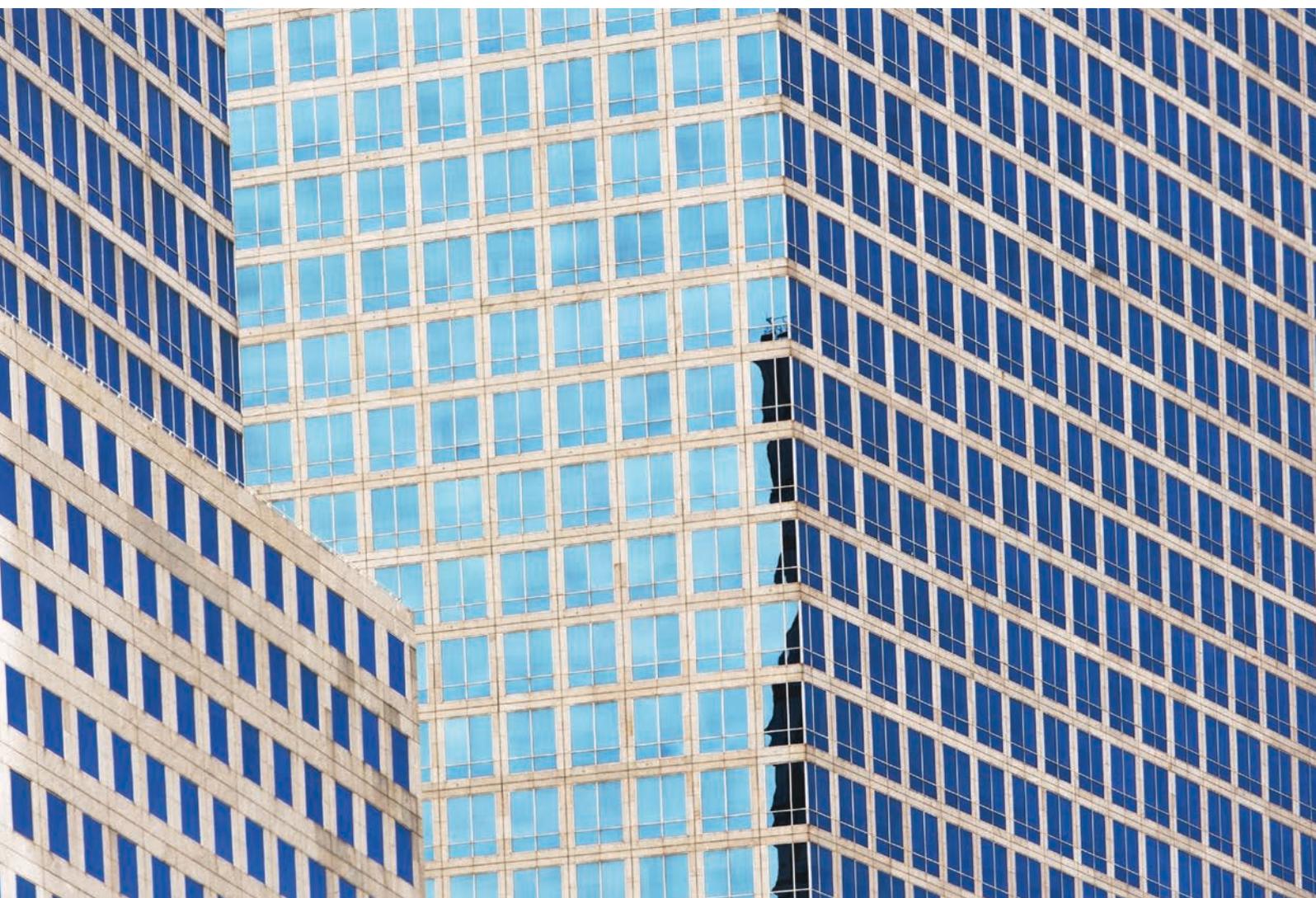


# PROCEEDINGS

## Global Knowledge Sharing Network on Corporate Governance of State-Owned Enterprises

First meeting, 7-8 June 2016, Mexico City, Mexico



### **About the OECD**

The OECD is a forum in which governments compare and exchange policy experiences, identify good practices in light of emerging challenges, and promote decisions and recommendations to produce better policies for better lives. The OECD's mission is to promote policies that improve economic and social well-being of people around the world.

### **About the G20/OECD Principles of Corporate Governance**

The G20/OECD Principles of Corporate Governance help policy makers evaluate and improve the legal, regulatory, and institutional framework for corporate governance. They also provide guidance for stock exchanges, investors, corporations, and others that have a role in the process of developing good corporate governance. The 2015 edition takes into account developments in both the financial and corporate sectors that may influence the efficiency and relevance of corporate governance policies and practices.

### **About the OECD Guidelines on Corporate Governance of State-Owned Enterprises**

The OECD Guidelines on Corporate Governance of State-Owned Enterprises give concrete advice to countries on how to manage more effectively their responsibilities as company owners, thus helping to make state-owned enterprises more competitive, efficient and transparent.

First developed in 2005, the Guidelines were updated in 2015 to take into account developments since their adoption and to reflect the experiences of the growing number of countries that have taken steps to implement them. The updated Guidelines were adopted by the OECD in July 2015 as part of a Recommendation of the OECD Council.

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Find us on Twitter: [@OECD\\_BizFin](https://twitter.com/OECD_BizFin)

The OECD's organisation of the first meeting of the Global Knowledge Sharing Network on Corporate Governance of State-Owned Enterprises has benefited from collaboration with the World Bank and CAF (Latin American Development Bank).



**PROCEEDINGS: GLOBAL KNOWLEDGE SHARING NETWORK ON CORPORATE  
GOVERNANCE OF STATE-OWNED ENTERPRISES**

**7-8 JUNE, 2016, MEXICO CITY, MEXICO**

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## Overview

### Meeting of the Global Knowledge Sharing Network on Corporate Governance of State-Owned Enterprises

<b>Date</b>	7-8 June, 2016
<b>Venue</b>	Antiguo Palacio del Arzobispado
<b>Language</b>	English and Spanish (Simultaneous interpretation provided in English-Spanish)
<b>Hosted by</b>	Ministry of Finance and Public Credit of Mexico
<b>In collaboration with</b>	Latin American Development Bank - CAF and World Bank
<b>With support from</b>	Ministry of Strategy and Finance of Korea

## Background

Governments in both mature and emerging economies are important owners of commercial enterprises and corporatised assets. These state-owned enterprises (SOEs) often supply fundamental services such as water, electricity and transportation that private companies depend upon for their competitiveness, and on which the citizens depend for their quality of life. Ensuring that governments efficiently manage these assets is therefore crucial for the competitiveness of the broader enterprise sector, economic growth and sustainable development more generally. In many cases, poor corporate governance of SOEs has had negative consequences on countries' economic development.

Many countries have taken steps to develop and improve the governance of their SOEs and equivalent public institutions in order to maximise their contributions to growth and development. Indeed, it is important that SOEs have well defined objectives, professional and independent boards of directors, and clear lines of accountability for their performance. More attention needs also to be given to the fact that SOEs can be particularly at risk for corruption due to their proximity to the state and the fact that they often operate in sectors with high corruption risk. The close relationship between the state and SOEs can also influence the transparency of public financial flows, and the complexity of the accountability chain could also increase opportunities for corruption in SOEs. Also the close relationship between SOEs and other state-owned entities such as banks or financial institutions – who are suppliers or clients of the SOEs – increases the risk of irregular practices.

The OECD has extensive experience in advising governments, through an inclusive ongoing dialogue, on how to ensure that SOEs operate efficiently, transparently and in an accountable manner. In 2015, the OECD revised the [\*OECD Guidelines on Corporate Governance of State-Owned Enterprises\*](#) (“*SOE Guidelines*”), which have served as a global benchmark for countries introducing governance reforms in the state-owned sector since their inception in 2005. A large number of emerging economies participated in the revision process and made significant contributions.

## Objectives

In this context, this first meeting of the Global Knowledge Sharing Network on Corporate Governance of State-owned Enterprises aimed at supporting ongoing efforts to help governments identify priorities for SOE reform and implementation through the process of knowledge sharing. The Network may be seen as a continuation of the *OECD Global Network on Privatisation and Corporate Governance of State-Owned Enterprises* which was created in 2008 in the context of the OECD's work to provide a structured environment for initiatives to support improvements in the governance of SOEs.

Bringing together the already existing OECD regional, peer-learning networks active in Latin America, Asia, the Middle East and North Africa and Southern Africa, it built on key pillars of the SOE Guidelines to maximise SOEs' contributions to sustainable development such as organising the ownership function; preventing corruption; improving boards practices and establishing comprehensive transparency and disclosure measures.

Its objectives were to raise awareness of governments on the importance and challenges related to the better corporate governance of SOEs; evaluate current SOE corporate governance policy frameworks and practices, and benchmark these against international good practice as described in the SOE Guidelines; influence policy-making by providing a forum in which policy makers, practitioners and experts from all over the world can share knowledge and experience among themselves and with their OECD peers; and support effective reforms in the area of SOE corporate governance, by discussing policy options, developing relevant recommendations and agreeing on priorities for reforms adapted to the conditions in emerging economies.

This year's meeting was hosted by the Ministry of Finance and Public Credit of Mexico and the OECD launch of the Network was made possible with support from the Ministry of Strategy and Finance of Korea.

The first day involved representatives of governments, SOEs and relevant experts to consider experience on SOE governance reforms from a range of perspectives. The second day was for representatives of government ministries and ownership entities only, to encourage an exchange on SOE governance reforms and discuss specific steps that the governments can take as owners of SOEs.

These proceedings were produced by the following:

Mr. Seungju Baek, Mr. Hans Christiansen, Mr. Daniel Blume, Ms. Chung-a Park, Ms. Korin Kane, Ms. Katrina Baker and Ms. Alejandra Medina from the OECD Secretariat.

## Agenda

### Day 1: Governments, State-Owned Enterprises and Experts

9:15-10:00	<i>Registration and Coffee/Tea</i>
10:00-10:30	<b>Welcoming remarks</b>
10:30-11:30	<b>Session 1: Recent reform efforts: An overview of the revised <i>OECD Guidelines on the Corporate Governance of State-Owned Enterprises</i></b>
11:30-12:00	<i>Coffee / Tea break</i>
12:00-13:30	<b>Session 2: Organising the state ownership function</b>
13:30-15:00	<i>Lunch buffet</i>
15:00–16:30	<b>Session 3: National practices for performance evaluation and management in comparative perspective : Asia and Latin America</b>
16:30-16:40	<i>Short break</i>
16:40-18:10	<b>Session 4: Evolving global consensus on the regulatory framework for ensuring business integrity and preventing corruption in SOEs</b>
19:00	<i>Cocktail</i>

### Day 2: Government Ownership Entities, Ministries and Agencies

8:15-9:00	<i>Registration and coffee / tea</i>
9:00-9:20	<b>Welcoming remarks</b>
9:20-11:00	<b>Session 1: Developing and implementing an SOE disclosure and transparency policy</b>
11:00 - 11:30	<i>Coffee / tea break</i>
11:30-13:00	<b>Session 2: Selecting SOEs for reform and ensuring success of the process</b>
13:00-14:30	<b>Session 3: Best practices on nomination, election and performance of board members</b>
14:30-16:00	<i>Lunch Buffet</i>
16:00-17:30	<b>Session 4: Best practices on the implementation of high standards of business integrity in SOEs</b>
17:30-18:00	<b>Concluding remarks and way forward</b>
18:00-19:00	<b>Guided tour of <i>Palacio Nacional</i></b>

9:15-10:00 *Registration and Coffee/Tea*

10:00-10:30 **Welcoming remarks**

- Mr. Max Diener Sala, Attorney-General for Fiscal and Financial Issues, Ministry of Finance and Public Credit, Mexico
- Ms. Ann Low, Vice Chair, OECD Working Party on State-Ownership and Privatization Practices (WPSOPP), United States

10:30-11:30 **Session 1: Recent reform efforts: An overview of the revised *OECD Guidelines on the Corporate Governance of State-Owned Enterprises***

*Moderator:* Mr. Jorge González Gallástegui, General Director for Legislation and Consult, Ministry of Finance and Public Credit, Mexico

*Speakers:*

- Mr. Lars Erik Fredriksson, Chair, OECD Working Party on State-Ownership and Privatization Practices, Sweden
- Mr. Victor Selman, Corporate Director, System of Public Enterprises, Chile
- Dr. U.D. Choubey, Director General, Standing Conference of Public Enterprises (SCOPE), India

*Focus*

The *OECD Guidelines on Corporate Governance of State-Owned Enterprises* give concrete advice to countries on how to manage more effectively their responsibilities as company owners, thus helping to make state-owned enterprises more competitive, efficient and transparent. This session will present the new *SOE Guidelines* and how they are being applied in practice.

11:30-12:00 *Coffee / Tea break*

12:00-13:30 **Session 2: Organising the state ownership function**

*Moderator:* Mr. Andres Bernal, Partner, Governance Consultants & Consultant, CAF, Colombia

*Speakers:*

- Mr. Hans Christiansen, Senior Economist, Corporate Affairs, OECD
- Mr. Cesar L. Villanueva, Chairman, Governance Commission for GOCCs, Philippines
- Mr. Camilo Barco, Head, Directorate for State-Owned Enterprises, Ministry of Finance and Public Credit, Colombia
- Mr. Tran Tho Hai, Head, General Policy Division, Corporate Finance Department, Ministry of Finance, Viet Nam

*Focus*

Organising the ownership of SOEs creates unique challenges for policy makers. Key challenges include obtaining a high degree of professionalism and ensuring that ownership is conducted at arm's-length from other government functions such as regulation. Moreover, the public needs assurance that the ownership rights are exercised in the public interest and not for the benefit of public officials or political constituencies. This session aims at discussing *recent exemplary SOE governance reforms in Latin American and (other) emerging economies* notably related to state ownership models.

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13:30-15:00 *Lunch buffet*

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15:00–16:30 **Session 3: National practices for performance evaluation and management in comparative perspective : Asia and Latin America**

*Moderator:* Mr. Hans Christiansen, Senior Economist, Corporate Affairs, OECD

*Speakers:*

- Mr. Hanjun Park, Head, SOE Evaluation Research Team, Korea Institute of Public Finance (KIPF); to present key results of the 8th Meeting of the Asia Network on Corporate Governance of State-Owned Enterprises on performance management
- Mr. Jose Antonio Gonzalez Anaya, Chief Executive Officer, Petroleos Mexicanos (PEMEX), Mexico
- Ms. Sunita Kikeri, Program Manager Corporate Governance, World Bank; to speak on the WB toolkit on SOEs and its relevance to emerging countries with specific focus on its advice on performance evaluation and management
- Ms. Patricia Elliot Blas, Chief Executive Officer, El Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado (FONAFE), Peru
- Mr. Andrés Oneto La Faye, Principal Executive, Department of Productive Development and Finance, CAF

*Focus*

Highlighting SOEs' performance and the performance of the state as an owner not only creates incentives to better perform for all SOE officials and civil servants involved, but it also strengthens public demand for further reforms. Performance evaluation practices differ globally depending in part on SOEs' degree of corporatisation, their commercial (or public policy) orientation and their proximity to the public administration. This session will present key findings of the new OECD report on best examples for performance evaluation and management of SOEs in Asia and discuss lessons for developing good practices towards performance evaluation and monitoring within the SOE sectors of Latin America and (other) emerging economies. It will also feature experiences with selecting SOEs for corporatisation as a means of improving their performance.

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16:30-16:40 *Short break (coffee and tea available)*

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16:40- 18:10 **Session 4: Evolving global consensus on the regulatory framework for ensuring business integrity and preventing corruption in SOEs**

*Moderator:* Dr. Sergio López Ayllon, General Director, Centro de Investigación y Docencia Económicas (CIDE), Mexico

*Speakers:*

- Ms. Korin Kane, Policy Analyst, Corporate Affairs, OECD; to present results of Global Knowledge Sharing Network survey on this issue, building on OECD work on trust and business and work of Southern Africa SOE Network
- Mr. Jorge Fabre Mendoza, Vice-President, Anáhuac University, Mexico
- Mr. Wan Saiful, Chief Executive Officer, Institute for Democracy and Economic Affairs (IDEAS), Malaysia

*Focus*

Minimising and preventing corruption in SOEs by realising synergies at different levels of governance is central to achieving SOE economic efficiency. This session will discuss the growing importance of improving corporate governance in SOEs to

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prevent corruption and stocktake relevant reform efforts on ensuring consistency between the different levels of governance to prevent corruption and achieve business integrity in SOEs. The discussion will build on the results of the new OECD survey on stocktaking of anti-corruption and business integrity measures for Southern African SOEs and its policy implications for developing relevant policies in other emerging countries.

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19:00

*Cocktail*

Hosted by the OECD, with support of the Ministry of Strategy and Finance of Korea

**Address:** Hotel Zocalo Central, Av. 5 de Mayo 61, Centro Histórico, 06000 Ciudad de México, D.F. (10 minute walk)

- **Dress code:** Casual
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8:15-9:00 *Registration and coffee / tea*

9:00-9:20 **Welcoming remarks**

- Mr. Max Diener Sala, Attorney-General for Fiscal and Financial Issues, Ministry of Finance and Public Credit, Mexico
- Mr. Lars Erik Fredriksson, Chair, OECD Working Party on State-Ownership and Privatization Practices, Sweden

9:20-11:00 **Session 1: Developing and implementing an SOE disclosure and transparency policy**

*Moderator:* Mr. Seungju Baek, Senior Policy Analyst, Corporate Affairs, OECD

*Speakers:*

- Ms. Nguyen Phuong Lan, Director, Division of SOE Reform, Agency for Enterprise Development, Ministry of Planning and Investment, Viet Nam
- Mr. F. Antonius Alijoyo, Chairman, National Committee on Governance, Indonesia
- Mrs. Martha Nujoma – Domingos, Acting Deputy Permanent Secretary, Ministry of Public Enterprises, Namibia
- Ms. Chung-a Park, Policy Analyst, Corporate Affairs, OECD

*Focus*

Improving transparency and accountability is a key priority to improve the corporate governance and performance of SOEs. It gives substance to shareholder and stakeholder rights by providing the information essential to their activities and is a prerequisite to and underpins public trust. This session will discuss government's key challenges and efforts in developing a coherent disclosure policy and how to ensure a policy framework that encourages disclosers to promote improved transparency.

11:00 - 11:30 *Coffee / tea break*

11:30-13:00 **Session 2: Selecting SOEs for reform and ensuring success of the process**

*Moderator:* Mr. Arturo Herrera, Practice Manager, Global Governance Practice, Latin America & the Caribbean, World Bank

*Speakers:*

- Mr. Jorge González Gallástegui, General Director for Legislation and Consult, Ministry of Finance and Public Credit, Mexico
- Dr. Madhukar Gupta, Additional Secretary, Department of Public Enterprises, Ministry of Heavy Industries, India

*Focus*

In this session, governments that have a recent history of implementing corporate governance reform in SOEs are encouraged to share their experience. Of special interest are details about the basis of criteria with which they selected SOEs as candidates for reform and the reform processes that they undertook.

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13:00-14:30	<p><b>Session 3: Best practices on nomination, election and performance of board members</b></p> <p><i>Moderator:</i> Mr. Carlos Elizondo Mayer-Serra, Independent Director on the Board of Directors, Petroleos Mexicanos (Pemex), Mexico</p> <p><i>Speakers:</i></p> <ul style="list-style-type: none"> <li>• Mr. Andrés Oneto, CAF; on the organisation’s new study on the efficiency of SOE’s Board of Directors</li> <li>• Mr. Bruno Cirilo Mendonça de Campos, Manager, General Coordination Staff of Corporate Participation, National Treasury Secretariat, Ministry of Finance, Brazil</li> <li>• Mr. Rajiv Rai, Secretary, Public Enterprises Selection Board (PESB), India</li> <li>• Dr. Ashraf Gamal El Din, Chief Executive Officer, Hawkamah, the Institute for Corporate Governance, UAE</li> </ul> <p><i>Focus</i></p> <p>As stated in the OECD Guidelines, when individual board members carry out their duties it is important that they do not act as representatives for different constituencies. Board autonomy and professionalism requires that all board members carry out their duties in an even-handed manner with respect to all shareholders. In this context, this session will discuss best practices on selecting, appointing and evaluating board members worldwide.</p>
14:30-16:00	<p><b><i>Lunch Buffet</i></b></p>
16:00-17:30	<p><b>Session 4: Best practices on the implementation of high standards of business integrity in SOEs</b></p> <p><i>Moderator :</i> Mr. Hoomyung Lee, Director-General, Public Institutions Policy Cooperation Division, Ministry of Strategy and Finance, Korea</p> <p><i>Speakers:</i></p> <ul style="list-style-type: none"> <li>• Mr. Alejandro Díaz, Audit Manager of Companies and Societies, Sindicatura General De la Nación, Argentina</li> <li>• Mr. Juan Munguira, Bureau Member, OECD Working Party on State Ownership and Privatisation Practices, Spain</li> <li>• Mr. Ahmed Belfahmi, Head, Restructuring and Programming Direction of Public Enterprises and Privatization, Ministry of Economy and Finance, Morocco</li> </ul> <p><i>Focus</i></p> <p>This session aims at discussing applicability of the OECD SOE Guidelines and sharing best practices regarding implementation of high standards of business integrity in SOEs. It will present tangible examples of the benefits of incorporating business integrity into SOEs including improved performance of SOEs.</p>
17:30-18:00	<p><b>Concluding remarks and way forward</b></p> <ul style="list-style-type: none"> <li>• Ministry of Finance and Public Credit of Mexico</li> <li>• Ministry of Strategy and Finance of Korea</li> <li>• Representative of OECD Secretariat</li> </ul>
18:00-19:00	<p><b>Guided tour of <i>Palacio Nacional</i></b></p> <ul style="list-style-type: none"> <li>• Optional for participants who wish to visit the historic building</li> </ul>

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## Potential Questions for discussion

### Day 1: Governments, State-Owned Enterprises and Experts

#### Session 2: SOE governance reform efforts: Organising the state ownership function

##### *Key questions*

- What are main characteristics of SOE sectors and the institutional arrangements for exercising the state ownership function in your country? What are the respective roles of various bodies (i.e. the government, the ownership entity, the board, the management) involved in the oversight of an SOE?
- How is the ownership function organised within the state apparatus? In particular, has a centralised or coordinating agency been established, or is ownership conducted at the decentralised level by line ministries?
- Has the ownership policy been officially established and publicly communicated?
- How is your government exercising the state's responsibility for actively exercising its ownership and preventing excessive state intervention?
- What are ownership and regulatory arrangements surrounding SOE public policy objectives?
- What are the main characteristics of and differences between ownership models of SOEs with commercial purposes and those with public policy objectives?

