

Chaired and hosted by:



SOE GUIDELINES TASKFORCE FOR SOUTHERN AFRICA

22-23 April 2013
Gaborone, Botswana

- Summary Record-

Item 1. Welcome remarks were made by PEEPA reminding participants of the important task charged to the group, the terms of reference, the role of the Taskforce, and the mandate that was provided following the October 2012 Network meeting. Participants introduced themselves, the institutions they represent, and the agenda was adopted.

Item 2a. Purpose and Rationale. PEEPA underlined the importance of the Taskforce's work in addressing some of the performance challenges faced by SOEs in the SADC region. PEEPA reminded participants of the role SOEs play in strategic sectors, as public service providers, in terms of their market position and their impact on downstream private competition. In order to remedy challenges and improve performance, the governance of SOEs was underlined as a key factor. PEEPA encouraged the Taskforce to share experiences and learn from each others' reforms efforts. National experiences should inform the draft Guidelines. PEEPA urged the Taskforce to agree on the initial chapters during the meeting and work towards developing a first draft in time for the November Network meeting.

Item 2b. Proposed structure of SOE Guidelines. OECD thanked PEEPA for Chairing the Taskforce and the Norwegian Ministry of Trade and Industry for funding current activities of the Network. OECD described the process of developing SOE guidelines in its own context and in other regions. Going forward it is important to keep in mind: 1) the scope and coverage should focus on commercial enterprises; 2) the guidance should be outcomes based; and, 3) guidance should be held at a high level of aspiration. OECD proposed that the OECD SOE Guidelines serve as a useful starting point but not a template; instead the Southern African guidance should be adapted to regional realities and practices. The proposal made by the OECD was to follow the same six chapters of the SOE guidelines but to include additional guidance where relevant and applicable; annotations to the guidance would go into more detail on the specifics and draw on national practices. The OECD volunteered its Secretariat services to prepare a "zero" draft outline for the consideration of the Taskforce by June 2013.

Item 3. Presentation of the background report. OECD presented a draft background paper on SOE governance, which provides a comparative stocktaking of SADC reforms and challenges. The Secretariat will solicit comments and corrections from all participating countries, especially on the country profiles featured under Part II of the report. It will be finalised and tabled at the November Network meeting, and will serve to inform the deliberation on Guidelines.

Item 4. Purpose of Ownership and the State as an Owner. IGEPE from Mozambique presented its ownership policy for all commercial enterprises under its central supervision. IGEPE presented the purpose and rationale for state ownership in Mozambique and respective institutional arrangements. A second

presentation was made by PEEPA on its plans to develop an ownership policy. PEEPA described the aspects that it will cover, similar to the areas covered by the previous presentation, but to be applicable in a system of dual ownership.

Box 1. Summary of the discussion on the purpose of ownership and the State acting as an owner

The main points areas of consensus reached during the session are as follows:

- The ownership policy should include a categorisation of SOEs, how they are defined by law, and under which institutional framework they fall depending on their commercial and/or non-commercial objectives.
- The ownership policy should clearly define the purpose of state ownership, what is the role of the state acting as an owner and articulate the state's overall expectations, including in terms of ownership, oversight and governance. The ownership policy should be drafted in consultation with stakeholders.
- The ownership policy should be translated into clear company-specific expectations and objectives (both commercial and non-commercial where applicable). This includes defining dividend policies, and capital structures which should also be balanced with any non-commercial obligations. Shareholding entities should give governing bodies of the company autonomy and independence to achieve the agreed objectives.
- The state should clearly define the role of the ownership function vis-à-vis other government functions. Ownership arrangements should promote accountability and transparency. It should also define which bodies are involved in board nomination and appointment.
- The state should exercise ownership in a way that maintains a level playing field between public and private businesses, and that its presence in the market place does not "crowd out" competition.
- The state should regularly revisit SOEs' mandates and objectives, and the rationale for maintaining state ownership.

Item 5. Legal and regulatory frameworks. The Ministry of State Enterprises and Parastatals (MoSEP) of Zimbabwe presented its national Corporate Governance Framework for State Enterprises and Parastatals (CGF). The CGF is a guidance document which is compatible with provisions in various legal and regulatory frameworks applicable to SOEs and parastatals, with the aim of improving SOE governance. However challenges in its implementation were highlighted, given that it is currently not a legal instrument and is being enforced by way of Cabinet Circulars and supported by existing legislation. The government is working towards codifying the Framework. In addition, it is taking a sector-by-sector approach to establishing independent regulatory authorities in sectors where SOEs operate, with a view to separate ownership and regulatory functions.

The Namibian State-Owned Enterprise Governance Council Secretariat was invited to present their SOE Act. The Act aims to promote better governed SOEs and encourage more efficient and financially viable enterprises. It is applicable to all SOEs (commercial and non-commercial). The Act also defines the power of the SOEGC Council and its Secretariat as the supervisory body. Challenges in its implementation were highlighted given that implementation capacities in the Secretariat have been lacking.

