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Draft Summary Record: Fourth Meeting of the SOE Network for Southern Africa

"Towards a Regional Consensus" 18-19 November 2013, Swakopmund, Namibia

Summary of meeting outcomes

The fourth meeting of the SOE Network for Southern Africa took place in Swakopmund, Namibia on 18-19 November 2013. It was hosted by the SOE Governance Council of the Namibian Prime Minister's Office, with the financial support of the Norwegian government and sponsorship by the Agricultural Bank of Namibia and Namport. The meeting brought together about 50 participants, including: 10 delegations from the Southern African Development Community (SADC) economies (Angola, Botswana, DR Congo, Malawi, Mozambique, Namibia, Seychelles, South Africa, Zambia and Zimbabwe); two delegations from OECD countries (Finland and Turkey); as well as representatives of the Africa Peer Review Mechanism (APRM) and the United Nations Economic Commission for Africa (UNECA). The objectives of the meeting were to (1) reach a consensus on the *Southern African Guidelines on the Governance of State-Owned Enterprises* and discuss next steps for achieving political endorsement; (2) agree on next steps towards developing company guidance on anti-corruption and corporate ethics in SOEs and (3) consider future work regarding the governance of SOEs in the infrastructure sector.

- ***Southern African Guidelines on the Governance of State-Owned Enterprises:*** There was a general consensus that the Network should seek to finalise the Guidelines in 2014. Network members agreed to send concrete suggestions to the OECD Secretariat by 6 December 2013. A revised draft incorporating comments will be circulated back to the Network by early January 2014. Following this, Network members agreed to organise national consultations for feedback and endorsement through March 2014 and to communicate further feedback to the OECD Secretariat by 30 April 2014. The Taskforce will then determine whether it is necessary to meet in May 2014 should further redrafting be deemed necessary. Final revisions to the background document entitled *State-owned enterprise governance: A Stocktaking of reforms and challenges* were requested by 15 December 2013.
- ***Company guidance on anti-corruption and corporate ethics.*** Network members expressed an interest in pursuing further work in this area. As a first step, the OECD Secretariat proposed to conduct an initial two-part stock-taking of (i) business integrity and anti-bribery legislation, policies and practices in SADC economies, specifically covering SOEs; and (ii) company ethics codes and responsible business conduct practices across those economies. The stocktaking could eventually lead to a set of recommendations based on which company guidance could be developed.
- ***Governance of SOEs in the infrastructure sector.*** The Network supports the proposal to organise a dedicated workshop on this topic, bringing together representatives of SOEs and private companies involved in infrastructure provision. This could be appended to a Network meeting and eventually feed into the SADC Investment Policy Review, notably its Pillar II on SOE Governance in the Infrastructure Sector. Co-operation with the SADC Secretariat could be discussed at a later date.
- ***Fifth Meeting of the SOE Network for Southern Africa*****.** Representatives from the Institute of Directors of Zambia offered to look into the possibility of hosting the next meeting of the Network. Dates and further details will be communicated in due course.

Introduction and welcoming remarks

Mr. Frans Tsheehama welcomed participants on behalf of the hosting institution, the SOE Governance Council of the Namibian Prime Minister's Office. He highlighted SOEs' role as catalysts for socio-economic development, noting in particular their role in supplying crucial services to citizens, such as water and electricity provision, road and transport infrastructure, schools and health facilities. He noted his institution's commitment to helping advance the Network's objectives, notably to agree on a final version of the regional SOE Guidelines and to determine the way forward for their broader endorsement at a regional level.

Mr. Arto Honkaniemi (Ownership Steering Department, Office of the Prime Minister of Finland) gave some introductory remarks in his capacity as an SOE governance practitioner and as a representative of the OECD Working Party on State Ownership and Privatisation Practices[1]. He noted that since its inception in 2007, the SOE Network for Southern Africa has become an important reference for sharing good practices in SOE corporate governance and for bringing together practitioners to push for reforms. He recalled Finland's 25-year and on-going experience with SOE governance reform, noting that state ownership in Finland today reflects both past efforts to develop basic industries through state capital provision, and the incorporation and subsequent broadening of ownership of state activities previously undertaken directly by the administration. Today, in line with the OECD *Guidelines on Corporate Governance of SOEs*, the Finnish Ownership Steering Department ensures a clear separation between the state's ownership and regulatory functions, as well as providing for a centralised administration of SOEs. Mr. Honkaniemi drew some parallels between the SOE Network for Southern Africa and the OECD Working Party on State Ownership and Privatisation Practices and highlighted Finland's commitment to support the Network in the future.