#### Session 3: National practices for performance evaluation and management

##### *Key questions*

- What are the key preliminary policy conditions for successful performance evaluation and management? What has been the development and progress of performance management? Has it had a significant impact on the performance and market position of SOEs?
- What are the main characteristics of SOE performance evaluation and management systems in your country, in particular: the presence and scope of performance evaluation systems; the indicators employed to assess SOEs' financial and non-financial performance; and the extent to which performance evaluation results are used to incentivise or sanction SOE executives?
- What are the key areas moving forward?

#### Session 4: Evolving global consensus on the regulatory framework for ensuring business integrity and preventing corruption in SOEs

##### *Key questions*

- What are the good examples or best practices in promoting business integrity and implementing corporate ethics in SOEs?
- What initiatives can governments initiate to promote an integrated perspective across different levels of government to prevent corruption in SOEs?

- What are good examples of ways in which SOEs or ownership functions have ensured that anticorruption compliance and business integrity remain a top priority for discussion by boards? (i.e., is this a standing item on boards' agendas, is there a board code of ethics, do directors receive integrity training, etc.?)
- What are some examples from your countries of effective ways for rolling out new integrity programmes or measures (such as the rollout of a code of ethics or financial accounting and reporting measures)?

## **Day 2: Government Ownership Entities**

### **Session 1: Developing and implementing an SOE disclosure and transparency policy.**

#### *Key Questions*

- What are overall disclosure and reporting obligations placed on SOEs in your country?
- Is an internal audit function mandated in SOEs? If so, is it monitored by, and does it report directly to, the board and to the audit committee? (If boards and/or audit committees are not in place for all SOEs, please note this in the response.)
- Are SOEs subject to the same accounting and auditing standards as listed companies? What financial and non-financial information do SOEs disclose? (If there are differences according to SOEs' legal form, please elaborate.)
- What challenges does your jurisdiction face in promoting strong financial and non-financial disclosure by SOEs? Please also describe, if possible, good practices for meeting these challenges.
- Does the state produce an annual aggregate report on the activities and performance of the entire SOE sector, or of a sizeable portfolio of SOEs? If so, what is the scope of aggregate reporting? For example, do aggregate reports include information on SOEs' financial and non-financial performance, the remuneration of board members and key executives, and/or information on board composition?
- Are SOEs required to report on their stakeholder relations either in their annual report or in a specific stakeholder report? Is there a clear threshold and the criteria to determine which SOEs are concerned?
- What are your governments' efforts in striking the balance between accountability to the Parliament and the risk of disclosing commercially sensitive information?

### **Session 2: Selecting SOEs for reform and ensuring success of the process**

#### *Key questions*

- What are the common challenges that governments face in reforming and implementing better corporate governance in SOEs?
- What political support do the relevant public authorities need to ensure a momentum for reform?
- In past cases, what was the extent of information and studies governments prepared to convince different players to accept proposals?

- What are the experiences on the participation of ministries different from line ministries or the Finance Ministry, in SOEs' boards of directors? How do they contribute?

### **Session 3: Best practices on nomination and election of board members**

#### *Key questions*

- What measures have governments taken to ensure good practices on nomination and election of board members? What is the degree of public transparency surrounding these processes?
- If governments keep appointing public servants as members of the boards, what are the best practices to avoid conflict of interests or inappropriate information sharing by the Ministry/Regulator in the Board, and vice versa?
- What are the key barriers in ensuring the operational autonomy of SOE boards of directors?
- What measures are in place to evaluate the performance of boards and individual board members? Do the outcomes of these evaluations have an impact on corporate strategies, remuneration or changes in the composition of the boards?

### **Session 4: Best practices on the implementation of high standards of business integrity in SOEs**

#### *Key questions*

- What are good examples of ways in which SOEs or ownership functions have ensured that anticorruption compliance and business integrity remain a top priority for discussion by boards? (i.e., is this a standing item on boards' agendas, is there a board code of ethics, do directors receive integrity training, etc.?)
- Are SOEs in your countries required or encouraged to assign specific responsibility for implementation of integrity programmes or measures? If so, how are these responsibilities assigned and to whom?
- What are some examples from your countries of effective ways for rolling out new integrity programmes or measures (such as the rollout of a code of ethics or financial accounting and reporting measures)?
- What relationship does the integrity function have with management and/or the SOE supervisory board when it comes to implementing and reporting on the effectiveness of integrity?
- How are general procurement rules and their transparency requirements applied to SOEs when working with government entities?

## Welcoming Remarks

### Ms. Ann Low, Vice Chair of the OECD Working Party on State-Ownership and Privatisation Practices (WPSOPP)

#### 1. Initial remarks

Your Excellency Minister Luis Videgaray Caso,

Distinguished representatives of governments and ownership entities, state-owned enterprises and other participants, I would like to join Minister Videgaray Caso in welcoming you to this OECD Global Knowledge Sharing Network on Corporate Governance of State-owned Enterprises, organised jointly with the Ministry of Finance and Public Credit of Mexico in collaboration with the World Bank and CAF. On behalf of the OECD, our warmest thanks go to the Government of Mexico for hosting and to the Government of Korea for its generous financial support.

The OECD Working Party on State Ownership and Privatisation Practices, in which I serve as a Vice Chair, has been tirelessly raising awareness among government ministries, ownership entities and state-owned enterprises (SOEs) about the newly revised OECD Guidelines on Corporate Governance of State-Owned Enterprises. Our Chair, Mr. Fredriksson, will tell you more about this in a short while.

National and international officials and experts from around the world who have kindly agreed to join this meeting will inform us about various aspects of state ownership and SOEs. I invite you to consider, and discuss, these experiences against the background of internationally agreed good practices. This is the OECD's habitual way of knowledge sharing through what we call "peer discussions."

I would like to share with you a few thoughts on, first, the importance of SOEs in the global economy; second, the importance of good governance and how the OECD can contribute to improvements; and third, some possible outcomes of this meeting.

#### 2. Importance of SOEs

State-owned enterprises play a larger role in developing countries than advanced economies, but they are not insignificant in advanced economies. It is important to distinguish between SOEs that pursue a public objective for an internal market, such as a post office providing universal service at a low cost, versus SOEs that pursue commercial objectives, that is to say doing activities that the private sector could, at least in theory, do for a profit. Our meeting and my remarks will focus on this latter group of SOEs that have a commercial orientation.

SOEs are most prevalent in strategic sectors such as energy, minerals, infrastructure and other utilities. However, the presence of SOEs in the global economy, doing cross-border investment and trade in competition with private enterprises, has grown strongly in recent years. SOEs now account for over a fifth of the world's largest enterprises, whereas ten years ago there were only one or two SOEs at the top of the Fortune Global list of the world's largest companies. This is driven by the growth of emerging market economies, where SOEs are often dominant economic actors, and especially by China's Go Global Strategy launched in 2001. State-owned enterprises in many developing economies are found well beyond the key public service providers, in many cases accounting for a significant share of the financial sector and the manufacturing industry.

The actions of SOEs have a significant impact on the global economy. Our challenge is to stimulate growth through an effective allocation of resources. SOEs growing role in the global economy poses to two challenges. First, how do we ensure that SOEs operate effectively and efficiently? Secondly, how do we, the international community, ensure fair competition between public and private firms, so that inefficient but subsidized SOEs do not crowd out more efficient operators.

### **3. What are the key challenges and how can we address them?**

Well-governed SOEs can play a positive role in the economy. They can be used to correct market failures, improve public service delivery and contribute to creating stronger and more efficient markets. However, when SOEs are not well governed, they waste resources through inefficiency. They can become captured by political interests or corporate insiders, and their employees can become vulnerable to corruption. The SOEs become a drag on the economy, reducing profitable business opportunities and discouraging competition or innovation in sectors dominated by SOEs.

The evolving presence of SOEs in the international marketplace heightens the need for policymakers to address these corporate governance challenges. One way of doing so is by implementing the recently revised OECD Guidelines on Corporate Governance of State-Owned Enterprises. In particular, it is important to ensure that SOEs have well-defined objectives, independent and professional boards of directors, clear lines of responsibility and accountability for their performance and a coherent disclosure and reporting policy that underpins public trust.

The Working Party – which I mentioned earlier – is a unique international forum based in Paris where SOE policymakers and practitioners exchange national experiences and good practices on how to implement effective governance reforms to improve SOE performance. It meets twice per year in Paris and is open to non-member participation. The Working Party currently brings together the 34 OECD member countries as well as government representatives from 11 emerging economies. These include Argentina, Brazil, Colombia, Costa Rica and Peru, alongside our member countries Chile and Mexico.

In addition, the OECD supports national reform efforts through dedicated regional, knowledge-sharing networks active in Asia, the MENA region, Southern Africa and here in Latin America. Those networks identify common challenges to SOE governance and share good practices for reform. I am honoured and pleased to see here today some of the most active participants in those fora. In this context, this first meeting of the Global Knowledge Sharing Network on Corporate Governance of State-owned Enterprises is an effort to facilitate a structured dialogue among participants in the OECD's regional networks to support SOE reform and encourage national implementation of internationally-agreed good practices.

### **4. Future work**

In the coming decade, supporting national efforts to implement the SOE Guidelines will be a key focus of the OECD's engagement with both OECD member countries and our partner countries around the world. The Working Party will notably continue to analyse trends in state ownership, identify good practices and facilitate international policy dialogue on effective reform options. The Working Party also plans to support implementation of the SOE Guidelines by developing targeted guidance to address emerging policy challenges in the state-owned sector. In this respect, I am pleased to inform you that the Working Party plans to issue guidance on promoting integrity in state-owned enterprises, which will focus on actions that state ownership entities can take to ensure, or maximize the likelihood that, SOEs and their staff act with integrity. The guidance will benefit from, and be informed by, the discussions that we have here today.

In conclusion, I would like to thank all of you for your contributions provided to our efforts in the field of corporate governance practices in SOEs and would like to express my pleasure in being involved in close cooperation with the CAF and World Bank on such issues.

I would like to thank the distinguished speakers - who will share their valuable experiences in this field - and you the distinguished participants. I look forward to some very fruitful discussions.

## **Mr. Max Diener Sala, Attorney-General for Fiscal and Financial Issues, SHCP, Mexico**

Ladies and Gentlemen, a very good day to everyone.

On behalf of Dr. Luis Videgaray Caso, Secretary of Finance and Public Credit, it is an honour for me and Mexico to give the warmest welcome to the leadership of the OECD Working Party on State Ownership and Privatisation Practices – the Chair, Mr. Lars Erik Fredriksson, and Vice-Chair Ms. Ann Low.

I would also like to extend my warmest greetings to the guests that have joined us in this meeting, including the World Bank, the Development Bank of Latin America (CAF), government officials and representatives of various state-owned enterprises in different countries.

I would like to bring to your attention the work and recommendations of the Organisation for Economic Co-operation and Development (OECD), particularly on state-owned enterprises. The organisation, through the issuance of various documents such as the Principles of Corporate Governance and the Guidelines on Corporate Governance of State-Owned Enterprises, has promoted the discussion and exchange of ideas to help the governments with evaluation and corporate design of our state-owned enterprises (SOEs).

The OECD Guidelines are the result of a series of studies and exchange of experiences among member countries based on the efforts of the OECD which have been refined over the past 10 years. As a result the revised Guidelines were published last year. The recommendations of the Guidelines cover i) the rationale for state ownership of commercial enterprises, ii) role of the state as an owner of such companies, iii) how SOEs should operate in the marketplace, iv) information disclosure and transparency, v) the responsibilities of the boards of SOEs and their relations with shareholders and stakeholders. However, achieving high standards of public governance and performance of state-owned enterprises is not a job that ends with development and implementation of these Guidelines.

This morning, I intend to highlight the first point: the importance of establishing the rationale for the state acting as an owner of state-owned enterprises. As says the first guideline, “the ultimate purpose of state ownership of enterprises should be to maximise value for society, through an efficient allocation of resources,” and in this vein, the rationale of state ownership should be subject to regular reviews. And these reviews allow for an evaluation of relevant experiences that help us to refine the process of making such assessments.

In addition, states should assess the performance of these companies in terms of accomplishing their stated objectives. Operational, financial, corporate, technical and social results should always be assessed with a view to maximising social benefits. Therefore, we must constantly evaluate the performance of our businesses and be committed to make necessary changes to achieve their goals.

With this aim in view, and with due regards to the extent to which these SOEs participate in competitive markets or depend on other operators, it is necessary to ensure a level playing field, i.e. equal conditions for SOEs and their private competitors. We have a paramount responsibility to ensure a strict separation of the dual characters of the state: 1) as a business owner and 2) as a regulator of the markets in which these businesses operate.

I also welcome the recommendations on disclosure and transparency. As stated in the text, the fact that a company is state-owned does not mean that it belongs to governments or to public officials. It belongs to the citizens, and they have a right to know under which conditions the businesses they own operate, what are their objectives and results, and in principle the justifications for state ownership.

In the same vein, the stakeholders of a company must have guarantees of transparency, access to information, environmental and social protections, as well as codes of ethics such as recommended by the Guidelines.

Mexico, as a member of the OECD, is committed and willing to implement, revise and improve these recommendations. In this context, and in accordance with these Guidelines, the government of President Enrique Peña Nieto has undertaken efforts to achieve the most ambitious energy reform with the aim of transforming PEMEX and CFE into State Productive Enterprises. The challenges have been considerable, involving not only legal and structural reform, but also a change of the way in which the state perceives its enterprises. The paradigm shift is associated with a complex mission of the State that is essential for the national economic and social development: balancing the task of monitoring and controlling companies as an owner against maintaining and enforcing these companies' autonomy and sustainability.

The corporate, technical and legal upgrading that has been implemented in this new regime aims to enable our companies to compete in the energy market. The goal is to maximise their social benefits and their contribution to the development of the country, and at the same time allowing them to grow and improve their financial performance.

However, the Mexican government's commitment goes beyond the design and implementation of structural and legal change. We are committed to undertaking continued evaluation of our State Productive Enterprises to ensure that their objectives are met and that their performance is satisfactory. Likewise, the government is committed to evaluate the different companies that under the guise of parastatals are owned by the Mexican government and encourage their compliance with the recommendations of the Guidelines and the OECD Working Party.

It is this interest that led us to offer to host this event. We are convinced that through sharing of experiences and visions of different ways of managing SOEs we can help improve efficiency and transparency in our public sector, thereby generating significant economic benefits for the country as a whole.

We are aware that there is no single way to manage state-owned enterprises, but there is no doubt that this group will encourage discussion and strengthen the recommendations that the OECD has presented in this area. This will help lay the foundations and creating tools for each state to refine and improve their role as enterprise owners.

Therefore, I am delighted to be hosting this important event. I thank the members of the OECD for offering Mexico the opportunity to host, as well as the Development Bank of Latin America, the World Bank and the Ministry of Strategy and Finance of Korea for their support in making this meeting happen. Undoubtedly there are many challenges ahead for our country, but this event confirms that we are promoting better corporate governance of SOEs according to international best practices.

Therefore, today on 7 of June in 2016, I am pleased to open this meeting of the "Global Knowledge Sharing Network on Corporate Governance of State-Owned Enterprises" with full confidence that its outcome will be beneficial to all participants and members of the OECD.

## Summary Record

This year, the OECD organised the re-launch of *Global Knowledge Sharing Network on Corporate Governance of State-Owned Enterprises* in collaboration with the World Bank and CAF (Latin American Development Bank) which took place in Mexico City, Mexico on June 7-8, 2016. The meeting was hosted by the Ministry of Finance and Public Credit of Mexico with financial support from the Ministry of Strategy and Finance of Korea.

The meeting brought together 110 participants representing 30 countries from Asia, Africa, Latin America, the Middle East and (other parts of) the OECD area. Participants notably included key members of the OECD's existing regional, peer-learning networks active across the world. Representatives of a number of Latin American SOEs also participated.

The meeting discussed key pillars of the [OECD Guidelines on Corporate Governance of State-Owned Enterprises](#) ("SOE Guidelines") to maximise SOEs' contributions to sustainable development such as organising the ownership function; preventing corruption; improving the functioning of boards of directors and improving transparency and disclosure. The meeting also served as a launch event for the Spanish version of the revised SOE Guidelines.

The purpose of the meeting was to raise awareness among governments on the importance of better corporate governance of SOEs and related challenges; evaluate current SOE corporate governance policy frameworks and practices and benchmark these against international good practice as described in the SOE Guidelines; influence policy making by providing a forum in which policy makers, practitioners and experts from all over the world can share knowledge and experience among themselves and with their OECD peers; and support effective reforms in the area of SOE corporate governance, by discussing policy options, developing relevant recommendations and agreeing on priorities for reform adapted to the conditions in emerging economies.

The meeting was opened by Ms. Ann Low, Vice Chair of the OECD Working Party on State Ownership and Privatisation Practices (WPSOPP) and Mr. Max Diener Sala, Attorney-General for Fiscal and Financial Issues of the Ministry of Finance and Public Credit in Mexico.

The first day brought together representatives of governments, SOEs and relevant experts to consider experiences with SOE governance reforms from a range of perspectives. The second day was organised for representatives of government ministries and ownership entities only, to encourage a frank exchange on specific steps that governments as "owners" of SOEs can take to implement priority reforms.

The meeting allowed an exchange of national experiences on state ownership and SOE governance practices as well as a discussion of challenges in bringing practices in line with the standards of the SOE Guidelines. The discussions were insightful and collegial. Specific cases were presented from countries including Argentina, Brazil, Chile, Colombia, India, Indonesia, Malaysia, Mexico, Morocco, Namibia, Peru, Philippines, Spain, Sweden, UAE and Viet Nam. Specific examples were also presented from companies such as System of Public Enterprises (SEP) in Chile, PEMEX and CFE in Mexico and by Peru's FONAFE, which presented an initiative for promoting corporate governance improvements in SOEs through the development of index measuring SOEs' governance performance against best practices.

New OECD stocktaking papers on SOE Anti-corruption and business integrity measures and disclosure measures based on questionnaire responses submitted by the national authorities of contributing countries were presented and welcomed. It was agreed that they would be enriched with supplementary information based on meeting discussions and additional national submissions and

finalised in the coming months. They will facilitate global participation in the ongoing discussions of the Global Network.

All participants agreed that they face similar challenges across countries and they need to engage closely and exchange knowledge, experience and best practices in the common interest. They agreed that the recently revised SOE Guidelines are the appropriate starting point for reform. For instance, participants noted that centralisation of the ownership function can be a strong driver in the development of efficient corporate governance of SOEs and that centralisation of the ownership function can help reinforce and mobilise relevant competencies as it requires organising pools of experts on key matters, such as financial reporting or board nomination.

Participants also discussed corruption prevention in SOEs and highlighted the importance of harmonising the liability regime applicable to SOEs' corporate officers, especially when both public servants and independent directors serve on the board, among others to strengthen business integrity. In particular, assuring a strong, autonomous role for SOE boards of directors was pointed out as key to improving performance management and business integrity of SOEs. It was identified as a reform issue that most countries seem to grapple with, and an obvious candidate for further work. There was a consensus that these lessons all point to one underpinning policy tenet: that governments need to adopt a holistic approach when it comes to improving SOE governance.

See detailed discussion below:

## **Day 1 (7 June 2016)**

### *Welcoming Remarks*

**Ms. Ann Low (Vice Chair, OECD Working Party on State Ownership and Privatisation Practices (WPSOPP), United States)**: Ms. Ann Low thanked the Ministry of Finance and Public Credit of Mexico for hosting the Global Network meeting in Mexico City; she also thanked the Ministry of Strategy and Finance of Korea for financing the initiative. Ms. Ann Low highlighted the importance of SOEs in the global economy and the WPSOPP's role in SOE governance standard setting to promote more efficient SOEs. She said that SOEs' growing role in the global economy poses two challenges: How to (i) ensure that SOEs operate effectively and efficiently and (ii) ensure fair competition between public and private firms so that inefficient but subsidised SOEs do not crowd out more efficient operators.

She emphasised that supporting national efforts to implement the SOE Guidelines will be a key focus of the WPSOPP's engagement with both OECD member countries and its partner countries around the world. She further pointed out that the Working Party will notably continue to analyse trends in state ownership, identify good practices and facilitate international policy dialogue on effective reform options. She gave an overview of the Working Party's plans to support implementation of the SOE Guidelines by developing targeted guidance to address emerging policy challenges in the state-owned sector. The Working Party plans to issue guidance on promoting integrity in state-owned enterprises, which will focus on actions that state ownership entities can take to ensure, or maximise the likelihood that, SOEs and their staff act with integrity. The guidance will benefit from, and be informed by, the discussions at the Network meeting.

**Mr. Max Diener Sala (Attorney-General for Fiscal and Financial Issues, Ministry of Finance and Public Credit, Mexico)**: Mr. Diener Sala thanked Network participants and welcomed them to the meeting, hosted by the Ministry of Public Credit and Finance of Mexico. He recalled the goals of the two-day meeting which included sharing best practices on SOE corporate governance and taking stock of the progress as well as challenges in terms of implementation of the SOE Guidelines. He applauded the OECD Secretariat for their commitment to re-launching the Global Network and emphasised that better corporate governance of SOEs can ultimately lead to better economic development outcomes.

He stressed the importance of the standards of the SOE Guidelines, notably concerning the rationales for state ownership; the state's role as owner; how SOEs should operate in market place; and treatment of shareholders and other relevant stakeholders. He noted that current SOE reform efforts in Mexico aim to modernise SOE governance practices, maximise income generation and expand all benefits to civil society. He emphasised that to achieve this, SOEs should (i) be evaluated; (ii) be accountable to citizens; (iii) justify why they are state-owned; and (iv) operate according to high ethical standards.

### *Session 1: Recent reform efforts: An overview of the revised OECD Guidelines on the Corporate Governance of State-Owned Enterprises*

**Mr. Jorge González Gallástegui, General Director for Legislation and Consult, Ministry of Finance and Public Credit, Mexico** moderated the session. Mr. González Gallástegui highlighted the role of the Global Network meeting as a venue for discussion on the updated SOE Guidelines. He called on all the participants to intervene and comment all along the meeting discussion saying that they will feed into the future revision of the SOE Guidelines.