Box 2. Summary of the discussion on legal and regulatory frameworks

The main points areas of consensus reached during the session are as follows:

- Independent regulatory authorities should be established, clearly separating the regulatory function from the ownership function.
- The legal and regulatory framework should ensure a level playing field between public and private undertakings in competitive markets (or where there is potential for competition). This should be weighed together with the use of SOEs to support development objectives.
- An effective legal and regulatory framework should ensure implementation and enforcement capacities.
- Guidelines should be compatible across diverse national legal and regulatory traditions. National jurisdictions should judge where to strike the right balance between what should be law and what is considered best practice.

Item 6. SOE Board Practices. PEEPA, the SOEGCS and the IoD-Zambia presented various aspects of SOE board practices. PEEPA and IoD-Zambia presented on board charters. Board charters are a tool which clarify board responsibilities; hold boards accountable; define the board's authority and obligations; and set out board committees and other functions which are part of the Board's remit. PEEPA uses board charters, among other tools (such as shareholder compacts) to improve board governance practices. The use of board charters had been discretionary until now, but a recent cabinet directive has made their use mandatory and should mainstream their implementation across SOEs in Botswana. IoD-Zambia highlighted that board charters serve to reinforce the board's role in strategic planning, and can help shield it from undue political interference.

Namibia was invited to present the SOEGCS board remuneration methodology. The methodology systematises board remuneration practices, currently a contentious issue in Namibia (and the region). The remuneration methodology is based on a categorisation of SOEs according to their size and economic weight, in addition to their commercial or non-commercial orientation. However challenges in its implementation were highlighted, including methodological issues (i.e. inability to capture the complexity of board members' individual roles and company specificities). Another challenge is to address the issue of public officials and civil servants on boards (and their remuneration). Despite these challenges, the government has used the methodology to balance public opinion concerns with its need to attract qualified directors.

Box 3. Summary of the discussion on SOE board practices

The main points areas of consensus reached during the session are as follows:

- There are a number of tools available to the ownership function to encourage well-performing boards. These include board charters, shareholder compacts, board remuneration schemes, and evaluation tools. Governance tools should be developed in an interactive manner, including input from boards.
- Boards should act as a collegial body. Boards should be independent, objective and shielded from undue political interference. Their role, fiduciary duties and legal responsibilities should be clearly articulated.
- Audit, ethics, and risk management board committees are an important part of the governance of an SOE.
- Boards should be focused on performance instead of conformance.
- Board remuneration is a contentious issue, but it must be tackled to balance public opinion with the

need to attract qualified directors.

Item 7. Relations with stakeholders, anti-corruption and ethics. The Development Bank of Southern Africa (Office of the Corporate Secretariat) and MoSEP from Zimbabwe were invited to present anti-corruption and ethics frameworks which are applicable to SOEs. Both presentations highlighted the importance of having additional governance tools, such as corporate governance frameworks in addition to existing legal and regulatory frameworks, which bind SOEs to ethical standards and good governance practices. Zimbabwe’s CGF, for example, deals with ethics and anti-corruption, outlining how SOEs should comply with their obligations as laid out in Company Law, information disclosure acts, public procurement laws and public finance management acts; in addition to good practices in corporate governance. Both presentations pointed to the challenges of enforcement, which can partly be addressed by increasing implementation and enforcement capacities.

Box 4. Summary of the discussion on relations with stakeholders, anti-corruption and ethics

The main points areas of consensus reached during the session are as follows:

- Provisions of existing legal frameworks and codes relating to anti-corruption and ethics are applicable to SOEs. Additional guidelines and codes can serve to promote good governance practices and can cover all levels of conduct from responsibilities of the board, executive management, employees, the State, and other public institutions or stakeholders interacting with SOEs.
- Guidelines and codes should address the issue of conflicts of interest in SOE procurement practices.
- Board instances, including independent ethics and audit committees, can reinforce transparent practices in SOEs. Audited financial statements help to guard against corrupt activities.
- Responsibilities towards stakeholders, including corporate social responsibility, should be clearly articulated and reported on.

Item 8. Transparency, disclosure and accountability. IGEPE and PEEPA presented on transparency, disclosure and accountability arrangements in their respective national contexts. Both countries favour the use of performance agreements as part of their governance models. IGEPE, which has direct supervision over 42 companies, uses “performance contracts” agreed between each SOE and IGEPE, and between each SOE’s management and board. Monitoring and evaluation of financial and non-financial performance is a requirement, and is linked to a system of incentives for management. PEEPA’s model relies on “shareholder compacts”, which clarifies the SOEs mandate and key corporate objectives and is monitored according to performance targets. The contract is agreed between the shareholding ministry and individual boards based on an interactive process involving inter-ministerial and stakeholder consultations. PEEPA is working towards mainstreaming the use of performance contracts by shareholding ministries, although capacities must be built both within the SOE and shareholding ministries to enable full implementation. The compacts fit into a broader set of tools currently being developed by PEEPA.