Keynote Speech on Behalf of the Right Honorable Dr. Hage G. Geingob, Prime Minister of the Republic of Namibia[2]

Prime Minister Geingob discussed the history of state ownership over the past century, noting that it began in the form of state interventions in the pre-World War I period and then was replaced by a more direct form of state capitalism after World War II with a wave of nationalisations beginning in the 1940s in continental Europe, India, Latin America and later in the newly liberated African and other developing countries. He put forward that the collapse of this first wave of state capitalism came about in part due to trade protectionism coupled with inefficiencies, finalised with a global liberalisation and reform agenda. He noted that the world has changed since the privatisation agenda of the 1980s and 1990s, especially following the global financial crisis and subsequent partial nationalisations. He noted that today some of the world's leading companies are SOEs, highlighting the particular case of Chinese SOEs. He recalled that in Africa, despite the almost disappearance of SOEs during the liberalisation era, they remain one of the largest sectors of the African economy, providing basic services and infrastructure to support economic and private sector development. He noted that while SOEs can be effective tools to address market failures and support development, they face a number of governance and efficiency challenges, resulting in poor service delivery, highlighting the need to find an appropriate balance between SOEs' commercial objectives and public service obligations. Finally, Prime Minister Geingob expressed Namibia's commitment to the success of the Network and its objective to achieve consensus among the 14 SADC countries on the proposed *Southern African Guidelines on the Governance of SOEs*.

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[1] The OECD WP SOPP is a body that brings together the 34 member countries of the OECD and key partners, including South Africa, to dialogue on SOE Governance. The body is subsidiary to the OECD Corporate Governance Committee. It serves as custodian to the OECD *Guidelines on the Corporate Governance of State-Owned Enterprises.*

[2] The speech was given by Mr. Tjekero Tweya, Deputy Minister for Trade and Industry of the Republic of Namibia.

Theme 1: Towards a consensus on the Southern African Guidelines on the Governance of State-Owned Enterprises*

*The comments and discussions made during this part of the meeting are based on the draft Guidelines circulated in advance and tabled for discussion.

Mr. Kgotla Ramaphane (PEEPA, Botswana and Chair of the SOE Guidelines Taskforce) gave an overview of the process behind the draft SOE Guidelines, which were developed by a dedicated taskforce in collaboration with the OECD. He thanked taskforce members for contributing their time and the OECD Secretariat for facilitating the process. He encouraged all Network members to contribute, noting that their engagement and input would be key to ensuring the Guidelines meet national expectations.

Mr. Hans Christiansen (OECD) presented the report on *State-Owned Enterprise Governance: A Stocktaking of Reforms and Challenges in Southern Africa*, to which all 14 SADC countries contributed. The report finds that SOEs are very prominent in most SADC economies, particularly in the utilities and infrastructure sector, on which downstream industries depend. However, some of the biggest identified bottlenecks to economic development are inefficient SOEs. He noted that over the last two decades, there has been a growing political will and, in some cases, fiscal pressure, to improve the performance of SOEs across the region. Concerning SOEs' legal and regulatory framework, while most SOEs in SADC economies operate more closely with the general government than in other parts of the world, there is a trend towards corporatisation as well as encouraging efforts to separate the state's ownership and regulatory functions. The report also finds that few countries have elaborated a clear ownership policy, and most jurisdictions do not ensure structural separation between SOEs' commercial and public policy objectives. In closing, **Mr. Christiansen** asked that taskforce members communicate any comments or corrections to the OECD Secretariat within three weeks after which the report will be finalised and placed in the public domain.