**Mr. Lars Erik Fredriksson (Chair, OECD Working Party on State Ownership and Privatisation Practices, Sweden)**: Mr. Fredriksson underlined that the recently revised *SOE Guidelines* are meant to help SOEs be as efficient as private companies. He gave an overview of the three fundamental changes to the SOE Guidelines, notably: (i) a new section on applicability and definitions; (ii) a new chapter on defining and communicating the rationales for state ownership of enterprises; and (iii) a revamped chapter on SOEs operating in the marketplace. He said while the SOE Guidelines continue to stress the importance of developing an ownership policy, the standard has been strengthened by calling for governments to also clearly evaluate and publically disclose the overall rationales for state ownership as well as the rationales for owning individual SOEs. Any public policy objectives placed on SOEs should be clearly mandated and disclosed according to the revised SOE Guidelines, he said. He further emphasised that the legal and regulatory framework should ensure a “level playing field” when SOEs compete with private enterprises in marketplace. SOEs’ economic activities should face market consistent conditions on debt and equity financing – whether it is provided by the state or the commercial marketplace – and achieve rates of return consistent with competing private enterprises.

**Mr. Víctor Selman (Corporate Director, System of Public Enterprises, Chile)**: Mr. Selman presented the SOE ownership and governance landscape in Chile and described the role of SEP in evaluating SOE boards. In an effort to ensure that both the state and the governing bodies of SOEs in Chile understand the importance of good governance, since 2006 SEP delivers corporate governance trainings, offers certifications and evaluates SOEs. Evaluations focus on how the boards of SOEs monitor the management of the companies they serve. Therefore, SEP does its best to ensure that SOEs have goals and (each) a defined vision that allows them to compare the company's performance against them. The scope of the evaluations includes how the board contributes to the achievement of the identified goals. By facilitating centralisation of the state ownership function, SEP ensures that an institutionalised, annual shareholders' meeting takes place and regulation is undertaken separately from company management. He further pointed out that boards from SOEs with unclear definitions should be well aware of the fact that there might be many regulating entities during the first phases. Therefore, he said, boards should build strategies accordingly and push for gradual implementation of good practices.

**Dr. U.D. Choubey (Director General, Standing Conference of Public Enterprises, SCOPE, India)**: Dr. Choubey highlighted that SOEs in India are important in terms of their contributions to GDP and national employment. He pointed out that SOEs' governance is complex and consists of many layers regarding the appointment of board directors. However, he said that what is most relevant is that the performance of SOEs in India has been proven to be better when they incorporate good corporate governance practices. He concluded that in general, Indian SOEs align themselves with the SOE Guidelines but, in particular, the independence of their board directors still needs to be

strengthened and Board needs to have more autonomy. He highlighted about reforms taken in India for state-owned-enterprises.

Mr. Gallástegui concluded the first session saying that this session has successfully set the tone for the following thematic discussion. He said while SOEs operate within a specific legal, institutional and economic contexts, and any attempt to improve their governance needs to be tailored to those national circumstances, there are common lessons on SOE governance reform that countries can garner from sharing knowledge and exchanging of experiences, which he hopes the meeting would will facilitate.

## *Session 2: Organising the state ownership function*

**Mr. Andres Bernal, Partner, Governance Consultants & Consultant, CAF, Colombia** moderated the session. He emphasised the importance of a strong state ownership function to enhance the economic efficiency of SOEs and called on speakers to exchange experiences in SOE governance reforms notably related to state ownership models.

Presentation of the new OECD report on ownership models for state-owned enterprises in OECD and partner countries

**Hans Christiansen (Senior Economist, Corporate Affairs, OECD)**: The OECD presented the OECD's ongoing study on ownership models for commercial SOEs. Some recent findings include that, since the year 2000, ten countries have adopted a centralised model of state ownership, bringing practices more in line with the SOE Guidelines (Chile and Finland are among them, for example). In Latin America, countries like Mexico, Argentina and Colombia have decentralised models; while Chilean and Peruvian SOEs have embraced centralised models. He pointed out that OECD research consistently shows that as the ownership of SOEs grows more professional, and the companies themselves operates in a more commercial and regulated environment, national reform processes gravitate toward the international consensus that is embodied by the SOE Guidelines.

**Cesar L. Villanueva (Chairman, Governance Commission for GOCCs, Philippines)**: Mr. Villanueva's presentation focused on the ownership framework of GOCCs (SOEs) in the Philippines and the governance reforms institutionalised through implementation of the mandates of the Governance Coordination Commission as the state ownership coordinating entity in the country. He highlighted important steps regarding the corporate governance of SOEs. Firstly, there are documents that define ownership models. Secondly, there is a new Corporate Governance Code for SOEs that defines duties, responsibilities, independence and extraordinary diligence. Thirdly, there is a mandate that obliges SOEs to adopt good corporate governance and have mechanisms to assure it. For instance, a whistle-blowing policy and mechanism applicable to the SOEs under its purview have been elaborated. Fourthly, a way of looking for board directors has been institutionalised based on skills and credentials. Fifthly, limits for the duration in a director position were established. Lastly, evaluation processes have been instituted – these evaluations measure performance of the company as well as its directors' performance in general (in order to see whether they should be reappointed or not). The last evaluation is based on *peer reviews*.

**Camilo Barco (Head, Directorate for State-Owned Enterprises, Ministry of Finance and Public Credit, Colombia)**: Mr. Barco started his presentation by highlighting the importance of SOEs in the national economy of Colombia. Many SOEs in Colombia are the property of the Ministry of Treasury, and these represent almost 90% of the State's assets. Out of these companies (owned by the State), 34 have major State ownership (i.e. Ecopetrol, which also represents 60% of the State's assets); and most of them belong to the oil and gas industry. However, the State's portfolio is highly dependent on the results of Ecopetrol which is one of the reasons why Colombian regulators are building a process to centralise the country's SOEs.

Some findings from the analysis of Colombian SOEs include: (i) the State has found many challenges in its role as owner as there are internal and external factors that affect its companies; (ii) SOEs lack good governance practices, especially those regarding nominating board directors; (iii) the State is aiming to use scorecards in order to help companies make decisions based on tangible measures; build mandates for each company; and, implement periodic, evaluation processes for SOEs; (iv) in order to work with the OECD, a Directorate of State Ownership was created in order to align the 102 SOEs with the SOE Guidelines. However, he said, to reinforce the role of this Directorate, a committee and an independent agency will be created –the latter, in order to act as a “holding” that would use the same guidelines that SOEs would be using by then.

As of today, there are two actions that have taken place. Firstly, SOEs were divided by industries, they were then categorised by their corporate governance practices and their synergy with the State was mapped as well. And secondly, many ministers that were on boards were withdrawn from their positions in order to incorporate independent directors. In the mid-term, however, the Directorate of State Ownership wishes to (i) define a Code of Good Corporate Governance with a mandatory character; (ii) establish a stable and clear mandate; (iii) find a way to attract and retain good talent on boards; and (iv) analyse whether the bureaucratic structure of the Colombian governmental entities is an impediment to accountability (due to the fact that SOEs need to report the same information to many entities). He stressed that centralising the state ownership function will help to achieve more efficient governance of SOEs.

Mr. Barco concluded by saying that in the long-run, the Colombian authority aims to improve three particular aspects of the corporate governance of SOEs: the nomination, the follow-up and the evaluation of board directors. And, apart from the governance *per se*, regulators are aiming to generate a proper regulatory framework which defines the State’s role as owner.

**Mr. Tran Tho Hai (Head, General Policy Division, Corporate Finance Department, Ministry of Finance, Viet Nam):** Mr. Tran started his presentation by touching upon the importance of SOEs in Vietnamese economy. As of 2015, there are nearly 1100 SOEs, accounting for 35% of GDP, 39% of industry volume and over 50% of export–import. However, he said economic effectiveness and the competitiveness of SOEs have many limits. More than 30% of SOEs have faced financial troubles mostly due to weak management and limited coordination among public actors in managing and supervising SOEs.

Mr. Tran pointed out that in Vietnam, the government plays a leading role regarding the structure and governance of SOEs. Viet Nam’s Prime Minister has a strong role in ensuring or detracting from progress in SOEs’ corporate governance practices. The observed problems in Viet Nam regarding corporate governance are that ownership and operation are not divided; ministers are managers of SOEs *but* are also State representatives that many times face conflicts of interest; and, there is no clarity of roles.

Mr. Tran said that in order to achieve better corporate governance practices in SOEs in the country, Vietnamese authorities would like to establish clear definitions and distinctions between local and national ministries’ responsibilities; align public servants’ compensation to SOEs performance; modify Viet Nam’s Enterprise Law; empower the management board; and establish ministerial authority for exercising state ownership in SOEs.

The panel presentations were followed by a question and answer session. The question was raised “is centralisation really the best option? Wouldn’t it be best to have tailored models?” The panelists highlighted that while the SOE Guidelines give a holistic view of good governance practices, they do incline strongly for centralisation.

They pointed out that centralisation would require strong coordination among the involved state institutions which would ultimately ensure that ownership is exercised on a whole-of-government basis. The panelists also highlighted the importance of monitoring the state’s performance as an

owner. Some said that you need patience and you need to apply corporate governance principles equally – that is, to both public and private companies. For instance, in Chile, it has taken 10 years for changes to be seen. Notable efforts in Colombia are the new Code of Corporate Governance for SOEs. It will be based on the “Código País” (Colombia’s Corporate Governance Code).

Participants agreed that key challenges for organising the ownership of SOEs include obtaining a high degree of professionalism in boards and ensuring that ownership is conducted at arm’s-length from other government functions such as regulation. Moreover, the public needs to be assured that the ownership rights are exercised in the public interest and not for the benefit of public officials or political constituencies.

### *Session 3: National practices for performance evaluation and management in comparative perspective: Asia and Latin America*

**Mr. Hans Christiansen, Senior Economist, Corporate Affairs, OECD** moderated the session. Mr. Christiansen opened the session by saying that highlighting SOEs’ performance and the performance of the state as an owner not only creates performance incentives for all SOE officials and civil servants involved, but it also strengthens public demand for further reforms.

Presentation of the key results of the 8<sup>th</sup> Meeting of the Asia Network on Corporate Governance of State-Owned Enterprises on performance management

**Dr. Hanjun Park (Head, SOE Evaluation Research Team, Korea Institute of Public Finance, KIPF)**: Dr. Park who is also the Bureau Member of the Working Party on State Ownership and Privatisation Practices (WPSOPP) gave an overview of the key findings of a report on performance management practices for SOEs in Asia, undertaken by the OECD-Asia SOE Network. He noted that many countries in Asia have adopted structured systems of performance evaluation, often defining key performance indicators and in some cases linking SOE performance outcomes to executive remuneration and incentives.

He said that while OECD good practice calls for an SOE’s corporate board to supervise and incentivise management, it is not always applicable to national contexts in Asia, where corporate boards are often strongly linked to state ministries, or are by-passed by the government in undertaking key functions such as CEO nomination.

He said that in many cases, the responsible ministry or central ownership entity essentially takes on many of the supervisory functions that would normally be the purview of a corporate board in a private company. He concluded that improving the quality of financial and non-financial performance indicators is crucial for effective SOE governance in Asia.

**Mr. José Antonio González Anaya (CEO, Petroleos Mexicanos, PEMEX, Mexico)**: Mr. González Anaya discussed key reforms in the governance of PEMEX over the last few years and gave an overview of challenges in implementing reforms in the ownership, governance and regulation of the oil sector. He said that the necessity to build a new corporate governance system in PEMEX emerged as a natural consequence of reforms in the oil sector. However, he said real change is difficult because compensation policies and top-down incentives would need to be changed throughout the company. This would take time for one single SOE, not to mention the rest of the SOEs in the country.

**Ms. Sunita Kikeri (Programme Manager, Corporate Governance, World Bank)**: Ms. Kikeri elaborated on the objectives, contents and opportunities of the IFC’s Corporate Governance Toolkit for SOEs. The toolkit was underlined as an ally of the SOE Guidelines and can be used to help implement better corporate governance practices, in line with the standards of the SOE Guidelines. She said that SOE performance management systems in a growing number of countries have evolved over many years with continuous fine-tuning. However, she pointed out that in addition to building

capacity, implementation requires a high level of coordination between the monitoring unit, ministries, SOEs and other relevant institutions. Public disclosure of results is key to transparency, accountability and results.

**Ms. Patricia Elliot Blas (CEO, FONAFE, Peru)**: Ms. Elliot Blas said that in Peru, FONAFE (a Peruvian conglomerate of SOEs) requires its subsidiaries and affiliates to report their strategic and operational plans quarterly in order to ensure that they maintain alignment with the corresponding industry objectives. If subsidiaries or affiliates exceed a 30% deviation, FONAFE meets with the company in question and pushes for rethinking the mentioned strategies. This is developed by FONAFE's board, which is composed of Peruvian ministers. Furthermore, FONAFE builds an index (on an annual basis) on the alignment of its companies with best practices. This index is not made public but it is shared with the companies. As part of this process, board members are also evaluated (with a self-evaluation) and recommendations are built around them.

A question and answer session followed, which covered a number of themes related to SOE performance, including ensuring policy coherence; the role of boards and executive management; and, tools available to regulatory bodies to incentivise better SOE performance. Participants agreed that performance evaluation practices differ globally depending in part on SOEs' degree of corporatisation, their commercial (or public policy) orientation and their proximity to the public administration.

**Mr. Andrés Oneto La Faye (Principal Executive, Department of Productive Development and Finance, CAF)**: Mr. Oneto La Faye presented the findings of a recent study by CAF on SOE boards in Latin America. Based on public information, CAF has made an evaluation in order to build an index on SOEs disclosure practices in Latin America with the objective of analysing the effectiveness of the boards of directors. The study is based on a 45-question survey sent to different SOEs from different Latin American countries which they were invited to respond to anonymously (there were a couple of questions revolving around compensation that offered the option to answer on a voluntary basis).

Some important findings so far (as the compilation of responses has not yet terminated) are that: regarding SOEs board meetings, there are two extremes: either they meet very often (to the point of becoming involved in management matters), or too little (with scarce supervision schemes), and, that 69% of the boards have Audit Committees; and that 1/3 out of the surveyed companies do not have introductory sessions to the board; and those who do have them only cover vision-related issues or board functioning and no accounting matters are covered in spite of the fact that most of them do have an Audit Committee. Finally, 2/3 of the SOEs surveyed evaluate their board directors through self-evaluations. Nevertheless, only 33% of them utilise these as an input to elect new board members (and the rest are appointed by political contacts).

#### *Session 4: Evolving global consensus on the regulatory framework for ensuring business integrity and preventing corruption in SOEs*

**Dr. Sergio López Ayllon, General Director, Centro de Investigación y Docencia Económicas (CIDE), Mexico** moderated the session. He recalled the purpose of this session. He said preventing corruption in SOEs by realising synergies at different levels of governance is central to achieving SOE economic efficiency and called on panellists to discuss the growing importance of improving corporate governance in SOEs to prevent corruption and stocktake relevant reform efforts on ensuring consistency between the different levels of governance to prevent corruption and achieve business integrity in SOEs.

Presentation of the preliminary results of a stocktaking report of Anti-Corruption and Business Integrity Measures for SOEs

**Ms. Korin Kane (Policy Analyst, Corporate Affairs, OECD):** Ms. Kane elaborated on the main findings from the OECD survey on anti-corruption and business integrity measures in SOEs (OECD Survey). She put forward the following key issues for consideration by policy makers: harmonising the liability regime applicable to SOE board members; improving institutional coordination in enforcing anti-corruption legislation; improving the independence of SOE boards of directors; and strengthening SOEs' internal controls, ethics and compliance measures. She also underlined that where SOEs are subject to the internal control system of the state, striking a balance between maintaining adequate oversight and avoiding state interference in daily operations is important.

**Mr. Jorge Fabre Mendoza (Vice-President, Anahuac University, Mexico):** Mr. Fabre Mendoza said that the analysis of responsible businesses within the private sector has demonstrated that there is causality between good practices and the sustainability of companies. Therefore, it is worth considering whether these should be adapted to the public sector as well.

He highlighted a number of policy priorities relevant for tackling corruption in SOEs, including: (i) citizens deserve being told what is being done with their money (and SOEs have a stronger responsibility regarding accountability that private companies do); (ii) the State should identify the different types of companies there are and define the services that each one of them offers; (iii) SOE boards should be required to communicate their codes of ethics (and show that these apply equally to employees, managers and directors) – this is how private companies are evaluated in governance and sustainability indices; (iv) SOE boards should ensure that the company's ethics regime is managed effectively and that it is periodically evaluated in order to bring corrective measures when needed; (v) boards should be comprised of independent directors that exercise unbiased judgements. This can be achieved with directors who are disconnected from the top spheres of the government, and with directors who actually have the appropriate credentials; and (vi) a “designation office” should be created in order to push for professionalisation of SOEs' boards. This office should build lists of people that could occupy directors' positions in SOEs and should promote good corporate governance practices.

**Mr. Wan Saiful (CEO, Institute for Democracy and Economic Affairs (IDEAS), Malaysia):** Mr. Saiful said that in Malaysia, as in other countries that have been presented, there has been intention to improve corporate governance practices in SOEs. But, even though (since 2010) there is an initiative to reduce the government's role in business (in Malaysia, the government currently has great participation in businesses), there are mixed results because the government has only focused on “top” SOEs and has, therefore, ignored small and medium-sized companies.

Mr. Saiful discussed the case of the Malaysian company “1 MDB”, which highlights significant shortcomings in SOEs' corporate governance. These include poor auditing practices; the weak monitoring of the public and the unclear definition of roles and responsibilities. However, these actions are not exclusive of 1 MDB, they deserve attention in other companies as well.

A question and answer session followed panel discussions. The main issues regarding enhancing business integrity in SOEs that were discussed included: Legal and institutional landscape for preventing corruption in SOEs; independence of boards of directors; internal controls, ethics and compliance measures within SOEs; corporatisation and listing of SOEs; and disclosure and transparency requirements and practices.

## **Day 2 (8 June)**

### *Welcoming remarks*

**Mr. Lars Erik Fredriksson (Chair, OECD Working Party on State Ownership and Privatisation Practices, Sweden):** Mr. Fredriksson highlighted some conclusions from the plenary discussions. He said that the ownership roles of the governments shall be clearly defined; performance

management evaluation is needed; and, there is an urgent need for integrity to fight corruption. Plus, in order to improve corporate governance practices in SOEs, a holistic approach is needed. He said that the second day's meeting has been exclusively organised for representatives of ministries and ownership entities to encourage a frank exchange on challenges of implementation as well as tangible examples and best practices on SOE governance, and to facilitate discussion on specific steps that they can take as owners of SOEs – putting words into action.

**Max Diener Sala (Fiscal Attorney's Office, Ministry of Finance, Mexico):** Mr. Max Diener Sala echoed Mr. Fredriksson's remarks saying that the first day's sessions explained the different ownership models and how these can be implemented; and, how the SOE guidelines have been implemented in various regions. Plus, participants learned what steps need to be taken in the future in order to have actors that push for better corporate governance practices; and that there is an interesting dichotomy where governments should define how private and public companies should be asked to be accountable to their stakeholders.

### *Session 1: Developing and implementing an SOE disclosure and transparency policy*

**Mr. Seungju Baek, Senior Policy Analyst, Corporate Affairs, OECD** moderated the session. He presented a rationale for organising this session. He said improving transparency and accountability is a key priority to improve the corporate governance and performance of SOEs as it empowers shareholder and stakeholder rights by providing the information essential to their activities and is a prerequisite to and underpins public trust. He emphasised that the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* provide recommendations specific to ameliorating transparency and disclosure, at both the company level and the level of the state, to enhance accountability for SOE performance.

**Ms. Nguyen Phuong Lan (Director, Division of SOE Reform, Agency for Enterprise Development, Ministry of Planning and Investment Viet Nam):** Ms. Nguyen emphasised that SOEs in Vietnam are highly important. And, even though their number has been reduced considerably in the last few years, their practices have improved in the sense that they are now required both to make periodical reports and to publish five-year plans (including investment ones). However, only 40% of them publish these reports on time. She said that regarding transparency, both listed and non-listed companies in Viet Nam have the requirements of publishing relevant information on their websites; nevertheless, it can get tedious for SOEs to comply as the authorities still need to create a centralised ownership model (actually, SOEs with private participation have better disclosure practices).

**Mr. F. Antonius Alijoyo, Chairman, National Committee on Governance, Indonesia:** Mr. F. Antonius Alijoyo said that in Indonesia, SOEs cope with corruption, inefficiency, strategy failure, policy changing and implementation failures. And, even though they elaborate annual reports on their activities, they are not (easily) accessible to the general public. Nevertheless, every year, board directors are required to make a declaration of their assets (and there is a verifying committee); they are subjected to a study of their financial movements; and, their property is analyzed both nationally and internationally.

**Mrs. Martha Nuujoma – Domingos (Acting Deputy Permanent Secretary, Ministry of Public Enterprises, Namibia):** Mrs. Nuujoma – Domingos highlighted that in Namibia, many SOEs were created in order to strengthen the economy. However, after 2005, the government noticed that its SOEs were poor performers due to their weak governance systems. SOEs' poor governance eroded public trust. To amend this, the government pushed for some disclosure on compensation policies and data to a Council, but this was not effective. Changes regarding governance were unplanned and actually quite improvised – which underlined the importance of implementing a regulatory model to begin a (gradual) governance improvement process. As a result, the government promulgated the State Owned Enterprises Governance Act (SOE Act) in 2006 which introduced an overarching legal framework for reporting of SOEs.

## *Presentation of the key preliminary findings of the new stocktaking paper of disclosure measures for SOEs*

**Ms. Chung-a Park (Policy Analyst, Corporate Affairs, OECD)**: Building on the key results from the OECD Survey, Ms. Park said that the key challenge for improving SOE governance is ensuring an effective legal and regulatory framework for implementing disclosure and aggregate reporting practices by state-owned enterprises. She said centralisation of the ownership function can help reinforce and mobilise competencies relevant to SOE disclosure as it requires organising pools of experts on key matters, such as financial reporting or board nomination. She also said that disclosure improvements should take place alongside other equally important reforms, such as harmonising SOEs' legal forms and corporatising those that undertake primarily commercial activities.

### *Session 2: Selecting SOEs for reform and ensuing success of the process*

**Mr. Arturo Herrera, Practice Manager, Global Governance Practice, Latin America & the Caribbean, World Bank** moderated the session. He called on panellists to share their experience implementing corporate governance reform in SOEs including details about the basis of criteria with which they selected SOEs as candidates for reform and the reform processes that they undertook.

