reporting, the board may seek internal auditor assurances on sustainability-related information.

However, greater convergence of the level of assurance between financial statements and sustainability-related disclosures should be the long-term goal. This would include aligning the reporting period for financial statements and sustainability-related disclosures.

VII.D. The state as an owner should set high expectations for SOEs' observance of responsible business conduct standards together with effective mechanisms for their implementation, should fully recognise SOEs' responsibilities towards stakeholders and should request that SOEs report on their relations with stakeholders. Such owner's expectations should be publicly disclosed in a clear and transparent manner.

SOEs are subject to an evolving legal and regulatory landscape around responsible business conduct. Many enterprises have demonstrated that respect for standards of business conduct is an important element of doing business. Like private companies, they also 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 standards of responsible business conduct across business operations and along the entire supply chain, including with regards to human rights, employment and industrial relations, the environment, anti-corruption, consumer interests, science, technology and innovation, competition and taxation. Their actions should be guided by relevant international instruments, including the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, which should be implemented to the greatest extent possible, 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 responsible business conduct and a component of the due diligence process. State ownership entities and SOEs should acknowledge the importance of stakeholder relations, including those with the workforce, creditors, customers, suppliers and affected communities for building sustainable, financially sound and responsible enterprises. Stakeholder relations are particularly important for SOEs assigned with public policy objectives. 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.

To this effect, 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. Such reporting may include progress reports for project-affected stakeholders, reports on stakeholder engagement activities and outcomes to stakeholder participants, amongst other aspects. Such information may be included in the corporate reports or produced as standalone documents.

In particular:

VII.D.1. Governments, state ownership entities and SOEs should recognise and respect stakeholders' rights established by law or through mutual agreements. Where stakeholder interests are protected by law, the workforce and other stakeholders should have the opportunity to obtain effective redress for violation of their rights at a reasonable cost and without excessive delay.

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 the workforce, affected communities and other relevant stakeholder rights. The ownership entity and SOEs should recognise stakeholder rights as established by law or mutual agreements and have a clear policy in this regard.

Stakeholders differ depending on the enterprise and its activities, but will generally include the workforce, creditors, customers, suppliers and affected communities. The rights of stakeholders are to a large extent established by law (e.g. labour, business, commercial, environmental and insolvency) or by contractual relations that companies must respect. For an effective decision-making process, firms should, as applicable under local law also consider stakeholders that 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.

The legal framework should be transparent and enable stakeholders to communicate and obtain redress for the violation of their 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.

Certain jurisdictions may 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. 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. To encourage active and long-term value-creating co-operation with stakeholders, state ownership entities and SOEs should ensure that stakeholders, including the workforce and affected communities, 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. Employees should also be able to freely communicate their bona fide concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.

VII.D.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

just transition (i.e. a transition to a greener economy in a way that is as fair and inclusive as possible), 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 to stakeholders' views (i.e. there is a follow-through on outcomes).

To ensure stakeholder engagement is meaningful and effective, it is important to ensure that it is timely, accessible, appropriate and safe for stakeholders, and to identify and remove potential barriers to engaging with stakeholders in positions of vulnerability or marginalisation. To this end, mechanisms should 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 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 action to a complaint regarding contravention of the law, workers and other stakeholders are encouraged to report their bona fide complaint to the competent authorities. Many jurisdictions also provide for the possibility to bring cases regarding issues that arise in relation to the implementation of the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* to the relevant National Contact Point for Responsible Business Conduct. The company should refrain from discriminatory or disciplinary actions against such stakeholders.

VII.D.3. Mechanisms for employee participation should be permitted to develop. Where employees and other stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

The degree to which employees participate in corporate governance depends on national laws and practices, and may vary from SOE to SOE as well. In the context of corporate governance, mechanisms for participation may benefit SOEs directly as well as indirectly through the readiness by employees to invest in firm-specific skills. Examples of such mechanisms include employee representatives on boards and governance processes such as trade union representation, collective or local bargaining 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. Notably, where laws and practice of corporate governance frameworks provide for participation by employee and other stakeholders, it is important that stakeholders have access to information necessary to fulfil their responsibilities.

With respect to performance enhancing mechanisms, employee stock ownership plans or other profit sharing mechanisms can be found in many jurisdictions. Pension commitments are also often an element of the relationship between the enterprise and its past and present employees.

VII.D.4. 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 measures should address other high-risk areas such as the procurement of goods and services as well as, *inter alia*: board and key executive 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.

OECD Guidelines on Corporate Governance of State-Owned Enterprises

The OECD Guidelines on Corporate Governance of State-Owned Enterprises give concrete guidance to help policy makers evaluate and improve the legal, regulatory and institutional framework for the ownership and governance of state-Owned enterprises (SOEs). They identify the key building blocks to ensure professionalised ownership and governance, and offer practical guidance for implementation at the national level. The Guidelines ensure state-Owned enterprises contribute to sustainability, economic security and resilience, by maintaining a global level playing field and high standards of integrity and business conduct.

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