Chapter 1: An effective legal and regulatory framework for state-owned enterprises

Mr. Apolinario Panguene (IGEPE, Mozambique) gave an overview of the recommendations contained in chapter 1 of the draft Guidelines concerning the establishment of an effective legal and regulatory framework for SOEs. He then gave a brief overview of recent reforms to the legal framework for SOEs in Mozambique. He put forward some suggestions for improving the legal and regulatory framework for SOEs in the broader SADC region, including: the enactment of dedicated legislation governing SOEs; the elaboration of clear ownership policies that separate the state's ownership and regulatory functions; the establishment of oversight bodies to monitor state shareholding practices; the enactment of legislation to ensure a level playing field between public and private businesses competing in the marketplace; and the establishment of clear policies on SOE board nomination, conduct, performance, incentives and remuneration. Mr. Panguene then opened the floor for discussion, summarised below.

- There was broad consensus that the Guidelines need to be set in the context of the developmental state that most countries in the SADC region aspire to create. In this context, it was remarked that the policy purpose of SOE ownership may go well beyond correcting market imperfections and removing obstacles to growth. (South Africa)

- Some participants highlighted that the global privatisation agenda of the 1980s and 1990s has been replaced with a growing consensus that SOEs, if governed properly, can support national development. There was agreement that the public service role of SOEs is adequately reflected in the Guidelines, which explicitly state that non-commercial activities of SOEs should be clearly mandated, disclosed and financed in a transparent manner. (APRM, Mozambique)

- It was highlighted that there are differing views across the region regarding competitive neutrality between SOEs and private businesses operating in the commercial marketplace. It was noted that where there is not yet a clear structural separation between SOEs' commercial and public service activities, subsidies may be justified during a transition period. (Mozambique)

- The Chair concluded that in the Guidelines, a balance needs to be struck between compliance and political commitment to good practice. The Guidelines should also acknowledge the importance of competing aims in government policy between, on the one hand, triggering economic development and, on the other hand, encouraging competition in goods and services markets.

Chapter 2: Purpose of ownership and the state acting as an owner

Mr. Richard Kakona (SOE GC Secretariat, Namibia) underlined that establishing a clear state ownership model, with well-defined roles and responsibilities for the various government stakeholders, is key to good governance of SOEs. He gave an overview of the main models of state enterprise ownership, notably: (i) centralised; (ii) dual; (iii) decentralised; and (iv) hybrid. He noted that regardless of the ownership model chosen, to be effective it must be underpinned with: accountability and transparency; a clearly defined ownership policy; political office bearers who act as the custodians of SOEs; a clear categorisation of SOE activities; and strategic plans for SOEs with clearly defined objectives. **Mr. Kakona** presented and elaborated on the recommendations contained in chapter 2 of the draft Guidelines. As a concluding question, he asked participants to reflect on the extent to which governments should "interfere" in the operations of SOEs. He then opened the floor for discussion, summarised below.

- The discussion revealed a degree of confusion regarding the typology of ownership models, leading to the conclusion that this language in the draft Guidelines must be clarified. Among other things a more detailed elaboration might better reflect the variety of ownership structures. (APRM) There was agreement that the Guidelines themselves do not need to encompass all possible ownership models, and that it is sufficient to recommend a well-defined ownership policy and clear identification of how ownership rights are exercised among different government stakeholders.

- One challenge cited was multi-linear reporting by CEOs, who are often required to report to the board, parliament and other bodies. On this point, it was suggested that a clause be added on the need to streamline SOE reporting requirements (Zambia).

- Regarding government involvement in SOE operations, it was noted that because ministers are often held accountable for SOE performance via reporting to parliament, it can be difficult to limit their interference in day-to-day operations of SOEs. A tentative conclusion is that the Guidelines should recommend an ownership policy that clearly defines the government's role (Namibia).

- A general point was made that the Guidelines themselves should not prescribe the contents of an ownership policy or identify the appropriate ownership model, but rather be an outcomes-based instrument which allows national jurisdictions to determine for themselves the most appropriate models.