**Mr. Madhukar Gupta (Additional Secretary, Department of Public Enterprises, Ministry of Heavy Industries, India)**: Mr. Gupta pointed out that on corporate governance matters, in India much attention has been given recently to the composition of SOE boards of directors, new models of general conduct, risk management and anti-corruption mechanisms. Government guidelines applicable to SOEs also require that every related-party transaction be revised by an audit committee and any deviation from generally accepted accounting principles be explained. Furthermore, SOEs' annual reports must include a corporate governance section and the chairs of SOE boards must deliver an introductory speech at every Annual General Meeting. Dr. U.D. Choubey (SCOPE, India) added that in general, Indian SOEs align themselves with the SOE Guidelines but, in particular, the independence of their board directors still needs to be strengthened and directors need to have more autonomy

**Mr. Jorge González Gallástegui (General Director for Legislation and Consult, Ministry of Finance and Public Credit, Mexico)**: Mr. González Gallástegui said that PEMEX and CFE (the two largest Mexican SOEs) improved their corporate governance practices after the energy reform that took place in the current administration. The oil reform brought new rules that allowed private players to get involved in the processes that were previously only exclusive for PEMEX; and, it formalised a process of electing board members (where 50% are to be independent, while the other 50% will be politically appointed). And, even though the CEO is still appointed by the President of Mexico, the board of directors is empowered to remove him/her. The reform also created a consensus that the current regime of decentralised entities shall be changed; that it is of utmost importance to differentiate between commercial (those maximising social value) and "institutional" (those providing services) SOEs; that a corporate governance code shall exist for Mexican SOEs; and, that there is a need of creating an institution that monitors and evaluates SOEs in the country.

Furthermore, boards shall be professionalised (since their selection); and centralising the budget of SOEs will facilitate these organisations' financial monitoring. He pointed out that currently there is duplicity on the monitoring of SOEs and the database of Mexican SOEs is incomplete and outdated. Also, he said that having boards with 50% politically-appointed members, might bias the voting scheme (as they are "allies").

### *Session 3: Best practices on nomination, election and performance of board members*

**Mr. Carlos Elizondo Mayer-Serra, Independent Director on the Board of Directors, Petroleos Mexicanos (Pemex), Mexico** moderated the session. Mr. Mayer-Serra set the tone for the session saying that as stated in the SOE Guidelines, when individual board members carry out their duties it is important that they do not act as representatives for different constituencies. In this context, he said, this session will discuss national practices on selecting, appointing and evaluating board member.

**Mr. Andrés Oneto La Faye (Principal Executive, Department of Productive Development and Finance, CAF)**: Mr. Oneto La Faye presented more findings of a recent study on SOE boards in Latin America in addition to the first day's presentation. According to this study, the average size of a board in Latin American SOEs is six and 70% of SOE board members in the region do not have substitutes. Also, 48% of these boards are chaired by a public servant, whilst only 15% are chaired by an independent director (with the caveat that it is important to look for the definitions of "independence" considered in each jurisdiction). Of all the companies surveyed, 47% have a defined profile for directors, but only for independent directors. The average duration of a regular director in a company's board is four years – which is highly dependent on the political process – and independent directors last longer.

Board evaluations for most companies are undertaken by an external evaluator and their results are usually not used to inform future election of directors. Concerning board responsibilities, in practice very few boards undertake the roles of defining the company's vision and strategies, supervising management and managing risks. In 1/3 of the surveyed companies, boards do not elect the company's CEO. In 86% of the companies, members of the boards' committees are not compensated; however, those who are receive an average of USD 480 per session (the lowest pay recorded was USD 80 per session; the highest USD 900).

**Mr. Bruno Cirilo Mendoca de Campos (Manager, General Coordination Staff of Corporate Participation, National Treasury Secretariat, Ministry of Finance, Brazil)**: Mr. Mendoca de Campos pointed out that key challenge for achieving board efficiency in Brazilian SOEs is that members of the Supervisory Board are usually drawn from the public sector, with prior approval of the Brazilian President. He said that appointments to Management Board are made by the line ministry, only ratified by the Supervisory Board, what may: compromise the effectiveness of the Supervisory Board; lead to companies' objectives misalignment; reduce Supervisory Board's authority over the Management Board; go against the goals of autonomy and independence of the Supervisory Board.

He said that the nomination process in Brazil needs to be improved by assuring professionalism, independence and freedom from undue political influence and be guided by the company's best interest, hence restraining political nominations. He highlighted the importance of ensuring a formal, structured and transparent selection; and basing on criteria such as unblemished reputation, academic background, experience and technical skills. He also stressed that the Supervisory Board's remuneration policy, which cannot exceed 10 percent of the Management Board's average, is not focused in market conditions and is a barrier to attract the best qualified and competent professionals. Therefore, he said it should be reconsidered by establishing guidelines and solid policies; defining incentives, considering the expertise and experience required for nomination; and assuring that remuneration is market oriented.

**Mr. Rajiv Rai (Secretary, Public Enterprises Selection Board (PESB), India)**: Mr. Rajiv Rai described the selection process of SOE board directors undertaken by PESB. It begins with the elaboration of a job description, followed by its publication, the shortlisting of candidates (this step aims at avoiding "job hoppers"), the selection meeting and the recommendation. He noted that PESB has a database that is used to refer non-elected candidates to future board postings. It also evaluates its

candidates on a yearly basis (if directors are evaluated with more than 80% they may extend their tenure).

**Dr. Ashraf Gamal El Din (CEO, Hawkamah, the Institute for Corporate Governance, UAE):** Dr. El Din emphasised that SOEs in the MENA region account for more than 40% of local production, and they are the major employers in the region. He noted that there is no overarching “board model” for SOEs in the region, but generally few SOE boards have independent directors. He highlighted some challenges with respect to SOE boards, including insufficient attention to their accountability and their duties and non-transparent nomination processes. SOE board members are frequently nominated by ministers. Directors are usually government employees, officials and university professors.

#### *Session 4: Best practices on the implementation of high standards of business integrity in SOEs*

**Mr. Hoomyung Lee, Director-General, Public Institutions Policy Cooperation Division, Ministry of Strategy and Finance, Korea** moderated the session. Mr. Lee asked the panelists to share good examples of ways in which SOEs or ownership functions have ensured that anticorruption compliance and business integrity remain a top priority for discussion by boards. He also encouraged the panelists to share national experiences in assigning specific responsibility to different stakeholders for implementation of integrity programs or measures.

**Mr. Alejandro Díaz (Audit Manager of Companies and Societies, Sindicatura General De la Nacion, Argentina):** Mr. Díaz said that SOEs in Argentina are governed by a Corporate Regime that distinguishes three bodies: the shareholders’ meeting; the managing board and the supervisory board. This same regime applies to private companies in the country.

In Argentina there are 138 SOEs. Since 69 out of them have the State as a majority owner, the State obliges a board of directors (who are considered public servants) to apply public law for preventive actions against corruption and guarantee proper accountability. This means that board directors are bounded by the “Public Ethics Law” which forces them to avoid the traffic of influence; obliges public servants to make public declaration of assets; strives for having people that have no relation with other public servants years before their nomination; and pushes directors to fulfill their responsibility of ensuring social interest.

Regarding accountability, there is one main difference between public and private companies in Argentina. Whilst in private companies it is the Annual General Meeting the one who approves financial statements and management, SOEs adds to this mechanism a budgetary control with financial and physical targets.

**Mr. Juan Munguira (Bureau Member, OECD Working Party on State Ownership and Privatisation Practices, Spain):** Mr. Munguira said that this is the era of the SOEs as they are the next destination for institutional investors. What is their role? They can inject liquidity and reanimate the economy as it is happening in Europe nowadays. Pension funds and institutional investors in general do not have anywhere to put their money; thus, the SOEs become a new niche for them. An interesting progress made in Spain was that limits to compensation for independent directors were established due to the belief that offering high salaries to directors would create the wrong incentives to them (as they would never want to leave the board on which they served).

**Mr. Ahmed Belfahmi (Head, Restructuring and Programming Direction of Public Enterprises and Privatisation, Ministry of Economy and Finance, Morocco):** Mr. Belfahmi pointed out that in Morocco, SOEs are crucial for economic and social development to happen. They are mainly focused on social and infrastructure projects; but all of them realise that corporate governance is fundamental, but needs to be modernised – especially regarding external auditing practices.

In Morocco there are very interesting steps regarding good governance. To begin with, there is a National Commission of Corporate Governance that constructed a Corporate Governance Code (with a ‘comply or explain’ basis) in 2008 that includes two annexes that focus on small and medium-sized companies. Now, as a consequence of this Commission, a committee that monitors what is related to SOEs exists; and the goal to expand the Code for it to cover sustainability topics as well is now recognised. In addition to these improvements, there is a database that concentrates indicators regarding the functioning of SOEs in order to both keep a registry of their progress and build the foundations for liberalising the economy, improve transparency and governance practices, and privatise companies.

### *Concluding remarks*

Representatives of the organisers and hosts – the OECD, the Ministry of Finance and Public Credit of Mexico and the Ministry of Strategy and Finance of Korea – thanked and congratulated participants for the successful meeting, which facilitated substantive discussions on SOE governance. They emphasised that the meeting allowed participants to exchange experiences and discuss ways to effectively design, promote and implement policies and instruments to achieve better corporate governance of SOEs. Mr. Lars Erik Fredriksson concluded that the insightful discussions pointed to many similarities across jurisdictions and the importance of the SOE Guidelines’ standards as a guidepost for national reforms. Mr. Max Diener Sala stressed that for SOEs to trigger economic growth, they need to be governed to a high standard and operate with transparency and integrity. He underlined the usefulness of the *Global Knowledge Sharing Network* in facilitating peer learning around these objectives. Mr. Hoomyung Lee, echoing his colleagues’ remarks, confirmed the Korean government’s continued support for the Network.

## Speakers

### Day I: Opening Remarks



#### **Mr. Max Diener Sala, Attorney-General for Fiscal and Financial Issues, Ministry of Finance And Public Credit, México**

Mr. Diener is the current Attorney-General for Fiscal and Financial Issues of the Mexican Ministry of Finance and Public Credit. He has a longstanding experience of more than 20 years in public service. He was Juridical Director General of the Deputy Ministry of Finance and Public Credit and Deputy Attorney-General for Fiscal and Financial Issues, for Legislation and Consulting. Afterwards, he performed as Deputy Minister of the Interior and as Legal Adviser of the Mexican Ministry of Foreign Affairs. Max Diener has a solid academic and professional background and has participation in international forums under the aegis of the Organization for Economic Cooperation and Development, the Interamerican Bank of Development, the United Nations, the Council of Europe, and many others.

Mr. Diener holds a Bachelor Degree from the Mexican National Autonomous University. He conducted Postgraduate Diploma Studies on Political Institutions and Thoughts at the Technological Autonomous Institute of Mexico (ITAM) and Master's Degree Studies on International Relations at the Diplomatic Academy of Vienna, Austria. He is a proactive member of the legal academy; he has been Professor of Law at UNAM, the Centre of Economic Research and Teaching (CIDE), ITAM, the Mexican College (COMEX) and the Mexican Institute for Public Administration (INAP).



#### **Ms. Ann Low, Vice Chair of the OECD Working Party on State-Ownership and Privatization Practices (WPSOPP), United States**

Ann Low is Deputy Director of the Office of Investment Affairs at the U.S. Department of State. She has extensive experience in multilateral and economic affairs. Ann currently represents the United States on the Investment Committee of the UN Conference on Trade and Development (UNCTAD) and on the Bureau of the OECD Working Party on State Ownership and Privatization Practices. She spearheaded a partnership between UNCTAD and Global Entrepreneurship Week to develop the new Global Enterprise Registration portal ([www.GER.co](http://www.GER.co)). Previously, Ann served as Deputy Director of the Office of Intellectual Property Enforcement, where she doubled the State Department's support for anti-counterfeiting public affairs campaigns and launched the State Department's annual Innovation Ambassadors' partnership with First Lego League.

Ann's previous assignments include representing the U.S. at UNCTAD in Geneva, serving as lead U.S. negotiator for the Accra Accord, representing the U.S. at the International Trade Center in Geneva, representing the U.S. at the Economic and Social Council (ECOSOC) in New York and serving as the U.S. representative to the UN Development Program (UNDP) and UN Children's Fund (UNICEF) in New York. Ann served as the Director of Public Affairs at Asia Pacific Economic Cooperation (APEC) in Singapore, and later represented the U.S. on the Budget and Management Committee for APEC. Ann graduated from Georgetown University's School of Foreign Service and has a Masters of Management degree from Northwestern University's Kellogg School of Management. She has served as a visiting Diplomat and adjunct Professor at Columbia University.

## Day 1, Session 1: Recent reform efforts: An overview of the revised OECD Guidelines on the Corporate Governance of State-Owned Enterprises



### **Mr. Jorge González Gallástegui, General Director for Legislation and Consult, Ministry of Finance and Public Credit, Mexico**

Jorge Gonzalez is the General Director inside the Mexican Ministry of Finance and Public Credit in charge of the regulation and control of the parastatal sector, which includes SOE's. Throughout the six years he has worked for the Ministry, he has participated in the drafting, negotiation and implementation of several reforms, such as energy, class actions and public-private associations' bill. In 2010, he served as Chief Council to Instituto Nacional de Ciencias Penales, a public entity dedicated to the research of criminal sciences in Mexico and formation of District Attorneys and prosecutors.

As for his academic foundation, he is an Attorney with a Masters in Administrative Law and Regulation from ITAM and has an MSc in Comparative Politics from the London School of Economics and Political Science with specialization in Politics of the Developing World. He currently is a lecturer of Administrative Law at one of the top universities in the country, Centro de Investigación y Docencia Económica (CIDE).



### **Mr. Lars Erik Fredriksson, Chair, OECD Working Party on State-Owned Ownership and Privatization Practices, Sweden**

Mr. Lars Erik Fredriksson is an Investment Director at the Division for State-Owned Enterprises at the Ministry of Enterprise and Innovation in Sweden since 2004. He specializes in corporate governance of state owned enterprises (SOEs). He is also the chair of the OECD WPSOPP (Working Party for State Owned Enterprises and Privatization) since 2015 where he was vice-chair since 2014 and delegate since 2008. Lars Erik has extensive experience from SOE ownership including corporatisation, privatisation, starting new SOEs, setting up ownership policies, setting financial targets, board recruitment and board work. He is currently a non-executive director in four SOEs and chair of the board in one private company. He holds a B.Soc.Sc. degree from Uppsala University.



### **Mr. Victor Selman, Corporate Director, System of Public Enterprises, Chile**

Victor Selman Biester, Industrial Civil Engineer, USACH Chile; MBA, IEDE Spain. With postgraduate degrees in Preparation and Evaluation of Investment Projects, Management Control and Strategic Management and Corporate Governance. He currently serves as Corporate Director of Public Enterprises System (Sistema de Empresas Públicas –SEP-), being in charge of making strategic management control of 20 companies SEP. He is also Vice President of the Seaport Enterprise Arica. He previously served as CORFO SEP Director of Business (2004-2009), CORFO Director of Health Business (1997-2004), CORFO Deputy Manager of Planning and Management Control (1994-1996).

He has been director of the following public companies: Emssat, EMSSA, LAKE PEÑUELAS, Edelayen, TATIO GEOTHERMAL, ICMM TyS and SACOR. He has also been director of the following private companies: Colbun MANQUEHUE WATER, WATER CORDILLERA, ANDINAS water, water Dominicans, ESSBIO, ESSEL and ESSAL. He participated in the privatization process of Colbun, Edelnor, Transmarchilay, EMPREMAR, Edelayen, NATIONAL RADIO, EMOS, ESVAL, ESSBIO, ESSEL, ESSAL, in the sale

of the granting of health services companies in the city of Valdivia, in the sale of Santiago Fish Terminal, in the tenders of health concessions for ESSAT, ESSAN, Emssat, ESSCO Essam, Essar EMSSA and ESMAG. He has participated in the preparation draft for the SEP Law and for the Law of health services and in developing the model of privatization for water companies and water utilities concessions.

He participated in the preparation of SEP Code and SEP Guidelines.

Is Coauthor of the book "The Modernization of the Health Sector in Chile" (2006).



**Dr. U.D. Choubey, Director General, Standing Conference of Public Enterprises (SCOPE), India**

Dr. U.D. Choubey is presently Director General in Standing Conference of Public Enterprises (SCOPE), an Apex Body Promoting Excellence in State Owned Enterprises (SOEs) in India. Dr. Choubey is double Ph.D., (Hydrocarbons & Management); MBA & LL.B. and he has done short courses in management in Stanford & Oxford. He has more than 40 years' experience in energy and management areas in SOEs, the last being Chairman & Managing Director of GAIL (India) Limited, a Maharatna SOE.

He has authored two books: one entitled "Text Book on Natural Gas" and the other entitled "Untold Story of the Indian Public Sector". Third book is under publication. He has written several articles, including on Corporate Governance, Professionalization and Reforms of SOEs, Corporate Social Responsibility, Oil & Gas sector, Developing Smart Villages, among others. In SCOPE, he is responsible for policy advocacy with Government on reforms in State Owned Enterprises.



**Mr. Andres Bernal, Partner at Governance Consultants and CAF consultant, Colombia**

Andres is Partner at Governance Consultants, a specialized consulting firm in governance for Latin American companies. He has led several corporate governance initiatives in the region, including best practices implementation in listed, financial institutions and state owned companies; training of directors; and building regulatory frameworks.

Andres has conducted corporate governance projects for institutions as: OECD; Lima Stock Exchange; Colombia Stock Exchange; Grupo EPM; CAF Banco de Desarrollo de America Latina, among others. Andres specializes in corporate governance for State Owned Enterprises and Financial Institutions in which he has implemented good practices in more than 20 companies in Latin America. With listed companies, he served as Lead Consultant for the Lima Stock Exchange project in corporate governance. He also coordinated the SAPIB initiative of Bolsa Mexicana de Valores and the Global Corporate Governance Forum in 2008 - 2009, a project designed to assist medium-sized firms to improve their governance to meet investor expectations. Prior to founding Governance Consultants S.A., Andrés served as project manager of the corporate governance program of the Confederation of Chambers of Commerce of Colombia and the Center for International Private Enterprise - CIPE.

Andres holds a law degree from Universidad del Rosario (Colombia) and an LLM in Corporate & Finance Law from Widener University – Delaware School of Law (US). Andrés is certified trainer of the Global Corporate Governance Forum, has a LEAD certificate in Corporate Innovation from Stanford University and teaches corporate governance in several universities of the region.



**Mr. Hans Christiansen, Senior Economist, Corporate Affairs Division, Directorate for Financial and Enterprise Affairs, OECD**

Mr. Hans Christiansen is a Senior Economist in the OECD Corporate Affairs Division. He joined the Division after previous postings in the OECD Investment Division, Financial Affairs Division and the Economics Directorate. Prior to joining OECD, he worked for the Bank for International Settlements (BIS) in Switzerland. Mr. Christiansen currently acts as the secretary to the OECD Working Party on State Ownership and Privatisation Practices, which is the custodian of the OECD Guidelines on Corporate Governance of SOEs. His current assignments include OECD's ongoing project on State-Owned Enterprises in the World Economy, responsibility for the OECD Network on Corporate Governance of Asian SOEs, as well as involvement in other SOE-related activities throughout the world. A Danish national, he holds a graduate degree in Political Economics from the University of Copenhagen.



**Mr. Cesar L. Villanueva, Chairman, Governance Commission for GOCCs, Philippines**

Secretary Cesar L. Villanueva is the Chairman of the Governance Commission for GOCCs (GCG), which is the government agency tasked to implement the objectives of R.A. No. 10149, otherwise known as the “GOCC Governance Act of 2011,” to act as the central advisory, monitoring, and oversight body with authority to formulate, implement and coordinate policies governing the GOCCs, and GFIs in the country. He was the Dean of the Ateneo de Manila Law School from 2004 to 2011, and remains a professorial lecturer in Corporation Law, Agency & Trusts, Partnerships & Joint Ventures. In 2011, he was appointed the Executive Secretary for the ADMINISTRATIVE TRIBUNAL of the ASIAN DEVELOPMENT BANK (ADB).

Secretary Villanueva obtained in 1977 his Bachelor of Science Commerce in Accounting (*magna cum laude*); and in 1981 his Bachelor of Laws Degree (LL.B.) from Ateneo de Manila Law School (*valedictorian, cum laude*). He obtained his Master of Laws (LL.M.) from Harvard Law School at Cambridge, Massachusetts in 1989. In October 2005, he was conferred a Diplomate in Juridical Science (D.J.S.) by the San Beda Graduate School of Law.



**Mr. Camilo Barco, Head, Directorate for State-Owned Enterprises, Ministry of Finance and Public Credit, Colombia**

Mr. Camilo Barco is a Lawyer from Universidad del Rosario, specialized in Financial Law from Universidad de los Andes in Bogotá, he has also carried out postgraduate studies in finance at the London School of Economics and Chicago Booth School of Business at the Chicago University. Along his career, he has gained wide experience in project finance and corporate finance and has held several positions within public and private sectors including, among others, Head of Investment Banking, Business Manager, and Counsellor for Special Projects in infrastructure at the Ministry of Finance and Public Credit. His latest posts were as Investment Banking Managing Director in BBVA Colombia and ISA's Chief Financial Officer.

Camilo was appointed General Director of State-Owned Enterprises with effect from 15th December 2015, reporting directly to the Minister of Finance. In this newly created role he is part of the board of directors at Gecelca (Generadora y Comercializadora del Caribe) and Coltel (Colombia Telecomunicaciones S.A. E.S.P.). In the past, he also assumed as board of director member of companies such as Isa Capital do Brasil, Red de Energía del Perú - REP, Consorcio Transmantaro S.A., CTEEP, Intervial Colombia, Intervial Chile, Petrocomercial, Coremar, Comicol (Comisionistas de Colombia), and Fiducolumbia



**Mr. Tran Tho Hai, Head, General Policy Division, Corporate Finance Department, Ministry of Finance, Viet Nam**

Tran Tho Hai is a Vietnam senior policy maker. He was born and raised in Hanoi and graduated from National Economic University, with master degree. After graduation, he worked for SOEs including: Bank for Investment and Development of Vietnam (BIDV) and Vietnam Food Corporation (VINAFOOD). Since 2004, he have been working in Ministry of Finance of Vietnam (MOF). At present, he works as a role of Head of General Policy Division – Corporate Finance Department. During working process, he has obtained deep experience in SOE equitization process.