Box 5. Summary of the discussion on transparency, disclosure and accountability

The main points areas of consensus reached during the session are as follows:

- A number of tools are available to promote transparency and accountability. Most prominent are the use

of performance or shareholder contracts which cover the full cycle of monitoring and evaluation (and which underline the role of internal and external audit), and are linked to incentive schemes.

- Board versus management performance targets should be clearly differentiated. Although Compacts clarify the State's expectations as shareholder, they should not undermine the role of the board in terms of strategic guidance.
- The use of transparency and accountability tools should draw from an overarching ownership policy and company-specific targets. Commercial and non-commercial objectives of SOEs should be clearly articulated. Where applicable, resource requirements should also be identified in advance.
- The development of performance criteria should be an interactive process involving consultation with the board, management and other stakeholder/shareholding ministries.

Item 9. Equitable treatment of shareholders, and broadening the ownership of SOE operations.

IGEPE from Mozambique and the Institute of Directors from Zambia were invited to present their national experiences concerning broadening the ownership of SOE and equitable treatment of shareholders, respectively. IGEPE presented the rationale behind the government's strategy to broaden the ownership of SOE, as a means to improve SOE efficiency and to gain financial leverage. Part of this strategy has been to invite private participation through PPPs or other arrangements; by issuing shares as part of employee buy-out schemes; and through listing on the local stock exchange. The PPP model has been favoured by Mozambique, but challenges remain to improve the management of those relationships, especially given their importance on a regional scale. IoD from Zambia highlighted the importance of protection of minority shareholders, drawing on the Zambian experience following the wide spread listing of SOEs on the Lusaka stock exchange. Treatment of minority shareholders was the same, by virtue of the listing requirements of the stock exchange; this has been monitored through the Securities and Exchange Commission and licensing team. The presentation also highlighted the benefits of the governance arrangements that came out of listing.

Box 6. Summary of the discussion on equitable treatment of shareholders and broadening the ownership of SOEs

The main points areas of consensus reached during the session are as follows:

- Benefits can be had through broadening the ownership of SOEs, including from improving SOE efficiency, gaining financial leverage, and improving governance arrangements – including equitable treatment of minority shareholders.
- Challenges remain in terms of managing public-private partnership to which SOEs are party. The types of arrangements, enabling legal and regulatory environment, and costs/benefits should be carefully evaluated.

Item 10a. Way Forward. The Taskforce agreed on the structure of the guidelines, which will largely follow the six chapters of the OECD SOE Guidelines. It was agreed that annotations should flesh out additional points which were discussed at length during the Taskforce meeting (see box below).

It was agreed that the OECD Secretariat will develop a “zero” draft of the Guidelines for consideration by the Taskforce in June. The draft will go through a number of iterations before being finalised in September and sent to the Network for consideration in advance of the annual Network meeting in November 2013. It was agreed that the November meeting would serve as an opportunity for

remaining national delegations to provide comments. Network members will be encouraged to share the Guidelines at the highest possible level in their countries and among stakeholders to engage respective governments in the implementation process. If requested, a process of consultation will be initiated with a broader set of constituents. A final draft of guidelines will be prepared for endorsement in 2014. The political avenue for endorsement has yet to be decided. The options for endorsement include: 1) the Network can informally endorse the guidelines; 2) the guidelines can be endorsed by select countries, on a national and voluntary basis; and, 3) the guidelines can be endorsed through a SADC ministerial process. Endorsement by SADC Ministers (option 3) is the preferred option of Taskforce participants, as it will give more political weight to the guidelines, and support current reform efforts lead by ownership functions across the SADC region.

Box 7. Summary of the discussions during the way forward

The additional key priority areas agreed upon to include going beyond the OECD SOE Guidelines structure are as follows:

- Chapter 1: Guidance and annotations on the rule of law, ideal corporate forms in view of public policy objectives, and emphasis on independent regulatory bodies, including sector regulation and adequately empower competition authorities with powers of enforcement.
- Chapter 2: Guidance on the political rationale for state –ownership and the role of SOEs in development; ownership policies, and key considerations on the organisation of the ownership function (i.e. centralised, dual or dispersed); typology on commercial versus non-commercial SOEs.
- Chapter 3: Guidance on managing private participation in SOE operations
- Chapter 4: Guidance on curbing corruption, corporate ethics and corporate social responsibility
- Chapter 5: Guidance and annotations on the use of tools to monitor and evaluate SOE performance
- Chapter 6: Guidance and annotations on SOE Board practices; the relationship between the owner, shareholders and governing bodies, and additional points on board evaluation and remuneration (which were particularly contentious issues).

Item 10b. Concluding Remarks. OECD and PEEPA thanked participants for their active participation and dedication to the process. The concluding remarks highlighted that multiple lessons were drawn from the discussions which will be included in the draft guidelines. The key take-aways include: 1) the role of public policy in rationalising the purpose of SOEs and their role in social and economic development; 2) the categorisation of SOEs is fundamental to determine the role of the ownership function, and the legal status of SOEs; 3) anchoring codes and other practices into law will help to ensure implementation; and, 4) enhancing transparency around SOE operations and communicating to the public will ensure better outcomes.