Chapter 3: Equitable treatment of shareholders and other outside investors

Mr. Abilio Inguane (IGEPE, Mozambique) highlighted that ensuring equitable treatment of SOE shareholders can be a challenge given that historically many SOEs were parastatals, under full government ownership and control. He noted that in Mozambique in particular, some broadening of SOE ownership has begun, making equitable treatment of shareholders a very important and timely issue. He presented and elaborated on the recommendations contained in chapter 3 of the draft Guidelines. He then opened the floor for discussion, summarised below.

- Participants highlighted particular challenges relating to public-private partnerships, where cost over-runs and delays can cause significant efficiency problems. It was suggested that the Guidelines include reference to the need to link contracts with appropriate risk management strategies. (South Africa)

- Regarding the protection of minority shareholders or other outside investors, one suggestion was to build in a clause regarding the importance of preventing nationalisations and regulatory takings, in order to build investor confidence (Zambia). It was further proposed that the duty to inform minority shareholders be formally linked with the board annual calendar (South Africa).

Chapter 4: Relations with stakeholders and anti-corruption and ethics

Mr. Thomas Scott (Development Bank of South Africa) opened the session by underlining the importance of strong and transparent relations with SOE stakeholders (creditors, employees and others affected by the SOE's activities) as well as good corporate ethics and responsibility in order to ensure efficient resource allocation, promote transparency, attract foreign investment and avoid leakages of state corporate resources. **Mr. Scott** gave an overview of the recommendations contained in chapter 4 of the draft Guidelines. He then opened the floor for discussion, summarised below.

- Participants highlighted that there are few mechanisms in place to ensure that SOE board members are held accountable for their fiduciary responsibility. A suggestion was made to reflect this in the Guidelines (Namibia).

- Regarding corporate social responsibility reporting, a suggestion was made to reference the value of "triple bottom line reporting", by which companies report not only on their financial performance, but also on their environmental and community impact (South Africa and Finland). It was further suggested to take into account occupational health and safety (APRM).

- It was proposed that, in addition to including a clause on employee whistle-blower protection, the Guidelines should also recommend employee training on how to identify corruption and take appropriate action, because existent codes and rules are often not adequately implemented (Namibia).

- In his conclusions, the Chair mentioned among the options for taking action: the development of shareholder compacts; tightening fiduciary duties; applying integrated reporting; developing mechanisms for dealing with conflicts of interest (especially in small economies); and measures to discourage political and commercial influence peddling.

Chapter 5: Transparency, Disclosure and Accountability

Mr. Otlametse Rakwadi (PEEPA, Botswana) presented and elaborated on the recommendations contained in chapter 5 of the draft Guidelines, notably concerning the importance of disclosing information on SOE activities to shareholders and the broader public, ensuring a strong internal and external audit function and maintaining accountability to representative bodies such as parliament. In conclusion, he noted that adequate disclosure and accountability mechanisms are key to assessing SOE performance, and that ownership functions and boards should exercise an oversight role in this respect. He then opened the floor for discussion, summarised below.

- It was suggested that the Guidelines specifically recommend the use of International Financial Reporting Standards (IFRS), but it was agreed that this might be too restrictive and difficult to implement by smaller companies (APRM). Further proposals centred on the role of board audit committees (Malawi) and involving state auditors (Namibia).

- Regarding the exercise of ownership roles it was pointed out that "those exercising ownership rights" are (ministerial) institutions rather than individuals. The Guidelines should not be misunderstood to indicate that individual civil servants can be held politically accountable (Finland).

Chapter 6: SOE board practices[3]

Mr. Mumba Kapumpa (Institute of Directors, Zambia) gave an overview of the specific recommendations contained in chapter 6 of the draft Guidelines. Among other important issues, he highlighted that SOE CEOs should be accountable to boards and not to the government (and that therefore governments should not appoint the CEOs of SOEs); that governments could consider making board remuneration policies public; and that in addition to self-evaluations, the board should conduct an evaluation of the CEO, which could be based on a contract agreed in advance including key performance indicators. He then opened the floor for discussion, summarised below.

- There was consensus among delegates that a key problem is widespread lack of understanding of the proper role of a board of directors. In many countries, SOEs continue to be seen as an extension of the ministerial powers, and in consequence board membership is either a duty for public officials or a source of political patronage.