**Day 1, Session 3: National practices for performance evaluation and management in comparative perspective : Asia and Latin America**

**Mr. Hans Christiansen, Senior Economist, Corporate Affairs Division, Directorate for Financial and Enterprise Affairs , OECD**



**Dr. Hanjun Park, Head, SOE Evaluation Research Team, Korea Institute of Public Finance (KIPF)**

Dr. Hanjun Park is the Head of SOE Evaluation Research Team at Korea Institute of Public Finance (KIPF) and currently serving as a member of the Committee for Management of Seoul Metropolitan Public Institutions. Prior to joining KIPF, He lectured extensively on public management at major universities in Korea. His academic and policy interests cover public sector reform, strategic management, personnel management and performance evaluation. He has performed many research and consultation projects for various state-owned enterprises, central government offices and metropolitan councils in Korea.

Dr. Park is a regular speaker at events on public management and policy conferences both in Korea and aboard including the American Society for Public Administration Annual Conference. He has also published articles in international journals including Public Management Review. He holds a PhD in Public affairs from Indiana University, Bloomington.



**Dr. José Antonio González Anaya, Chief Executive Officer, Petróleos Mexicanos (PEMEX)**

Mr. González Anaya is the Chief Executive Officer of Petróleos Mexicanos (Pemex). Previously he served as Director General of the Mexican Institute of Social Security. At the Ministry of Finance in Mexico he was: Undersecretary of Revenue; Chief of Staff of the Minister; Head of the Unit of Coordination with States; Head of the Unit of Pensions, Insurance and Securities; and Chief of Staff of the Undersecretary.

He was a Lecturer and Senior Researcher at Stanford University. He was Senior Economist for Bolivia, Paraguay and Peru at the World Bank. He has a PhD and a Master's degree in Economics from Harvard University and a B.A. degree in Economics and a B.S. degree in Mechanical Engineering from the Massachusetts Institute of Technology (MIT).

**Ms. Sunita Kikeri, Program Manager Corporate Governance, Finance and Markets Global Practice, World Bank Group**

Sunita Kikeri is Program Manager for Corporate Governance in the Finance and Markets Global Practice of the World Bank. She manages and oversees the Group's work on corporate governance of listed companies, financial

institutions, and state-owned enterprises. She supports corporate governance reforms in a wide range of countries and led the development of a World Bank Group Toolkit on State Enterprise Governance. She represents the World Bank at the OECD Working Party Committee on Privatization and State-Owned Enterprises.

Prior to joining the Corporate Governance Group in 2006 she was a Lead Specialist in the Private Sector Development Vice-Presidency of the World Bank covering privatization, enterprise restructuring, and investment climate reforms. She has published widely in the fields of corporate governance, privatization, and state enterprise reform.

**Ms. Patricia Elliot Blas, Chief Executive Officer, El Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado (FONAFE), Peru**

She has an extensive experience in financial and economic analysis and budgeting of state and private companies as well as in the development and evaluation of strategic and operational plans. She has a great expertise and knowledge in the organization, implementation and monitoring of projects, performing administrative activities. She has an M.A. in economics



**Mr. Andrés Oneto La Faye, Principal Executive, Department of Productive Development and Finance, CAF**

Currently works at CAF, Latin American Development Bank, as Principal Executive in the Direction of Productive and Financial Development, first at its headquarters in Caracas, Venezuela, promoting projects on issues related to competitiveness and productive development and currently at the La Paz office, Bolivia, as a specialist in corporate governance.

Prior to joining CAF he was a Senior Consultant for the Inter-American Development Bank (IaDB) funded program “INVERTIR” at Procapitales, a non-profit association whose goal is to promote the development of the capital markets in Peru. He has been a Senior Financial Consultant in BCC & Associates, CFO at M&S S.A., as well as Credit Risk Analyst and Credit Officer at Banco de Credito del Peru. He was also a Treasury Analyst at Banco Mercantil del Peru and Professor of Finance at Universidad Peruana de Ciencias Aplicadas (UPC) and of Corporate Governance for Board Members, at Centrum School of Business (Peru).

He has an MBA in finance and international business from the Stern School of Business - New York University. He is has a Bachelor in Arts degree in Economics from Pontificia Universidad Catolica del Peru.

Day 1, Session 4: Evolving global consensus on the regulatory framework for ensuring business integrity and preventing corruption in SOEs



**Dr. Sergio López Ayllón, General Director, Center for Economic Research and Teaching (CIDE), Mexico**

He holds a PhD in law from the Universidad Nacional Autónoma de México. He earned his master's degree in sociology of law and social relations at the University of Paris II. He is a research professor of the Center for Economic Research and Teaching (CIDE) where he currently serves as General Director. He is a member of the National System of Researchers (level III) and the Mexican Academy of Sciences. He is the author of several books and has published numerous articles and book chapters in both Mexico and abroad on the subject of information and transparency rights, regulation and sociology of law.

He has taught graduate and postgraduate courses at leading academic institutions of higher education in the country and has participated in numerous seminars and national and international symposia. In the Federal Public Administration has held various positions, has also been a consultant to the Supreme Court of Justice of the Nation, to the H. Chamber of Deputies, to the H. Senate, the Economy Ministry, the Ministry of Civil Service, the Federal Institute of Access to Information, among others.



**Ms. Korin Kane, Policy Analyst, Corporate Affairs Division, Directorate for Financial and Enterprise Affairs, OECD**

Korin Kane is a Policy Analyst in the Corporate Affairs Division of the OECD Directorate for Financial and Enterprise Affairs, serving the OECD Working Party on State Ownership and Privatisation Practices. She has played a leading role in several research projects on state-owned enterprises, including a study on SOE financing conditions, a comparative dataset of national SOE sectors and most recently an overview of SOE performance evaluation practices in Asia. She also played a key role in the 2014-15 update of the international standard for state-owned enterprise governance, the OECD Guidelines on Corporate Governance of State-Owned Enterprises and in the first country assessment conducted against the updated standard, in Lithuania.

Prior to joining the Corporate Affairs Division, Korin worked in the OECD's Middle East and North Africa Investment Programme, facilitating regional policy dialogue on reforms to promote private sector development and women's entrepreneurship in the region. She has a Master's Degree in Finance and Strategy from Sciences-Po Paris (France) and a double BA in Economics and French from Smith College in Massachusetts (USA).



**Mr. Jorge Fabre Mendoza, Provost & Academic Vice-president of Anahuac del Sur University, Mexico**

Mr. Jorge Fabre is Provost & Academic Vicepresident of Anahuac del Sur University since 2015. He was the Dean of the Business School for the previous 19 years. Founder and Chairman of the Center for Excellence in Corporate Governance of Mexico; and Partner of Proxy Corporate Governance. Mr. Fabre is a professor of management and corporate governance. He is co-author of the 2006 book "La Institucionalización de la Empresa: Casos de Éxito en Gobierno Corporativo". He is a member of the Board of Directors of Punto Casa de Bolsa, Medix, Oxal, Grupo El Arca, Corbuma Corp, and member of the Advisory Board of the Millstein Center for Global Markets and Ownership at Columbia University. He is the Chairman

of the Advisory Board of Editorial LID México. He designed the methodology for the IPC Sustentable, Mexico's leading corporate governance index at the Mexican Stock Exchange and has been responsible for its yearly evaluation since 2010. He holds a B.Sc. in Industrial Engineering with honorary achievement and an MBA with a major in Finance from Anahuac del Sur University.



**Mr. Wan Saiful, Chief Executive Officer, Institute for Democracy and Economic Affairs (IDEAS), Malaysia**

Wan Saiful Wan Jan is Chief Executive of the Institute for Democracy and Economic Affairs ([www.ideas.org.my](http://www.ideas.org.my)). He is also Director of the Southeast Asia Network for Development ([www.seanetwork.asia](http://www.seanetwork.asia)) and Chairman of the Istanbul Network for Liberty ([www.istanbulnetwork.org](http://www.istanbulnetwork.org)). Additionally, he is also a member of the Advisory Board at Laureate International Malaysia; member of the Advisory Board of the University of Nottingham's School of Politics, History and International Relations; a Governor at Rafflesia Education Group; and Chairman of IDEAS Academy, a not for profit learning centre for stateless and refugee children in Kuala Lumpur. In August 2015, he was appointed as a member of the National Consultative Committee on Political Financing, following the Prime Minister's announcement to set up the group. He lived in the United Kingdom between August 1993 and October 2009. There he served several organisations, including the think tank Commonwealth Policy Studies Unit, the British Conservative Party's Research Department, and Social Enterprise London.

He is now a columnist for The Star and Sin Chew Jit Poh, national newspapers in Malaysia. He also writes for several other national and regional press. His opinion has been quoted by various media, including the BBC, Reuters, Asian Wall Street Journal, International Herald Tribune, Al-Jazeera and The Economist.

## Day 2: Welcoming remarks

**Mr. Max Diener Sala, Attorney-General for Fiscal and Financial Issues, Ministry of Finance And Public Credit, México**

**Mr. Fernando Galindo Favela, Vice Minister, Ministry of Finance And Public Credit, México**

**Mr. Lars Erik Fredriksson, Chair, OECD Working Party on State-Ownership and Privatization Practices, Sweden**



**Mr. Seungju Baek, Senior Policy Analyst, Corporate Affairs Division, Directorate for Financial and Enterprise Affairs, OECD**

Mr. Seungju Baek is currently working as Senior Policy Analyst at the Directorate for Financial and Enterprise Affairs (DAF) of the OECD. As a specialist in “knowledge sharing”, Seungju is working on sharing knowledge and promoting effective networking in global regions regarding the ownership and governance of SOEs through exchanging OECD experiences and knowledge with good practices of state-owned enterprises. He is serving the WP SOPP Secretariat as well. Before joining the OECD he had worked for the Korean Ministry of Strategy and Finance (MOSF) for almost 20 years. He has built strong knowledge and experiences in establishing development policy and implementation of strategies and allocating resources in various fields including regional development, social overhead capital (SOC) industry, small and medium-sized enterprises (SMEs), energy, resources, and agriculture. In particular, he worked closely with the World Bank and the Korea Development Institute (KDI) in conducting the Knowledge Partnership (KP) Program, which was designed to share Korea’s development experiences and knowledge with developing countries.

He studied Economics and received the M.S degree in public policy from the Seoul National University, Korea, and the University of Colorado, United States. He also finished the Ph.D. course of public policy in Korea University, Korea.



**Ms. Nguyen Phuong Lan, Director, Division of SOE Reform, Agency for Enterprise Development, Ministry of Planning and Investment, Viet Nam**

Ms. Lan Nguyen is the Director of State-owned enterprise (SOE) Reform Division, Agency for Enterprise Development, Ministry of Planning and Investment, Vietnam. During almost 10 years working for the Government, she has actively involved in the design and implementation of various programs and plans on SOE reform. She also played key role in drafting important legal documents which set rules for SOE reform and performance as Government Decrees on the implementation of rights and obligations of State ownership at SOEs, the re-organization of SOEs, Prime Minister’s Decisions on criteria for SOE classification. She has a strong viewpoint that the SOE sector must be reformed to pave the way for the development of market economy and private enterprises.

Lan Nguyen was awarded Fulbright scholarship in 2008 and completed her Master of Public Administration in Syracuse University, USA in 2009.



**Mr. F. Antonius Alijoyo, Chairman, National Committee on Governance, Indonesia**

Dr. Antonius Alijoyo is the leading principal in CRMS Indonesia. He is an independent professional expert in corporate governance, strategy and risk management. Currently, he sits as an Independent Commissioner PT AIG Indonesia and also PT Tokio Marine Life Insurance Indonesia, independent expert member of the Steering Committee of Information Technology and Risk Management in Indonesia Stock Exchange, a member of the Audit Committee PT Indokordsa Tbk, and a member of the Audit Committee and Oversight Risk Committee of PT Bank Saudara Tbk. He also serves on the boards of various national and international professional organizations among

others are National Committee on Governance (NCG), Indonesia Institute of Director and Commissioner (LKDI), Indonesia Audit Committee Association (IKAI), Professional Risk Managers International Association (PRMIA), and ERM Academy (ERMA - Enterprise Risk Management Academy).

Previously, he served as Audit Board Member of Indonesia Financial Services Authority (OJK), a member of the Audit Committee of PT Multi Bintang Indonesia Tbk, Independent Commissioner and Chairman of the Audit Committee of PT Bank Commonwealth Tbk., member of Risk Oversight Committee of PT Adhi Karya Tbk., Risk Oversight Committee member of PT Bank Saudara, and Risk Oversight Committee member of PT Bank BTN Tbk.



**Mrs. Martha Nuujoma – Domingos, Acting Deputy Permanent Secretary, Ministry of Public Enterprises, Namibia**

Mrs. Martha Nuujoma-Domingos obtained two Law Degrees from the University of Namibia (UNAM) a B-Juris and LLB. She joined the State Owned Enterprises Governance –Secretariat (now the Ministry of Public Enterprises) in 2009, as a Deputy Director in the Directorate: Legal Advice. She was promoted to Director for Legal Advice in 2013 and concurrently occupies the position of Acting Permanent Secretary within the Ministry of Public Enterprises (MOPE). She has played a pivotal role into the transformation of the SOEGC- Secretariat into a fully-fledged Ministry in 2014, by contributing to the research which lead to the formation of the Ministry, including; the establishment of the Corporate Advisory Reform Unit (CARU) a specialized unit within the Ministry. She is passionate about her work and at the same time excited about the journey she will embark upon to ensure that Public Enterprise are positioned as key contributors towards the socio-economic development of Namibia. She aspires to pursue further studies in a Masters in Business Administration.



**Ms. Chung-a Park, Policy Analyst, Corporate Affairs Division, Directorate for Financial and Enterprise Affairs, OECD**

Chung-a Park is a Policy Analyst in the Corporate Affairs Division of the OECD Directorate for Financial and Enterprise Affairs. She is a project manager of the Global Knowledge Sharing Network on Corporate Governance of State-Owned Enterprises and is responsible for the project on stocktaking of disclosure measures by state-owned enterprises. She previously joined the OECD to undertake joint projects on infrastructure investment between the OECD Investment Division and Environment Directorate with a specific focus on emerging economies and developing countries. Chung-a started a career as a newspaper journalist at the Korea Times covering economic and industrial policies and has previous experience in development cooperation at the Presidential Committee on Green Growth of Korea. A Korean national, she holds a Master's Degree of Public Affairs with specialisation in economic governance from Sciences Po Paris and B.A. in sociology from Yonsei University in Seoul.



**Mr. Arturo Herrera, Gerente de la Práctica Global de Buen Gobierno, Banco Mundial**

Arturo Herrera Gutiérrez is the Practice Manager for Public Sector Performance, Latin America and the Caribbean Region (LCR), Governance Global Practice, World Bank Group. His team has operations and projects in 27 countries in the region, from public financial management, tax administration, and quasi-fiscal activities, to justice service strengthening and citizen participation. Before joining the Bank, Arturo worked in Mexico's Ministry of Finance and later in the Government of Mexico City where he served as the General Director for Financial Management and then as Secretary of Finance. His expertise includes public financial management, tax administration, subnational governance, and inter-fiscal relationships.

In the academia, he taught Monetary Theory and Policy and Macro and Micro Economics at both El Colegio de Mexico and New York University, where he did his doctoral studies in Economics.

**Mr. Jorge González Gallástegui (General Director for Legislation and Consult, Ministry of Finance and Public Credit, Mexico)**



**Dr. Madhukar Gupta, Additional Secretary, Department of Public Enterprises, Ministry of Heavy Industries, India**

Mr. Madhukar Gupta is an Electrical Engineer, MBA and a law graduate. He was selected as a Mason Fellow by Harvard for a Master's in Public Administration in 2006. The Government of India sent him for a Master's in Public Policy at Maxwell, Syracuse. Mr. Gupta has been awarded a PhD in Development Economics in 2010. He focused on Public Policy in US and China working with experts on economic growth, urban development, infrastructure, corporate finance and cluster development at the Harvard, MIT and Fletcher School. He has won many national awards from National Productivity Council and National Bank for Agriculture and Rural Development. Indian and international Universities have hosted him as a visiting faculty and scholar. Mr. Gupta has worked in Government of India, governments of Rajasthan and Tamil Nadu, as Team Leader in United Nations Development Program, consultant to ADB and Sri Lankan government, non-profit sector, cooperative sector, as Managing Director in State Road Transport Corporation and State Cooperative Dairy Federation, as Principal Secretary Higher Education and Transport Departments and also, as Vice Chancellor of University of Rajasthan and Rajasthan Agriculture University. Mr. Gupta has spent thirteen years as a practitioner as Divisional Commissioner in four Divisions (regions), District Magistrate in three districts and Sub Divisional Magistrate in two places.



**Dr. Carlos Elizondo Mayer-Serra, Independent Director on the Board of Directors, Petróleos Mexicanos (PEMEX), Mexico**

He received his Ph.D. and M. Phil. in Political Science from the University of Oxford, United Kingdom, in 1994. From 1991 until 1995 was professor and researcher at CIDE and in 1995 became Director General until 2004 when he was appointed as Ambassador and Permanent Representative of Mexico to the OECD. In 2006 he returned to CIDE as an academic and researcher. Author of several books, the last two *Con dinero y sin dinero. Nuestro ineficaz, precario e injusto equilibrio fiscal* and previously, *Por eso estamos, la economía política de un crecimiento mediocre*.

He writes an op.ed. article weekly at *Excelsior*. Together with Federico Reyes Heróles, hosts a weekly tv program, *Primer Círculo*, at TV Azteca. He is currently professor at the School of Government and Public Transformation at Tec de Monterrey, Campus Santa Fe. In September 2014 was named as an independent member of the Board of Directors at Pemex.

**Mr. Andrés Oneto La Faye, Principal Executive, Department of Productive Development and Finance, CAF**



**Mr. Bruno Cirilo Mendonça de Campos, Manager, General Coordination Staff of Corporate Participation, National Treasury Secretariat, Ministry of Finance, Brazil**

Bruno Campos has graduated in Economics at Brasilia University and has a postgraduate course in Administrative Law. Worked as a Risk Specialist for the Bank of Brasilia and as Economist for the Transportation Department of the Federal District and actually works as Manager of Corporate Participations at the National Treasury Secretariat - Ministry of Finance - Brazil.



**Mr. Rajiv Rai, Secretary, Public Enterprises Selection Board (PESB), India**

Shri Rajiv Rai, posted to the Public Enterprises Selection Board (PESB) as Secretary on 24.5.2013, is an officer of the Central Secretariat Service of Civil Services Examination of 1983 batch. Educational Qualification: A graduate and post-graduate from Hindu College, University of Delhi, he acquired the LLB degree in 2010 and subsequently Masters in Law(LLM) in 2014.

Professional Experience: During his tenure in the Union Ministry of Urban Development from 1986 to 2001, Shri Rai was associated with drafting of the National Housing Policy, National Commission of Urbanisation and worked as Additional Private Secretary to two Union Ministers of Urban Development. On promotion as Deputy Secretary in 1997 got posted to the Directorate of Estates and dealt with allotments and policy of government accommodations, and computerization.

Shri Rai served in the Vigilance wing in the Ministry of Finance, Department of Revenue in the Central Board of Excise and Customs (CBEC). On promotion as Director w.e.f. July 2003 in the Deptt. of

Personnel & Training, worked in areas of Vigilance, Cadre review of Central Services, Administration and as Secretary, Central Civil Services Cultural & Sports Board, as well as Secretary, Grih Kalyan Kendra.



**Dr. Ashraf Gamal El Din, Chief Executive Officer, Hawkamah, the Institute for Corporate Governance, UAE**

Ashraf Gamal El Din the Chief Executive Officer of Hawkamah, the Institute for Corporate Governance, at the DIFC, Dubai government. The center has been promoting good governance in the MENA region since 2006 in cooperation with the OECD and the IFC. Hawkamah believes that it can be a strong partner of the new OECD MENA Competitiveness Program as sustainability is in the heart of competitiveness. He is a jury member, Arabia CSR Award, evaluating and rewarding best practice of CSR in organizations across the region. Dr. Ashraf was the Executive Chairman of Egypt Post. He was also the Deputy Director of the Egyptian Banking Institute, Central Bank of Egypt. Dr. Ashraf was the founder and Director of the Egyptian CSR & Global Compact Center, promoting CSR in Egypt. He worked extensively with the OECD in promoting responsible business conduct in the region. He was one of the key architects behind establishing the “OECD-MENA Responsible Business Forum” and was an active partner for the OECD MENA Investment program as well as the Co-Chair for the Forum.



**Lawrence Hoomyung Lee, Director-General, Public Institutions Policy Cooperation Division, Ministry of Strategy and Finance, Korea**

Mr. Lawrence Hoomyung Lee served as administrator at the Ministry of Strategy and Finance (MOSF), Korea for the last 25 years. He has been put in charge of various fields such as international finance, national budget and public institutions management, and currently working as the Director General for public institutions policy.

Participated in Korean government's contribution to institutionalize the OECD's Guidelines on SOEs of 2005 and handled such tasks as enacting Public Institutions Governance Act of 2006, classification of SOEs and quasi-governmental organizations, standardization of corporate governance structure, disclosure of management information(alio.go.kr), and improving systems on their performance evaluation and nomination of board members.

He also served as Director General for future vision and strategy at the Presidential Council for Future, and as Director General for Marketing at the 2018 Winter Olympic Games Organizing Committee in Korea.

He has an MBA from HEC (isa) and diplome from ENA, France. He earned a Bachelor of economics from Seoul National University. Amateur in tennis, ping pong, and Korean traditional archery.



**Mr. Alejandro Díaz Audit Manager of Companies and Societies, Sindicatura General De la Nación, Argentina**

Public accountant (University of Buenos Aires), with postgraduate studies in Social Responsibilities, Social Balance, Business Management. He developed activities in Audit, Audit Office and Control Government activities during more than 30 years in major state-owned enterprises and in a less measurement, in private capital companies. He monitored activities of internal control in different areas of the public administration since the creation of the Sindicatura General de la Nación in 1993 (SIGEN).

Teaching activity in postgraduate studies including Professor of Government Auditing, Professor of Politics of Companies in the Mastery in Business administration (MBA) of the business School of the Catholic Argentinian University (UCA).

Audit Manager of Companies and Societies, with competence in control and supervision of all State companies with majority and minority participation.

Awarded with the Silver Medal of the Prize Manuel Belgrano for the work "El Gobierno Corporativo en Organismos Públicos y Empresas Estatales ", presented in the Professional Council of Economic Sciences of the Autonomous City of Buenos Aires, 2010.



**Mr. Juan Munguira, Bureau Member, OECD Working Party on State Ownership and Privatisation Practices, Spain**

Juan Munguira has been member of the European Company Law expert group in the European Commission ( company law, corporate governance and money laundering).