- Participants noted that in some cases, board effectiveness can be limited when for instance members serve on the boards of several companies and/or when boards are subject to frequent policy-induced change (e.g. Namibia, Zambia).

- The issue of board evaluation was discussed, including the role of key performance indicators, industry benchmarking and the role of external facilitators.

- Several participants stressed the need to clarify the role of the Chairman of the Board and the processes involving the appointment and removal of the CEO (e.g. DR Congo, Finland, UNECA).

The way forward on the regional Guidelines

Dr. Moustapha Mekideche (Africa Peer Review Mechanism) gave an overview of APRM's mandate and governance structure. APRM is an instrument voluntarily acceded to by the Member States of the African Union for monitoring and improving political, economic and corporate governance values, codes and standards. He gave an overview of the national governance reviews conducted by the APRM, which are periodically updated to include newly adopted codes and standards, including guidance for SOE governance. Regarding the way forward, he suggested that future APRM reviews of SADC countries could examine the extent to which the regional SOE Guidelines have been implemented.

Mr. Anthony Ademola Taylor (UN Economic Commission for Africa) commended the Network's progress in drafting the Guidelines and noted UNECA's commitment to help the Network to take the process forward. Mr. Taylor suggested some potential avenues for achieving endorsement and implementation of the SOE Guidelines, at both the regional and national level. First, he suggested that the SOE Network engage with the SADC Secretariat to submit the Guidelines for endorsement to its various organs, eventually leading to endorsement at the SADC ministerial level. Secondly, he suggested efforts to revise national legal and regulatory frameworks in line with the agreed regional Guidelines, as well as activities to publicise and disseminate the Guidelines. Finally, he noted the importance of monitoring the implementation of the Guidelines at the national level.

During the ensuing discussion there was broad agreement that work on the Guidelines should go ahead with the purpose of finalising them in 2014. A question relates to the possible role of SADC and its secretariat in this process, but there was agreement that this should not detract the Network from issuing a consensus document. It was suggested that other regions of Africa might be encouraged to follow a similar route of regional consensus (Namibia).

[3] This discussion took place earlier in the meeting, but has been summarised to maintain consistency with the ordering of chapters in the draft regional Guidelines.

Wrap up session

Mr. Hans Christiansen (OECD) thanked participants for the engaged discussion and detailed comments on the draft Guidelines. In response to concerns that practices in many SADC economies are far from those recommended by the Guidelines, he underlined that as was the case for the OECD *Guidelines on Corporate Governance of State-Owned Enterprises*, the Southern African Guidelines can be considered aspirational. The Guidelines can act as a platform for achieving a regional consensus on long term ambitions for improving the corporate governance of SOEs.

Mr. Kgotla Ramaphane (PEEPA, Botswana) closed the session by proposing the following next steps: Network members will send concrete suggestions to the OECD Secretariat by 6 December 2013, and a revised draft will be circulated back to the Network by early January 2014. Following this, Network members are asked to organise national consultations as necessary for feedback and endorsement through March 2014 and communicate further feedback to the OECD Secretariat by 30 April 2014. The taskforce will then determine whether it is necessary to meet in May 2014 should additional redrafting be necessary; otherwise the Network will proceed with an endorsement process via the Network and will, in parallel, consider other political avenues for endorsement, including through a SADC process.

Theme 2: Developing company guidance for SOEs – Anti-corruption and corporate ethics*
* See related discussion paper.

Ms. Orcilla Ruthnam (Department of Public Enterprises, South Africa) moderated the session, the purpose of which was to discuss whether the Network should pursue a project on reducing corruption and promoting corporate ethics, with a particular focus on SOEs. **Ms. Ruthnam** presented the related concept note, which proposes that the Network undertake an initial two-part stocktaking of (i) business integrity and anti-bribery legislation, policies and practices in SADC economies, specifically covering SOEs; and (ii) company ethics codes and responsible business conduct practices across those economies. The stocktaking could eventually lead to a set of recommendations based on which company guidance could be developed. **Ms. Ruthman** discussed the South African experience with developing ethical standards for SOEs and combatting corruption.