Member of the OECD working party on State Ownership and privatisation practices Member of the OECD Corporate Governance Committee Member of the Assessment Committee of IOSCO Member of the review panel of ESMA and lecturer of securities market and company law at the Master of business administration in the University Alfonso X " El Sabio".



**Mr. Ahmed Belfahmi, Head, Restructuring and Programming Direction of Public Enterprises and Privatization, Ministry of Economy and Finance, Morocco**

Mr Ahmed Belfami is Head of the Programming & Restructuring Division in the Department of Public Enterprises and Privatization of the Ministry of Economy and Finance, Morocco, where he served for 18 years initially as Financial Controller of SOEs in the infrastructure and transport sector, and Head of Analyses and Synthesis Unit before being appointed in March 2011, Head of Division. It is, moreover, a director in the boards of some SOEs.

Mr. Belfami, married, 3 children, graduated in Economics, Laureate of the training cycle of the National School of Administration in Rabat and has acquired expertise in public finance, the areas of management, control and governance of Public Companies. He is a member of the National Commission on Corporate Governance and the MENA-OECD Task Force on Corporate Governance of SOEs.

## The OECD

### *The Working Party on State-owned Enterprises and Privatisation Practices (WP SOPP)*

The WPSOPP is a unique international forum based in Paris where SOE policy makers and practitioners exchange national experiences and good practices on how to implement effective governance reforms to improve SOE performance. It is open to non-member participation and it currently brings together the 34 OECD member countries as well as government representatives from 11 emerging economies for biannual meetings in Paris. In addition, the OECD supports national reform efforts through dedicated regional, knowledge-sharing networks active in Asia, the MENA region, Southern Africa and in Latin America, which work to identify common challenges to SOE governance and share good practices for reform.

### *The OECD's committee structure*

The Working Party on State-owned Enterprises and Privatisation Practices (WP SOPP) is a subsidiary body of the OECD Corporate Governance Committee. OECD's governing body is the OECD Council. In Council representatives of the member country governments (usually represented by the Ambassadors to OECD, but occasionally at Ministerial level) make decisions with implications for the entire Organisation, including individual Committees. Council is assisted in its work by a number of "auxiliary" committees, including in areas such as budgeting, external relations. A number of "substantive" committees report to Council. They cover a wide range of policy areas including economic, industrial, fisheries, taxation, etc. One of these is the Corporate Governance Committee. The Working Party, as a subsidiary body of this Committee, carries out its mandate with a high degree of autonomy, but all decisions with wider implications for OECD (e.g. programmes of work and budget; the inclusion of non-member countries in the work of the Working Party; the issuance of recommendations) are subject to the final approval of the Corporate Governance Committee. At the head of WP SOPP, like almost all other OECD bodies, is its Bureau. The Bureau is appointed from among WP SOPP delegates for one year at a time. It is led by the Chair, who also presides over the meetings of the Working Party.

### *The OECD Secretariat*

The OECD Secretariat has as its main tasks organising the meetings of committees and subsidiary bodies, preparing papers for the consideration of delegates and organising global relations (outreach to non-member countries) activities and events. The Secretariat is headed by the OECD Secretary-General, Mr. Angel Gurría. The Secretariat consists of a number of Directorates, which in turn are subdivided into Divisions. Some of the Directorates work with the Secretary-General in support of the management of the Organisation. Others provide supporting services to the substantive committees. Although no Secretariat person is in principle earmarked to specific activities, each OECD body does in practice have a small team within the OECD Secretariat that is effectively assigned to it. The WP SOPP receives Secretariat assistance from the Corporate Affairs Division, which is a unit of the Directorate for Enterprise and Financial Affairs (DAF).

## The Bureau of the Working Party on State-owned Enterprises and Privatisation Practices



**Mr. Lars Erik Fredriksson, Chair**  
Investment Director, State Ownership Ministry of Enterprise and Innovation  
Sweden



**Ms. Ann Low, Vice Chair**  
Deputy Director  
Economic, Energy & Business Affairs  
Office of Investment Affairs  
U.S. Department of State



**Mr. Nigel Smith, Vice Chair**  
Head of Corporate Services  
Department for Business, Innovation and Skills  
United Kingdom



**Mr. Selim Yesilbas, Vice Chair**  
Director General  
Undersecretariat of Treasury  
Turkey



**Mr. Carlos Alvarez**  
President of the Board  
Public Enterprises System (SEP)  
Chile



**Dr. Christine Hasche-Preusse**  
Regierungsdirektorin  
Federal Ministry of Finance  
Germany



**Ms. Mira Mines**  
Senior Deputy Director General  
Government Companies Authority (GCA)  
Israel



**Mr. Juan Munguira Gonzalez**  
Legal Adviser - International Affairs  
Comisión Nacional del Mercado de Valores (CNMV)  
Spain



**Dr. Hanjun Park**  
Head of SOE Evaluation Research Team  
Korea Institute of Public Finance (KIPF)  
Korea



**Ms. Karianne K. Wasenden**  
Deputy Director General  
Ministry of Trade, Industry and Fisheries  
Norway

## The OECD Secretariat Team from the Corporate Affairs Division

### *The Network team*



**Hans Christiansen**  
Senior Economist &  
Head of the WP SOPP  
Secretariat



**Seungju Baek**  
Senior Policy Analyst



**Korin Kane**  
Policy Analyst



**Chung-a Park**  
Policy Analyst



**Katrina Baker**  
Project  
Co-ordinator

### *Other key members of the secretariat team*



**Mats Isaksson:** Head of the Corporate Affairs Division. His responsibilities include corporate governance, SOEs, equity markets, company law, privatisation, dispute resolution and other policy areas of importance to the business environment. Mats participated in the revision of the G20/OECD Principles of Corporate Governance and the OECD Guidelines for Corporate Governance of State-Owned Enterprises. He is involved in the work with both OECD and Key Partner countries. Recently, his work has focused on corporate governance and the financial crisis, and a new OECD initiative on Corporate Governance, Value Creation and Growth.



**Daniel Blume:** Senior Policy Analyst in the Corporate Affairs Division. Daniel is responsible for the OECD's corporate governance work in Latin America and Eurasia and other non-member co-ordination. He has also carried out corporate governance reviews related to accession and other corporate governance peer reviews.



**Sara Sultan Balbuena:** Policy Analyst serving the WP SOPP secretariat. Sara has been a key contributor to recent projects on SOEs in the Global Market Place, competitive neutrality, SOE board practices and SOEs listing practices. Sara also manages one of the WP SOPP's regional networks in Southern Africa.



**Mary Crane-Charef:** Policy Analyst serving the WP SOPP secretariat. Mary contributes to projects on ownership rationales, risk management, as well as accession assessments under the Guidelines. Mary also contributes to the WP SOPP's regional network in Southern Africa.



**Anne Nestour:** Assistant to the WP SOPP, Anne is responsible for the secretarial function during WP SOPP meetings and is the main "go-to person" on practical and logistical matters. Anne is also the project co-ordinator for country specific projects and SOE regional networks.

<http://www.oecd.org/daf/ca/soemarket.htm>

## Opinion Pieces

### Lessons for Mexico from the 2016 Global Network Meeting on Corporate Governance of SOEs

*Max Diener Sala, Attorney General of the Ministry of Finance and Public Credit, Mexico*

There is not ONE definitive way in which a State should carry out its duties as an enterprise owner. However, the OECD Guidelines on Corporate Governance of State-Owned Enterprises (“Guidelines”) are the right tool for each State to find the best way to act towards their SOEs. The guidelines are the result of exchange of experiences and models that each State has implemented throughout time, and accordingly, they are in continuous revision derived from development that each country or international organization wishes to share. Last June, in the meeting in Mexico City, we had the privilege of witnessing that experience sharing.

Moreover, such exchange is also an eye opener for policy makers, and this was the case for the authors of this opinion. Learning by comparison is a task that must be executed both willingly and carefully. In that spirit, the Mexican government representatives participated in the event with the intention of obtaining the information shared by experts and other State’s operators in order to locate the areas of opportunity found in our approach towards handling and monitoring our SOEs.

In the following pages, we aim to present the development and improvement that our regulation has shown with the reform of the corporate structure and in the manner that the State handles Mexican most meaningful SOEs: Petroleos Mexicanos (PEMEX) and Comisión Federal de Electricidad (CFE). After that, we will revise the current regulation for the rest of SOEs and decentralized sector, identifying the margin for improvement we foresee and intend to implement in the upcoming future.

#### ***Reform on emblematic SOEs***

The commitment towards improving corporate governance in Mexican SOEs to match international standards is exemplified by the Energy sector Reform of 2013. Mexico recognized the need to establish a legal mechanism that enhanced a more efficient operation of all of its public enterprises. Therefore, it selected the two most emblematic and biggest national enterprises: PEMEX and CFE. The aim was to show that if corporate governance practices and a new role of the state were to be implemented, the best way to start the implementation and show our commitment was with the most important SOEs.

As a result, a new type of public company was created: productive state enterprises, with technical and budgetary autonomy, ability to withstand international competition, and mechanisms to ensure productivity, transparency and accountability, based on principles of corporate governance.

Furthermore, we changed the vision of state involvement, becoming an owner instead of an active role as managers. The State purpose is to create economic value and increase revenue by allowing an autonomous performance of the company, with normal monitoring and evaluation practices. In this new regime civil and commercial law are the generally applicable law and, by exception, figures of public law as the liability regime and public procurement competitions may apply.

The productive state enterprises regime comply with the provisions of the OECD Guidelines on Corporate Governance of State-Owned Enterprises in the following areas:

*Reasonableness of State property.* The object of PEMEX and CFE is to generate economic value and profitability for the state.

*State role as owner.* The autonomy of enterprises is strengthened by giving more control to their governing bodies and minimizing state interference. However, due to the number of State designated board members, we do acknowledge that further restraint from central government must be exercised towards a more centralized model.

*Public companies in the market.* These enterprises were placed on equal terms with its competitors (they are subject to the same regulator, the general tax regime is applicable and disputes may be subject to alternative dispute resolution mechanisms).

*Relations with stakeholders and responsible business.* The reform foresaw the creation of standards and guidelines on environmental protection, affected communities, labor, ethics and fighting corruption, as well as the creation of specific agencies monitoring these areas. Creditors and partners have guarantees of transparency and accountability through the supervision of the Board and independent committees with full capacity to audit the companies.

*Transparency and accountability.* Additional transparency obligations to those applicable to other public entities were established, as well as the regular and mandatory reporting of their competitors.

*Responsibilities of members of the governing body.* There is a Liability regime which applies only to members of the Board, for damages caused to any companies because of their functions.

### ***What about the rest of Mexican SOEs?***

Currently, the regulation for SOEs is set forth within the general framework of the whole decentralized sector: regulatory agencies or entities with institutional purposes, enterprises and funds. Such framework does not differentiate those entities that pursue commercial purposes (public enterprises) from those with institutional ones, therefore, the Guideline's principles of corporate governance are not accomplished.

Such failure to distinguish the commercial enterprises from institutional -regulatory or non-lucrative entities- causes the current regime to display the following shortcomings:

- It sets the same mechanisms of planning, budgeting, monitoring and evaluation of management, which is inefficient for commercial entities.
- It does not specify objective parameters for establishing sustainability requirements and financial rationality of the commercial entities.
- The state performs its owner role in the same manner for both types of entities, when it is clear that it should be an actor in institutional entities, and an owner in commercial enterprises.

Therefore, the next step is to differentiate these parastatal entities by their object: between institutional entities and commercial enterprises. To create a catalog of them and establish a mechanism to determine which public companies must implement corporate governance principles, and establish an exception when the cost of implementation is greater than the benefit that could give corporate governance, which might lead to the disincorporation of such enterprise if state ownership rationale is not met. The categories will then be:

- Institutional entities: those that serve a clear social function, through the provision of public services, doing activities that promote development, research, health and education,

fulfilling a function of market regulation, income distribution or either social or regional development, among others. They must not have any profitable or lucrative approach in their activities.

- Public Enterprises: Enterprises that produce certain type of goods or services; they must have predominantly economic objectives and therefore be subject to financial profitability.

The main areas of focus in which the new regime will strengthen the role of the state as an owner are:

1. Central Government participation. The Central Government participation in the Board of Directors, in terms of monitoring, internal control and budget planning, should focus on the smallest number of stakeholders as possible (centralized model). In this way, a step towards fulfilling the criteria of Minimum Intervention will be taken.
2. Control and Surveillance. Through a legal framework designed to centralize monitoring in the budgetary field and to strengthen the financial internal monitoring bodies and as a result, increase the authority and strategic direction of the governing body.
3. Disclosure of corporate and business information. By strengthening the Public Registry of decentralized agencies to consolidate it as a tool of monitoring and for transparency of financial, institutional and legal information.

The reform will include a “next wave” of public enterprises in which corporate governance will be implemented, and in general it will aim to: (i) improve performance of such enterprises, (ii) push the central government to act more as an owner, closer to what it is seen in the private sector, and (iii) generate information to determine which enterprises are not worthy of spending in corporate governance measures and hence re-assess the rationale behind the State owning them.

It is important to say that Mexico has already taken steps in order to accomplish the modernization of our SOEs regime. In the very recent legal reforms against corruption, which are now in force, Congress included important measures which bring us closer to our goal:

- Grants faculties to the ministries of Finance and Public Credit and Public Function to issue criteria to distinguish public enterprises and institutional entities, and then establish corporate governance practices for SOEs.
- Excludes Independent board members of the SOEs from the public servants regime. They will have the same duties of care and loyalty as the independent board members of productive state enterprises.
- Congress must approve the legal reforms needed to create the new public enterprises regime within one year.

As a final note, it is important to state that the reform described herein is now subject to another revision thanks to the Network Meeting held in Mexico City. The information obtained regarding concentration models of state ownership, the legal frame designed in several Latin American and Asian countries to supervise and evaluate their SOEs, among many other valuable experiences shared, have lead us to look for areas of improvement of our reform and we will certainly intend to add them in the near future.

## Corporate Governance in SOEs: The Case of Chile

*Victor Selman, Corporate Director, System of Public Enterprises, Chile*

The new 2015 *OECD Guidelines on Corporate Governance of State-Owned Enterprises* reinforce good corporate governance practices for enterprises. Initially developed in 2005, they have been updated based on accumulated national experiences in application of such practices in the last ten years. The purpose of this article is to show the application of some key aspects of these new Guidelines in the reality of Chilean companies through the Sistema de Empresas (SEP), a body responsible for a centralised monitoring of a large group of state enterprises in a complex environment involving different active stakeholders, which have different perspectives and objectives. Particularly important is analyzing how a good corporate governance and a centralized entity exercising the ownership function have a positive impact on the effectiveness and efficiency of SOEs.

In the vast majority of countries where state-owned enterprises (SOEs) exist, a rationale for state ownership of one or a group of SOEs as well as role of the State in business matters depends on specific circumstances in each country.

These include ; i) to participate only in the activities that the private sector is unwilling to participate (ex. a sector with high social economic value and low private economic value); ii) to act in cases of market imperfections ; or iii) to play a specific social role (i.e. implementation of public policy or in cases of a complex economic sector in which the State wishes to reserve a function or just to be a player in a particular industry in order to generate resources (profits) and revenues for the State for implementation of public policies.

Whatever the basis for State involvement in business are, their participation must meet the idea that the SOEs have to, according to their ultimate purpose, "maximize the value for the Society, through an efficient allocation of resources". This has two implications, the first one is that the company must be "effective" as to fully comply with the role or purpose that the State has defined, and must be "efficient" as to fulfill this role with minimal resources and costs. Achieving effective and efficient companies is not easy. It requires the establishment of good corporate governance, understanding the set of principles and rules governing the operation and interaction of shareholders with boards (or council administration) and senior management, involving two key elements: i) a centralized and active ownership function and ii) professionalized and competent boards.

The definition and establishment of an active centralized function as an "ownership entity" must comprise a separation of roles of the State, in which regulatory roles and public policy roles are separated. In the case of Chile, the definition of the SEP, as a body responsible for exercising the ownership role of SOEs has led to a separation of the roles of the State, ensuring effectiveness and efficiency of enterprises with a long-term development perspective in the context of complex interactions with a large number of stakeholders that act based on their legitimate interest in achieving their own purposes while trying to intervene in the actions of the company.

It is crucial that the ownership entity handles these stakeholders in a way that does not divert or defocus the company from its ultimate purpose of maximizing its contribution to the society. Therefore, it is also crucial that the ownership entity has a highly professional management structure with a diverse representation. In the case of SEP this has been achieved through an SEP Board of nine members appointed by various bodies: The Ministry of Finance, the Ministry of Economy, sectoral ministries such as the Ministry of Transport and CORFO and representatives of the President of the Republic.

The second key aspect is boards, which are the most responsible for administration of public enterprises and are a determining factor in their success or failure in terms of achieving their objectives. Therefore, one of the main functions of the ownership entity is to ensure that public companies have the best and most appropriate board or board of directors to generate mechanisms and

incentives to implement corporate governance, which could result in the effectiveness and efficiency of public enterprises. In the case of Chile, the corporate governance mechanism has three pillars: i) nomination of directors or board of directors of a public company; ii) strategic planning ; and iii) management control.

Regarding SOE's boards or boards of directors, the role of the ownership entity SEP is to undertake a search process and nominate directors for each company, based on a thorough understanding the problems and challenges they are facing; define the challenges for the short, medium and long-term perspective based on a strategic analysis; and analyse and define the profiles of the SOE directors.

The recruitment process has to meet the adequate requirements for the candidates, such as their professional skills, integrity, prestige, character, common sense and ability to learn and to know the organization. Relevant are also the experience, knowledge, age and gender. The candidates also need to be able to work together as a team regardless of who nominated them to ensure the best interest of the company.

It is the SEP's task to monitor the proper functioning of the boards of directors regarding their implementation of good corporate governance practices as well as management regulations and policies based on a document called SEP Code (set of Guidelines). Part of this monitoring process is the annual assessment and training of board members in three aspects: i) evaluating the performance of the board in terms of application of good practices, ii) performance evaluation of the board related to fulfillment of the goals and mandate established for each SOE and iii) evaluation of each director as to their individual contribution for the board and the company.

While it is the task of each SOE to develop its strategic planning– the ownership entity SEP is responsible for defining missions and main strategic plans of each public company in order to ensure that they are framed within what the state has defined as a role for each SOE. Therefore, it is the work of the ownership entity to validate strategic plans and define annual objectives for each SOE.

The third aspect is the management control which is a function of the ownership entity SEP to ensure an implementation of the strategy and objectives defined by the SEP for each public company, while not replacing the oversight function of the board of directors regarding their senior management. The management control needs to be associated with the commitments that the board itself or the board of directors has made regarding the ownership entity SEP.

## Indian SOEs and Reform Measures

*Dr. U.D. Choubey, Director General, SCOPE*

State Owned Enterprises (SOEs) have been the mainstay of Indian economy. Post-independence, planned and self-reliant economic development constituted the heart of the development strategy in India. The core challenge was to achieve high growth rates with equity in addressing concerns of extreme disparities in incomes, wealth and consumption, expansion of employment opportunities and accelerated growth of agriculture and industrial production.

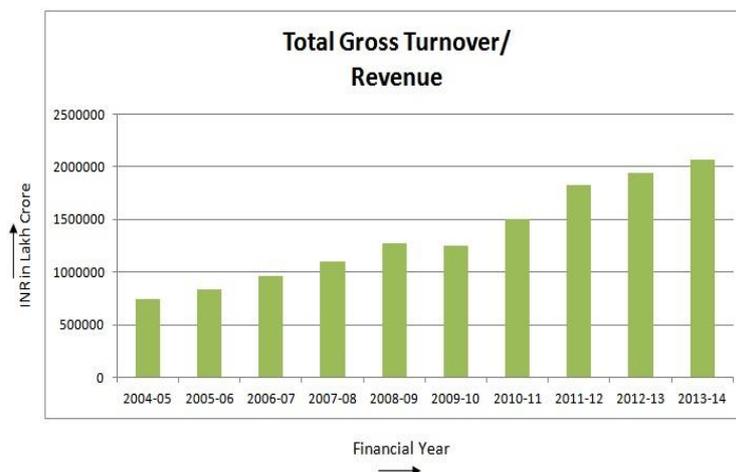
It was felt critical macro-economic decisions cannot be left to the operation of the free market system. The country, thus, adopted a centrally planned model of mixed economy for equitable distribution of natural resources and balanced economic growth. SOEs were set up to serve the broad macroeconomic objectives of higher economic growth, self-sufficiency in production of goods and services, long term equilibrium in balance of payments and low and stable prices besides meeting certain socio economic obligations.

Initially SOEs role was primarily confined to develop core industries and infrastructure in the country for balanced economic growth. Profit generation was the secondary objective behind the goals of employment creation and equity. With the launch of Economic Reforms in early 1990s, there was a sudden change from command economy to a competitive economy moving towards globalization. The role of SOEs took a new turn in tune with country's new economic thrust areas.

With the economic liberalization, post 1991, sectors that were the exclusive preserve of the SOEs were opened to the private sector. The Central Public Sector Enterprises (CPSEs), therefore, are faced with competition from both domestic private sector companies and the large multinational corporations (MNCs). The management systems, policies and procedures have also undergone a sea change. SOEs conformed to the new economic order and demonstrated excellent performance in all significant parameters.

During the year 2014-15, 298 PSEs with a total investment of USD 164.7 billion, have earned a net profit of USD 15.5 billion. Their turnover of USD 299.9 billion is equal to approximately 16 percent of GDP of the country. They contributed USD 30.1 billion to the central exchequer by way of dividend, taxes etc.

**Figure 1. Total gross turnover / revenue, Indian PSEs**



Besides, SOEs have been playing a leading role for the development of the society and the role of business to compliment the government efforts. They have adopted very innovative practices and are implementing their CSR activity in project mode addressing their infrastructure deficit, socio economic development of surrounding communities, environment education and drinking water. Development of backward regions, creation of industrial and social infrastructure, employment to a large number of people, and production of essential products and services at a reasonable price speaks volumes of their CSR activities.

### ***Corporate Governance in SOEs***

SOEs are maintaining the highest standards of transparency and accountability. Their role in accelerating the pace of development in the country has been facilitated by sound and transparent business principles and practices, based on the tenets of good corporate governance. SOEs are subject to several systems and mechanisms of compliance for ensuring accountability and good governance. Presently, apart from Parliament, SOEs are accountable to other authorities under several regulations like the Comptroller & Auditor General of India, Central Vigilance Commission, Competition Commission of India and the Right to Information Act etc. Besides, listed companies are governed by SEBI norms. These checks and balances have assured high level of transparency in their functioning and contributed greater credibility and investors' confidence. This can be validated by the fact that a handful of PSEs (46 listed companies i.e. one percent of the total companies listed on Bombay Stock Exchange) account around 15 percent of market capitalization at BSE.