Mr. Regan Mwazi (Agricultural Bank of Namibia) stressed the importance of advancing efforts to combat corruption, particularly for SOEs in Namibia, where there are few measures to effectively combat corruption and bribery. He put forward that efforts should focus on both developing a national anti-corruption strategy for SOEs and establishing Guidelines to support implementation by individual companies, which could be facilitated through the Network.

During the open discussion, participants elaborated on some of the challenges relating to national implementation of international anti-corruption commitments in the SADC region, and the constraints this creates for economic growth. All participants agreed that anti-corruption and corporate ethics are very important issues on which the Network should pursue further work. They noted the need to avoid overlap with other initiatives working in this area. They agreed that prior to developing company guidance, it would be useful to first gain a better understanding of current practices and challenges in the SADC region, as it relates to SOEs. The OECD Secretariat proposed to conduct, in collaboration with Network members, a questionnaire-based stock-taking as suggested in the related concept note.

Theme 3: Agreeing on priorities on the governance of SOEs in the infrastructure sector*
* See related discussion paper.

Ms. Annely Haiphene (National Planning Commission, Namibia) moderated the session, the purpose of which was to discuss potential follow up work by the Network on improving the governance of SOEs operating in the infrastructure sector (be they direct providers of infrastructure, clients or bidders for infrastructure procurement). **Ms. Haiphene** noted that adequate infrastructure is crucial for the operations of downstream business activities, as well as for ensuring regional trade integration, attracting foreign investment and ensuring public service delivery.

Mr. Thomas Scott (Development Bank of South Africa) noted that efficient and effective infrastructure service delivery requires improved governance practices in SOEs. He proposed a number of principles necessary for successful infrastructure service delivery, including: ensuring strategic planning and co-ordination; clarifying relationships and roles in infrastructure delivery problems; identifying gaps in the infrastructure delivery system; achieving sustainability by ensuring affordability and exploiting economies of scale; introducing commercial principles in service delivery; and leveraging private sector skills and technology, for example through public-private partnerships.

Mr. Immanuel Hanabeb (Namport, Namibia) highlighted a number of governance challenges faced by SOEs operating in the infrastructure sector, including: the absence of clear roles and responsibilities among government, SOE boards, CEOs and managers; lack of accountability; and the absence of a national infrastructure strategy. He also noted the challenge of obtaining adequate financing for long term, capital-intensive infrastructure projects.

During the open discussion, participants highlighted a number of issues surrounding infrastructure development in the SADC region and noted that the Network should focus any future work specifically on governance issues related to SOEs involved in infrastructure provision. It was recalled that at the previous meeting of the Network (Midrand, 2012), a representative of SADC-DFRC discussed the SADC Regional Investment Policy Framework and Network members expressed an interest in contributing to Pillar II on Enhancing SOE Corporate Governance in the Infrastructure Sector. Given that the representative of SADC was unable to attend the meeting, it was agreed to postpone the discussion on the Network's potential contributions to the Regional Investment Policy process. Moving forward, participants supported the proposal to organise a workshop on SOE governance in the infrastructure sector, possibly in connection with the next meeting of the Network.[4]

Concluding remarks

Concluding remarks were provided by **Mr. Regan Mwazi (Agribank)**, **Mr. Arto Honkaniemi (Ownership Steering Department, Finland)** and **Mr. Frans Tsheehama (SOE GC, Namibia). Mr. Mwazi** expressed Agribank's support for the Network and noted the value of sharing experiences across SADC institutions to improve service delivery by SOEs in the region. **Mr. Honkaniemi** echoed the point made by many participants that the SOE Guidelines will be the starting point of a long-term process of implementation and co-ordination among stakeholders. **Mr. Tsheehama** extended his appreciation to all participants and financial sponsors. He congratulated the Network and the taskforce for their efforts to finalise the Guidelines and underlined that improving the governance of SOEs is crucial to ensuring that they better serve the needs of society.

[4] Noting that this could also involve the NEPAD-OECD Africa Investment Initiative, as current partner to the SADC process in developing a framework for infrastructure investment among SADC economies.