The Companies Act 2013 has incorporated several provisions related to Board duties, board performance, role of Independent Directors, Stakeholder protection, better auditing tools etc. The Act requires maintaining of adequate accounting records for safeguarding the company's assets and prevention of fraud and error. It also laid great emphasis on promoting transparency and disclosure in corporations. It has been mandated that annual reports of companies should contain a separate section on Corporate Governance with details of compliance. SOEs are required to submit quarterly compliance report in the administrative ministries. SOEs are compliant with rules and regulations in letter and spirit.

### ***Reform Measures***

Government of India has taken many reform initiatives to improve performance and efficiency of SOEs which include MOU System, Categorization of SOEs into Maharatna, Navratna and Miniratna, Performance Management System, Security & Exchange Board of India's Regulations, Right to Information Act, Directives on Corporate Governance and Corporate Social Responsibility.

SOEs in India play a crucial role in Indian economy. While continuous initiatives have been taken to improve their performance in governance, there is need to address a range of issues in line with the international trends.

Professional management is imperative for the growth and competitiveness of the SOEs. Professional and competent board can guide the company on the right path, keeping the changes taking place internationally. Hence, segregation of ownership and management is a pre-requisite for ensuring sustainable development of SOEs and managing them in a professional manner. The Board should fully empower to decide vision, strategy, and all key operational and strategic decisions with respect to investment, mergers and acquisitions, joint ventures etc.

Succession planning is a major concern in SOEs as lack of stability at the top leads to ineffective implementation of strategic plans and programmes. Additionally, multi-agency control mechanisms and stringent procedures need convergence. Capacity building in PSEs is important and has become a game changer in the current market environment. A real challenge for any company including PSEs, is to fill knowledge gap at the top level, both the board as well as senior management. Capacity building of the Board Members and Senior Managers and to continuously keep preparing them for

dealing with emerging challenges, is of utmost importance for a company to sustain its competitiveness and growth.

Moreover, Public Sector Boards have a unique but complex structure. They have three different classes of Directors – Functional Directors, Government nominee Directors and Independent Directors. They come with different qualifications, experience, working environment or background/areas. Functional Directors have domain expertise but lack interconnectivity to meet transition from working level to Functional Director level. Government Nominee Directors come from privilege position and pursue the political and social agenda. They have a gap with the working level people. Similarly, Independent Directors need not necessarily possess the company's domain expertise. Therefore, all the three classes need induction training.

### ***Way Forward***

Given the dynamics of global economic scenario, SOEs have to invest heavily and expand their businesses to enhance their global competitiveness. SOEs would need conducive policy guidelines including SOEs reforms like greater autonomy, empowerment, professional board management, streamlining of regulatory mechanism and level playing field vis-à-vis private sector.

Globally, many countries have undertaken reforms to strengthen their public sector and boost their economic prospects and this trend is likely to continue. They are seeking to build designated 'Sovereign Fund' for effective use of their financial resources for promoting industrial development and building strong infrastructure. India could also work on similar lines to explore Models suitable to Indian conditions.

A well-documented Ownership policy with clear segregation of role and responsibility with regard to ownership, control and management helps government to avoid the usual pitfalls of passive ownership and excessive interferences emanating from multiple and contradictory objectives. It will define the ownership function of State and would help in minimizing their control and interference in day-to-day commercial decision making, thereby providing greater powers to Boards. In this regard OECD has also opined that the government should develop and issue ownership policy which defines the overall objective of State Ownership, the State's Role in Corporate Governance and Public Sector Enterprises and how it will implement its ownership policy.

## What responsible state-owners should implement in terms of corporate governance?

*Andres Bernal, Partner at Governance Consultants S.A.<sup>1</sup>*

We are facing an era of “State Capitalism”<sup>2</sup>. States acting as owners, through different mechanisms and instruments, including: direct ownership of companies or sovereign wealth funds (SWF) are big players within the global economy. Either way, States need to define and regulate how they can or should exercise their ownership rights in State Owned Enterprises (SOEs). Under this context, in different parts of the world it is a prevalent practice to centralize this responsibility in a public ownership entity. These entities have a dual purpose: harmonize practices and act as a more professional state-shareholder. To achieve both purposes implementing good corporate governance standards is essential.

The OECD has advocated for the exercise of ownership rights in a centralized manner through a single ownership entity; “or if this is not possible, carried out by a coordinated body”<sup>3</sup>. The purpose is basically to organize under “one umbrella”, with the same logic and under the same rules, the exercise of ownership rights for SOEs.

The recommended logic for a centralized state ownership is the following<sup>4</sup>: governments, as beneficial owners, define a general ownership policy; and then a Centralized Public Ownership Entity (COE) exercises shareholders’ rights (nominating directors, voting on AGMs<sup>5</sup> and deciding about privatizations or M&A, etc.) and monitors performance.

As a consequence of this institutional arrangement, COEs around the world can be considered one of the most prominent / powerful shareholders of our times – at least in terms of the size of their portfolios<sup>6</sup>. Additionally, COEs are key decision makers for critical industries such as utilities, oil & gas and in some cases financial services.

From a corporate governance perspective, COEs are a very interesting case and a powerful trigger to implement best practices in SOEs around the world. However, the discussion of corporate governance for COEs should also comprise another dimension: how can governments define and implement best practices to regulate COEs (or how COEs can self-regulate their exercise of power)?

As seen in the business sector, good corporate governance depends to a great extent on the quality, commitment and responsibility of its company’s shareholders. As it can be witnessed in family owned business or in listed companies dealing with activist investors; shareholders are critical to define their companies. Good, responsible shareholders can build good boards, and good boards will select, retain and align good management teams. On the other hand, irresponsible shareholders may lead to “short-termism” and destruction of SOE’s value.

So, what good practices of corporate governance should be developed for a COE?

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<sup>1</sup> Comments or feedback can be directed to: [andresbernal@governanceconsultants.com](mailto:andresbernal@governanceconsultants.com)

<sup>2</sup> The Economist: <http://www.economist.com/node/21543160>

<sup>3</sup> OECD Guidelines on Corporate Governance of State-Owned Enterprises – 2015. Title II: The state’s role as an owner – literal D.

<sup>4</sup> Hans Christiansen presentation in OECD Global Knowledge Roundtable. June, 2016.

<sup>5</sup> AGM: Annual Shareholder General Meetings.

<sup>6</sup> Some COEs demonstrate/show their importance in terms of the size of portfolio, by consolidating the assets or equity (not formal valuations) of its SOEs. Due to this mathematical operation some COEs indicate that their impact is over 30% of their national GDP. For example, Colombia in a government policy (CONPES) describe the size of their portfolio over 36% of local GDP. The Economist indicates that over 80% of China’s and 62% of Russian stock markets are controlled by States.

Currently, there is no globally recognized standard of corporate governance for COEs. However, there are several examples of how corporate governance can lead to better state-ownership and consequently, better SOEs.

In a recent study performed by our company<sup>7</sup> to analyze COEs around the world, we have identified the importance of corporate governance practices and different approaches and emphasis given by COEs on this field.

There are different examples of COEs around the world: Treasury Board of Canada, Khazanah Nasional (Malaysia), Fonafe (Peru), New Zealand Treasury, SEP (Chile), to mention only a few. In all these cases, corporate governance instruments are a key leverage mechanism for COE's objectives. Governance instruments may include guidelines of corporate governance for its SOEs; recommendations for audit committees; owner's expectations (ownership policy); reporting and disclosure policies; board nomination; and remuneration practices, among others.

Ensuring the effectiveness of these instruments to enhance corporate governance practices in SOEs requires various strategies including: having a strong institutional and regulatory framework for SOEs; communication and training strategies for SOEs directors and managers; effective compliance and reporting systems; and of course, a strong government commitment to implementation of best corporate governance practices. Unless there is a disciplined State / COE that not only defines but also complies with good practices, it is difficult to have SOEs that respect and comply with the corporate governance framework defined by a COE.

As a result of this global COEs benchmark, I would say that there are three main elements that COEs / Governments should resolve to add value (or at least no destructive value) to their SOEs:

- i. A clear mandate about the purposes and intentions of the state-owner;
- ii. A defined set of information required from the owner of SOEs; and
- iii. Effective practices that guide boards composition and drive talent attraction and management alignment.

Unless the state owner publicly commits to best practices in these three areas, corporate governance for the SOEs is going to prove very difficult. SOEs' development, performance and capability to create value is in great part a consequence of the mandates, organization and framework defined by its owners.

The top five problems that COEs / Governments create for governance of SOEs are:

1. Poor nomination processes that result in boards of directors lacking the required knowledge (of the industry and also of their responsibility and its role as board) to direct a company. Or a constant rotation of directors that affects boards dynamics and long-term strategies. Such rotation could result in recurrent changes in a business strategy.
2. Lack of a clear mandate (financial and/or social indicators) that hinders directors and managers from properly understanding how to direct the company. This circumstance can also affect their accountability. On the other hand, high appetite for dividends that restrict growing opportunities for the SOEs. Most governments are in a constant need of resources; however, unless they re-invest in their companies the possibility to grow and compete is minimal for SOEs.

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<sup>7</sup> Governance Consultants is a consulting firm specialized in corporate governance and it has worked with several governments in Latin America to implement corporate governance practices for their SOEs.

3. Incessant necessities of information (of all types, during any time of the year, under different but similar methodologies) that are repeatedly required from SOEs by different offices of the government or state-ownership entities.
4. Bureaucratic internal procurement procedures that limit SOEs' competitiveness, due to hard and long processes to acquire inputs or services to develop a business.
5. Public controls without a business rationale that disincentives taking controlled business risks. SOEs need to take risks and this implies that sometimes they can lose money due to their normal business activity (actually competing with private sector). So, unless the director's liabilities risks are clear and fair, SOEs decision makers are going to be "timid" to make decisions and create business value.

So, the basic corporate governance policies that can be implemented for COEs to help, from the ownership perspective, to have better SOEs are:

**Table 1. Basic corporate governance policies**

<b>SOEs perspective: to enhance corporate governance in</b>	<b>COE (Owners) perspective: to regulate the exercise of ownership as COE</b>
<ul style="list-style-type: none"> <li>• Clear, concrete Corporate Governance framework based on international standards to define governance practices for SOEs.</li> <li>• Models of corporate instruments as: by-laws, ethics code, board charters, etc... in which a general guideline is provided to SOE to be developed, adapted and implemented internally for every SOEs.</li> <li>• Integrated reporting systems in which clear financial and social indicators are defined to be complied by their SOEs (and can be easily reported).</li> </ul>	<ul style="list-style-type: none"> <li>• Board nomination policies for SOEs. This policy should include commitments from the owner about the level of professionalism that will guide their board nomination process; as well as commitments about retaining good directors despite political changes at the government.</li> <li>• Remuneration and evaluation policies that will be implemented by the COE to supervise and align directors nominated by them to the SOEs.</li> </ul>

## National ownership models for SOEs

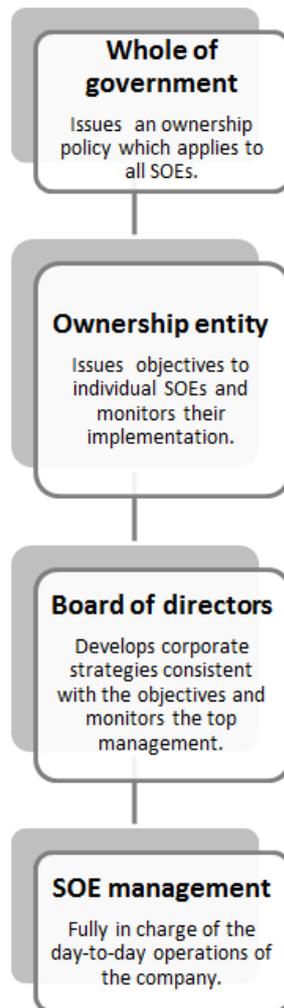
*Hans Christiansen, Senior Economist, Corporate Affairs, Directorate for Financial and Enterprise Affairs, OECD*

The OECD Guidelines on Corporate Governance of State-Owned Enterprises (the “Guidelines”) recommend that governments create a centralised state ownership function to exercise ownership in SOEs or, if this is not feasible, establish sufficient coordination among the involved state institutions to ensure that ownership is exercised on a whole-of-government basis. There are several reasons for this recommendation. First, it is essential for good governance that the state’s roles as a regulator and owner of enterprises are conducted separately. In practice this is often easier to achieve when the ownership is conducted by a specialised institution. Secondly, the ultimate owners of SOEs are the general public, and government must ensure that the ownership function is carried out in the public interest rather than as an extension of various ministerial priorities. Thirdly, in an era of generally shrinking SOE portfolios it is often efficient for governments to entrust ownership to a specialised unit of experts in corporate law and economics.

Moreover, one of the overarching principles in the consensus that underpins the Guidelines is that the roles of overseeing and managing SOEs should be allocated to the most appropriate levels in a “chain of command” extending from the highest levels of government to the individual enterprises. The structure implied by the SOE Guidelines is illustrated in Figure 1. The following four levels of decision-making should be involved:

- *The government.* To ensure a consistency of approach (and to help avoid the “third agency problem” mentioned above), an ownership policy needs to be developed by the government as a whole. The ownership policy should normally communicate the rationales for enterprise ownership, how the government intends to exercise its rights as an owner and any specific expectations (beyond commonly accepted commercial norms) that the state may have of its SOEs.
- *The ownership entity.* The administrative role of exercising the ownership rights (further detailed below) is delegated to one or numerous state institutions, who are charged with communicating operational and financial performance objectives to individual SOEs (or classes of SOEs) and with monitoring their implementation.
- *The board.* The board of directors is the highest corporate authority within each SOE. It formulates (or approves) corporate strategies, monitors each SOE’s executive management and generally holds overall responsibility for the company.
- *The management.* The management may, according to corporate law and tradition, consist of an executive board of directors chaired by a chief executive officer (CEO), or one CEO alone who is given freedom to compose his/her management group. The CEO is appointed, and can be dismissed, by the board of directors.

Figure 2. The respective roles of bodies involved in SOE oversight and management



The above recommendation does not apply indiscriminately. It is clearly more relevant to SOEs that are largely of a “commercial” nature – i.e. carrying out economic activities in competition with other firms. Conversely, SOEs that exist solely to carry out public policy functions could arguably be most efficiently overseen by the sector ministry in charge of these policies. At the same time, this raises the question why government has chosen to corporatize these activities that might, in most cases, be more efficiently entrusted to public agencies rather than to corporations.

To gain clarity over the extent to which various countries have implemented this recommendation, the OECD carried out a recent stocktaking study<sup>8</sup>. This report took stock of the ownership practices in 35 OECD and partner countries<sup>9</sup>. The findings of the report were qualitatively somewhat different from earlier OECD studies, chiefly because of its focus on commercial SOEs<sup>10</sup>.

<sup>8</sup> This document is not yet available in the public domain.

<sup>9</sup> Twenty-nine countries submitted detailed information, namely: Argentina, Belgium, Chile, China, Czech Republic, Denmark, Estonia, Finland, France, Greece, Germany, Hungary, Israel, Italy, Kazakhstan, Korea, Latvia, Lithuania, Mexico, the Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Slovenia, Sweden, Switzerland and Turkey. Independent research in consultation with OECD experts was used to guide insights for the following additional six countries: Brazil, Colombia, India, Russia, South Africa and the United Kingdom

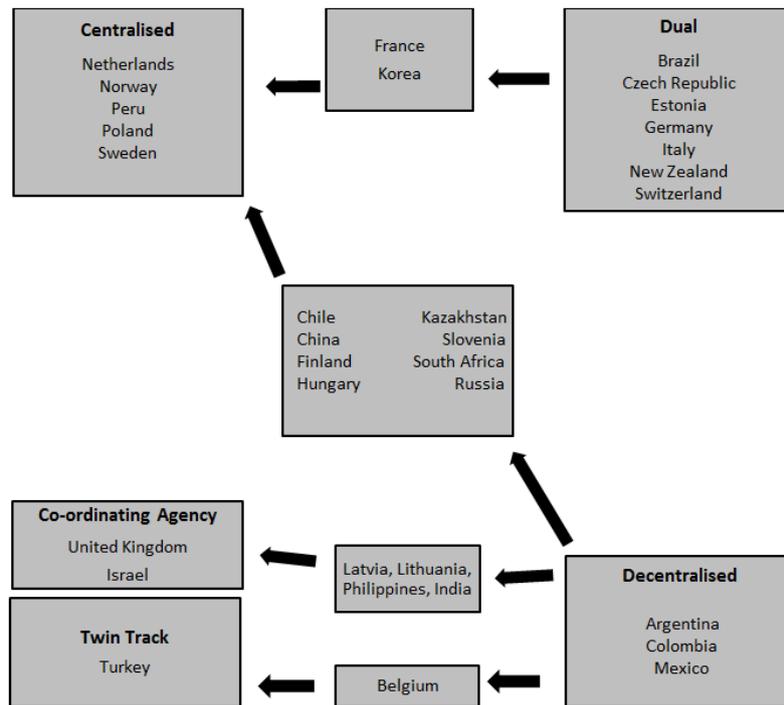
<sup>10</sup> An earlier standard reference, which took stock of a broader range of SOEs, is OECD (2005), *Corporate Governance of State-Owned Enterprises, A Survey of OECD Countries*, OECD Publishing, Paris.

Compared with previous publications, this report finds a somewhat stronger concentration of SOE ownership responsibilities within the state administrations, because many governments have found it efficient to centralise the ownership of commercial firms, but to leave SOEs that are tasked mostly with public policy objectives to the relevant line ministries (or other specialised public institutions). The main findings can be summarised as follows.

- ***Centralised ownership function.*** Of the 35 countries reviewed, 16 governments have to some extent centralised their ownership models. The degree of centralisation differs significantly. For example, Finland, France, Korea and Sweden have grouped the vast majority of all commercially significant SOEs under the aegis of one ownership unit. South Africa has created a central ownership agency but has allocated only six (previously seven) particularly large SOEs to the agency. Also, Norway which is notionally committed to centralised ownership maintains certain companies (e.g. the oil giant Statoil) outside the centralised structure. The institutional features also differ across countries. A plurality of the centralised structures include a state ownership agency, but a significant number of countries rely on ministerial departments or, increasingly, state holding companies for exercising the ownership rights.
- ***Dual ownership versus the “twin track” model.*** Another departure from earlier OECD studies lies in the distinction between dual ownership and “twin track”, which in the past have been often confused. In the purely dual ownership model, two state institutions (typically the ministry of finance and a line ministry) share the ownership responsibilities in any given SOE. In the twin track model, the state has a couple of distinct SOE portfolios, each under a separate ownership unit. Currently seven countries have dual ownership models, whereas two (Belgium and Turkey) practice variations of the twin track model. Following recent changes in SOE ownership arrangements in Greece, this country can be categorised as having a hybrid model with elements of a twin track structure.
- ***Decentralised ownership with or without co-ordination.*** A total of 9 countries surveyed for the report exercise the ownership rights over most of their commercial SOEs through line ministries. A majority of these (six countries) have created co-ordination agencies to ensure that ownership decisions (or some of them) are carried out on a whole-of-government basis. The actual strength of these co-ordinating bodies varies significantly. For example, Israel’s Government Companies Authority is empowered to play a significant role in influencing line ministers’ decisions, whereas the newly created co-ordination agencies of Latvia and Lithuania still appear small and weakly resourced. The three countries without a formal co-ordinating function (Argentina, Colombia and Mexico) rely on national comptrollers or state audit bodies to exercise a degree of ex-post control.

The direction of change since approximately 2000 has clearly been toward greater centralisation of the ownership function, at least with regards to commercially oriented state-owned enterprises (Figure 2). To some extent this seems to have been a result of shrinking SOE portfolios in many countries, but it also reflects a desire to obtain a better separation of ownership and regulation – especially as the sectors in which SOEs are found have become subject to greater competition from private firms. During this period no less than 9 countries have centralised their ownership function. Two of these (France and Korea) previously practiced dual ownership, whereas the other 7 (Chile, China, Finland, Hungary, Slovenia, South Africa and Russia) have moved directly from decentralised to central ownership models. Finally, one country (Belgium) has shifted from decentralised ownership to the twin track model.

**Figure 3. Status and developments of ownership functions since 2000**



As indicated above, the ownership of SOEs with largely public policy objectives is in most cases not carried out by central ownership structures. Since public policy objectives can be handed to the SOEs either via instructions from the ownership function or in the form of sector regulation, this raises additional points about the state’s dual role as an owner and a regulator. At one extreme, if an SOE undertakes an activity that is an “inherent monopoly” then it may be deemed most efficient to “self-regulate” the activity. However, in most cases it is necessary to obtain (1) a clear delineation of public policy objectives; and (2) independent regulation conducted in the general public interest. Consistent with the Guidelines, most countries rely on legislation (and sometimes subordinate regulation) to regulate the public policy objectives of SOEs. This is an important point because it limits the scope for “hidden politicisation” exercised in the form of *ad-hoc* action by the sector regulators. In practice, however, for this type of SOE there will always be grey zones between the roles of owners and regulators, and the extent to which outside intervention in the activities of the SOEs is value creating or destroying.

In conclusion, the recommendations regarding SOE ownership laid down in the OECD Guidelines on Corporate Governance of State-Owned Enterprises have been put in the practice – fully or, in many cases, partially – in a growing number of countries. This confirms this instrument’s principal role as a trend-setter for reform. As mentioned in an earlier chapter the Guidelines are set at a high level of aspiration, and few if any countries have fully implemented them. However, OECD research consistently shows that as the ownership of SOEs grows more professional, and the companies themselves operates in a more commercial and regulated environment, national reform processes gravitate toward the international consensus that is embodied by the Guidelines.

## State ownership function as a prerequisite for SOE reform process

*Tran Tho Hai, Director of General Policy Division, Corporate Finance Department, Ministry of Finance, Vietnam*

In Viet Nam, state-owned enterprises (SOEs) play an important role and cover most of business areas in the economy (electricity, cement, construction, power, petrol, telecommunication, shipbuilding, coal and mineral). They also have a close relationship with the government. Many SOEs are overleveraged and/or have invested in industries affected by the economic downturn (e.g., Vietnam Shipbuilding Corporation and Viet Nam Marine Transportation Corporation). These need to be subject to downsizing or consolidation. Other SOEs (e.g., Army Telecommunication Corporation, Viet Nam Rubber Corporation and Viet Nam Petro Corporation) are highly profitable with low debt, which could be due to their monopolistic status. Others do not earn a market return due to their social mission (e.g., Viet Nam Electricity Corporation). However, business effectiveness of SOEs is not sufficient: 30/85 state corporation had rate of debts on total assets greater than 3; and 7/85 state corporation had rate of debts on total assets greater than 10. Total debt of SOEs is 50.4 billion USD while their own capital is 39.5 billion USD. This implies that there may be a high potential risk. In recent years, the government has deployed many policies to innovate SOEs. One of its strategic solutions is to define and strengthen its state ownership function.

In order to innovate SOE management mechanism and operation effectiveness, the government promulgated the Decree 99/2012/ND-CP about allocation of rights, responsibilities and obligations of state ownership in SOEs. According to the Decree 99, allocation of rights, responsibilities and obligations is focused on three groups of SOEs: i) an SOE of which 100% of its chartered capital is owned by the state; ii) an SOE of which 50% of its chartered capital is owned by the state; and iii) an SOE of which less than 50% its chartered capital is owned by the state. The SOEs of which its chartered capital is owned 100% by the State play an especially important role. They include Petro Vietnam (PVN), Vietnam Energy Corporation (EVN), Vietnam Telecommunication (VNPT) and Vietnam Coal and Mineral Corporation (TKV). Allocation of state ownership rights, responsibilities and obligations is conducted thoroughly and closely. There are clear assignments and classifications among management entities at four levels:

- The government sets up a full legal foundation to implement state ownership rights and responsibilities: establishment and structure organization of SOEs, nomination of board of directors, financial management rule, salary and recruitment procedure, supervision, control, detection mechanism, financial report publication and sample regulations.
- The Prime Minister directly holds four important rights relating to long-term strategic decision and organization mechanism. They include decisions on establishment, chartered capital, five – year operation, investment and development, and chairman nomination.
- Functional ministries are superior to SOE management boards with two main responsibilities: suggestion on Prime Minister's responsibilities, direct implementation of remaining state ownership rights and responsibilities (nomination of CEO and board member, approval of annual business and operation plans as well as salary mechanism for superior position). Functional ministries have highest responsibilities for business operation of SOEs, effective use of capital and legislation execution.
- Board of directors or chairmen are direct representatives of state ownership in SOEs. They are assigned to carry out two groups of rights and responsibilities: i) to directly implement plans approved and decided by ownership entities; ii) and to directly implement some rights and responsibilities assigned by ownership entities such as nomination.

For SOEs of which more than 50% of its chartered capital is owned by the State, the state holds a control right. State ownership function is implemented through state capital representations. For

capitalized corporations, it is similar to SOEs of which 100% of its chartered capital is owned by the state. However, Functional ministries have more rights and responsibilities such as nomination for capital representation as well as salary and benefit for board of directors. For other SOEs which are directly under the functional ministries, functional ministries nominate capital representations and carry out full rights and responsibilities of state ownership through them. Functional ministries make all decisions for important issues. For example, the State Bank of Vietnam (SBV) holds more than 50% of chartered capital of biggest banks and plays a role of state ownership and implements all related rights and responsibilities. For SOEs of which less than 50% of its chartered capital is owned by the State, the final and important plans and decisions depend on structure of chartered capital (other shareholder's capital ratio).

In Viet Nam, there seems to be troubles and contradictions in its SOE system:

- The state ownership function does not seem to be separated from operation activities. Functional ministries play both two roles which is state management of all enterprises in economy and state ownership representation only for SOEs. It may cause duplications.
- There seems to be a confusion over a management role between functional ministries and board of directors (including representatives nominated by ministries), especially regarding planning and human resource operation.
- The state ownership function through Board of Management Member has not ensured the integrity. It may be confounded between ministry and board of director.
- There seems to be an abuse of power in management board. The management board seems to directly influence business operation activity or take decisions that bring benefits for themselves.
- The role and function of supervisory board is not clear and effective. On the other hand, supervisory board has not sufficiently supported the SOE integrity.

In my opinion, solutions to improve implementation of state ownership of SOEs are:

- To clearly separate ministry functions: the state ownership and state administration.
- To restructure all SOEs operating under Enterprise Law (using other models).
- To set up a complete mechanism in which a management role of board member is assigned clearly so that it can be directly responsible for business activities in order to enhance the integrity in SOEs.
- To establish a governmental authority specializing in implementing state ownership function in all SOEs including State Capital Investment Corporation (SCIC). The organization should not be a state administration agency. Its role could include defining implementation of state ownership function, coordinating with variable resources (audit, investment) and suggesting solutions to the government.

## SOE Performance Evaluation in Asia: Closing Gaps between System and Reality

*Dr. Hanjun Park, Head, SOE Evaluation Research Team, Korea Institute of Public Finance (KIPF)*

It is well-known that state-owned enterprises (SOEs) have been a primary driving force to promote national economic growth in many countries in Asian region. SOEs are engaged in the provision of essential infrastructure, public goods and related services which are vital to the competitiveness of the economy (e.g. energy, electricity, gas, etc.).

While it is impossible not to recognize significant contributions of SOEs to national economies, experts have been pointing out problems rising from complexity and uncertainty of their supervision and responsibility structure. In an effort to overcome this, an increasing number of Asian countries have started to measure performance of SOEs and formalize performance evaluation systems in SOEs. SOE performance evaluation and management is becoming a meaningful policy tool to maximize value and economic contribution of SOEs through enhancing performance and management efficiency of SOEs.

According to the survey findings from the 2015 OECD Asian Network project presented in the *Global Network Meeting of Corporate Governance of State-Owned Enterprises* in Mexico City in June 2016, most countries in Asian region have adopted performance evaluation system for SOEs in place although its level of sophistication varies across the region. Nine out of 11 surveyed countries have adopted SOE performance evaluation and monitoring systems. Some countries including Bhutan, India, the Philippines and Korea have been managing performance evaluation system by making use of performance contracts or memorandum of understanding.

Many countries in Asia have also adopted structured systems of performance evaluation and in some cases linking SOE performance outcomes to executive remuneration and incentives. Among the countries that have established performance evaluation systems, all of them evaluate financial performance through quantitative indicators, while some of them also use qualitative indicators to measure financial performance. There are also many countries that use a range of indicators to measure SOEs' non-financial performance, especially in countries where SOEs have public policy objectives (Table 1).

In the early stage of economic development, business objectives can be reached thanks to rather clear definition of main responsibilities of SOEs and young vitality of organisations. However, as the economy matures and organisations become larger, a country needs an SOE monitoring system that can prevent and reduce organizational inertia and inefficiency. From this perspective, for advanced and developing countries alike, establishing SOE performance evaluation and management system can be a valuable policy tool that could enhance competitiveness of national economies as well as public confidence, in line with philosophy of the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*.

Despite such an institutional advantage, there has been a lot of discussion regarding issues and limits of SOE performance management and evaluation system. The most essential point is to establish validity and reliability of SOE performance evaluation management models and their indicator systems. In other words, it is important to secure objectivity of evaluation management system by not subjecting performance indicators and performance results to subjective interpretations or applications depending on perspective or a specific situation of an evaluator.

**Table 2. Examples of performance evaluation indicators used in Asia**

	Quantitative	Qualitative
<b>Financial</b>	<ul style="list-style-type: none"> <li>• Net interest margin (Bhutan)</li> <li>• Economic value added (China)</li> <li>• Net profit (India)</li> <li>• Financial ratios (Indonesia)</li> <li>• Labour productivity (Korea)</li> <li>• Return on investment (Philippines)</li> </ul>	<ul style="list-style-type: none"> <li>• “Policy directed activities” (Bhutan)</li> <li>• Quality of risk management (Indonesia)</li> <li>• Transparency of budgetary practices (Korea)</li> </ul>
<b>Non-financial</b>	<ul style="list-style-type: none"> <li>• Customer satisfaction index (Bhutan)</li> <li>• Number of new products (China)</li> <li>• Project cost overrun (India)</li> <li>• Number of corporate events (India)</li> <li>• Achievement of “core business targets” (Korea)</li> <li>• Percentage of beneficiaries served (Philippines)</li> </ul>	<ul style="list-style-type: none"> <li>• Quality of corporate governance (Bhutan)</li> <li>• Commitment to corporate social responsibility (India)</li> <li>• Timely submission of reports to regulators (Indonesia)</li> <li>• Development of a gender equality policy (Korea)</li> <li>• Certifications indicating compliance with international standards (Philippines)</li> </ul>

Source: State-Owned Enterprises in Asia: National Practices for Performance Evaluation and Management, OECD Publishing, Paris, <https://www.oecd.org/corporate/SOEs-Asia-Performance-Evaluation-Management.pdf>. The table draws on the 2016 OECD Questionnaire responses from contributing countries. Note: Singapore reportedly uses performance evaluation indicators in all of the above areas but did not provide specific examples to include in the table.

The actual management performance and results of performance evaluation need to be synchronized. This cannot be achieved by simply expanding the use of quantitative evaluation system. Establishing a sophisticated institutional system could be a good starting point. However, it is equally important to mobilise efforts to avoid prejudicial decisions and errors that could occur in the management processes of such institutional systems. Also, in order to increase public acceptance of evaluation results and maximize SOE’s efforts for management improvement, objectivity and fairness of evaluation process need not be distorted. For this, it is necessary to strengthen professionalism of evaluation system and come up with a tailored evaluation system that reflect characteristic of each SOE.

Also, evaluating all SOEs with a single standard can compromise accuracy of evaluations by denying differences in regulatory environment that they are faced with according to characteristics of industry that the companies belong to. At micro level, policy makers could also face technical problems such as establishing an evaluation cycle. Annual performance evaluation and management system which has been the most popular form – has problems of placing a greater focus on short-term outcomes instead of mid and long-term strategy and vision.

Despite an extensive discussion on various limits and issues of performance management systems that are being observed, it is difficult to deny that there is no clear cut solution for these problems. Also, often, information asymmetry between SOEs and state ownership entities lower quality of performance evaluation and management system. Despite all this, performance evaluation and management system is still a very valuable institutional system.

Above all, what is most important is that while SOE performance evaluation and management is a policy tool to strengthen competitiveness of SOEs and generate better results, it should ultimately be conducted in parallel with reform of governance structure as well as management of public institutions according to the SOE Guidelines. SOEs should be allowed to make voluntary decisions on management and their relevant responsibility could be emphasized through performance evaluation and management. Otherwise, the ownership entity cannot hold SOEs accountable for the evaluation results even in that case of being identified as low performing ones.

Ultimately, in order to establish an effective performance evaluation and management system and enhance competitiveness and performance of SOEs, autonomy of SOEs needs to be strengthened through i) construction of sophisticated institutional system; ii) management that fits institutional objectives ; and iii) enhanced validity of institutional system.

## Corporate Governance Practices on Boards of Directors of State-Owned Enterprises in Latin America

*Andres Oneto, Principal Executive – Productive and Financial Development Direction – CAF, Latin American Development Bank*

### *Relevance of State-Owned Enterprises and its Corporate Governance in Latin America*

State-Owned Enterprises (SOEs) in Latin America have an enormous economic and social impact on the region, both as critical stakeholders in the provision of various public services and as key players in sectors that are considered strategic by various governments. They also serve multiple roles as owners, regulators and users of companies. Furthermore, in some cases, they contribute to the development of the local capital markets, as some of these companies actively participate through debt issuance or even equity participation on local and international stock markets. Likewise, the state firms that have been able to extend their operations into the international sphere in order to become “*Multilatinas*” are not few in number.

In this regard, governments, at national, state and municipal level, must aim to ensure the sustainability and maximize the generation of both economic and social value of these enterprises, which have historically rendered poor results. By having the commitment to implement good corporate governance practices, States provide the basic framework to improve SOEs management. This framework includes strengthening the governing bodies that oversee and control companies (shareholders or owner meetings, board and management, internal monitoring structures) while defining clear rules of engagement between the different actors, increasing the transparency and accountability towards stakeholders, as well as shielding it from political interference.

### *CAF Guidelines on Corporate Governance of State-Owned Enterprises*

CAF – Development Bank of Latin America is an established promoter of corporate governance in SOEs in the region and also leads initiatives for the implementation of good corporate governance practices. CAF’s “Guidelines for Good Corporate Governance of State Enterprises” (2010), based on the OECD’s Guidelines for SOEs, have been a step forward in this regard, as it establishes practices that go beyond local boundaries, to be implemented effectively at a regional level.

Within that framework, last year CAF published a study “Transparency in the Corporate Governance of State-Owned Enterprises in Latin America(2015)”. A **Corporate Governance Transparency Index** was introduced in this investigation based on public information available on the websites of more than 100 SOEs from 13 countries in the region. The index served as a platform to examine the mechanisms by which these companies report the information associated with their corporate governance structure and enabled the identification of some of the most significant governance shortcomings of these companies. Among the conclusions, it is worth highlighting that one of the greatest deficiencies in terms of SOEs’ corporate governance is related to the mechanisms used in nominating and appointing the Board of Directors.

### *Study on Board Function and Dynamics on Latin American State-Owned Enterprises*

Taking into account the above, CAF with the support of Governance Consultants, is currently finalizing a study intended to analyze the structure and operation of the boards of directors of more than forty representative SOEs of Latin America. The main objective is to present practical recommendations to improve the effectiveness of boards as well as to generate proposals on public policies and best practices. The first stage of this study included gathering information through a questionnaire sent to SOEs throughout the region to be completed voluntarily. Topics analyzed included:

- Composition of the board and directors’ profile

- Boards meetings operation
- Board committees
- Induction and training
- Evaluation methodologies and directors' remuneration

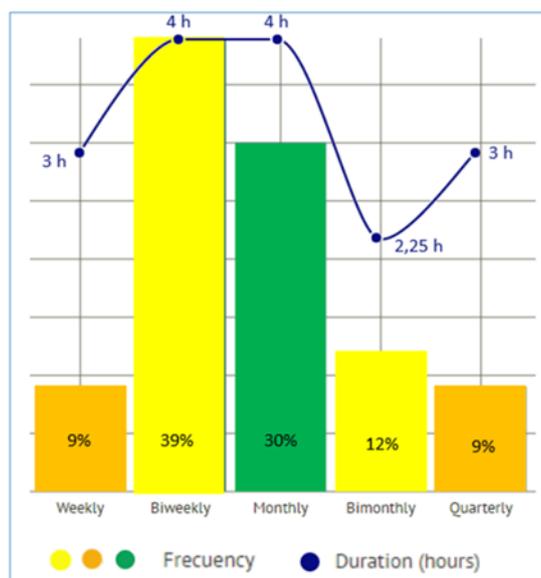
The study is currently in the final phase and will be published during the last quarter of 2016.

**Preliminary Results:**

Regarding the **composition of the boards**, according to the results of the survey, SOEs have an average of 6 members. Also, less than half of these boards incorporate independent members and only 15% have its Chairman elected among the independent members. In many cases the position is assigned by local regulation, to a public servant such as a Minister, Mayor or a top government official. It is also important to highlight that board members who are public servants have shorter terms (on average less than 4 years) than independent members (on average more than 4 years) as their nomination is linked to their capacity as a government official.

When analyzing the results regarding the **length and frequency** of board meetings, as seen on Figure 1, almost half of the boards meet weekly or biweekly with an average length of 3-4 hours per meeting. On the other extreme, more than a fifth of them have bimonthly or quarterly meetings with an average length of 2-3 hours per meeting. On the first case, due to the time dedicated it seems that the boards are getting too involved in SOEs operation, which may generate a co-management risk. In the latter, with a low participation, they may not be fulfilling all of their duties. Although time dedicated to board meetings is not a guarantee of the quality of these meetings, it is still a proxy of the commitment of board members. In that sense, only 30% of boards have, what we consider, an adequate balance in terms of annual meetings (once a month) and its average length (4 hours), for this size and type of companies they are working for.

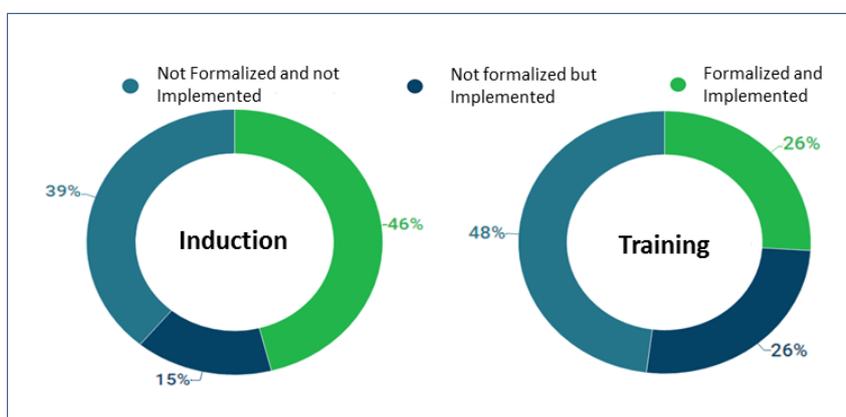
**Figure 4. Length and frequency of board meetings**



In relation to **board committees**, three quarters of SOEs report to have some type of committee, being the most common the Audit Committee (69%). It is also important to highlight that 28% of SOEs reported to have a Corporate Governance Committee. As a relevant fact, companies have reported that these committees have a predominant role of decision-making and also that of an advisory body of the board.

As for **induction and training** of new board members, figure 2 shows that SOEs usually provide these practices, though in a significant number of cases, they are not part of a formal policy. Topics included in induction processes are basically: (i) Perspectives of the sector to which the company appertains; (ii) Corporate documents; and (iii) Board operation. Training on the other hand, focuses on strategy, corporate governance and risk & control. However, no SOE has reported training on financial statement analysis, which is a relevant topic, considering that most boards have an Audit Committee.

**Figure 5. Induction and training of board members**



Finally, when examining the results on **evaluation methodologies and directors remuneration** two thirds of SOEs report that they perform some sort of evaluation, mainly as an annual self-evaluation. Nevertheless, only a third of them use this information as an input in their nomination process. As for remuneration, a per meeting payment is the most recurrent system used (over 70% of SOEs). Two issues that stand out are that in most SOEs, board members who participate in committees do not receive an additional remuneration and their remuneration per meeting is substantially below market value.

### ***Final remarks***

The reports on the questionnaire have provided significant and relevant information that will generate recommendations to improve board effectiveness. Issues that have been highlighted include (i) the relevance of incorporating independent members, who contribute with knowledge and experience, should have a longer presence in the board and their participation on committees can add value in the decision making; (ii) the operation of meetings could be more efficient both in terms of length and frequency in order to exercise its functions of strategic guidance, supervision and control of senior management; (iii) induction and training are key elements to ensure board members awareness of their rights and duties; and (iv) providing an adequate remuneration, aligned to their level of responsibilities and to an evaluation methodology, can improve their level of commitment and strengthen the structure of the board.

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## Malaysia: A case for better government supervision of SOEs

*Wan Saiful Wan Jan, Chief Executive, Institute for Democracy and Economic Affairs (IDEAS), Malaysia*

Malaysia is a country that has been dominated by government intervention in the economy, especially since the second Prime Minister Abdul Razak Hussein introduced his New Economic Policy (NEP). The NEP is an attempt to socially reengineer society, restructuring the population so that the different ethnic groups in the country can have a more equitable share of the economic cake.

One of the implications of the NEP is the growth of state-owned enterprises (SOEs) as an important player in the economy. The SOEs were mandated with mixed social, political and economic purposes. As an enterprise they have to be profitable. But as agents of socio-political agenda, many of them are tasked with the responsibility to assist in implementing the government's social engineering exercise.

The total number of SOEs that exist in Malaysia today is unknown. The monitoring mechanism almost does not exist and the amount of available data is very limited. It is known that there are seven major SOEs called the 'Government-Linked Investment Companies' (GLICs). These are the SOEs that are owned by the federal government, mandated to invest some or all of their funds into another group of SOEs called the 'Government Linked Companies' (GLC).

The GLCs are SOEs in which the Malaysian federal government has a direct controlling stake. Unlike the GLICs whose mandate is to invest, the GLCs run commercial activities which is their primary purpose. If we count the number of companies in which the seven GLICs have direct shares in, there are a total of 427 of them in the country.

But that is about all that we know. There are hundreds and perhaps thousands more SOEs owned at sub-national level but no one has been able to give an exact number of how many such companies there are. And, since we can't even identify them fully, it is extremely difficult if not impossible to know the performance of these SOEs.

The current Malaysian Prime Minister, Najib Razak, is the son of Abdul Razak Hussein. While the latter took the first step that led to government domination of the Malaysian economy and the flourishing of SOEs, his son realised that the government's role in the economy needs to be curbed.

In the early years of Najib's premiership, he introduced the New Economic Model (NEM) as a new policy to push Malaysia into becoming a high income nation.

The NEM was explicit in its demand for the government's role in business to be reduced. The policy document unabashedly states that dominant state participation in the economy through large direct public investment including through SOEs is an "old approach". In its place, the "new approach" envisaged by the NEM is one that is led by the private sector, through the promotion of competition to revive private investment and market dynamism. The NEM further argues that domination of SOEs is "unlikely to provide the dynamism needed to spur the country to developed country status" because "their mere presence may inhibit expansion of new firms."

The Malaysian government claims that it has successfully achieved all their targets to reduce the government's role in business. But when this author checked the Malaysian government's claim, it was found that it is not completely true. Our calculation, published in a paper entitled "Lesser government in business: an unfulfilled promise?" (IDEAS, April 2016) shows that the government's share in the Kuala Lumpur Composite Index (KLIC) - which is composed of the 30 largest companies on the Malaysian stock exchange by market capitalisation - increased from 43.7% to 47.1%, indicating that government control of the largest companies in Malaysia has actually increased. On top of that, the Malaysian government has also increased its investments in private companies as

compared to its disposals. Our calculation in the same study shows that the total SOE acquisition value of MYR 51.7 billion (USD 12.9 billion) dwarfs the total disposals at MYR 29.5 billion (USD 7.36 billion).

This situation may not be problematic if the governance of Malaysian SOEs is good and transparent. The problem is we do not know how well they are governed. For example, despite the prevalence of SOEs in the Malaysian economy, the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* is not known to most of the public in the country. Also, efforts to improve corporate governance of SOEs has never covered all the SOEs that exist.

However it would be wrong to accuse the Malaysian government of complete neglect. The government has indeed acknowledged that steps need to be taken to improve the governance and performance of Malaysian SOEs. It is important to recognise and commend the steps that have been taken by them. The most significant step was the formation of the Putrajaya Committee on GLC High Performance (PCG) in May 2004. The purpose of this committee was to transform Malaysia's top 20 GLCs into high-performing entities.

The PCG produced various guidelines for Malaysian SOEs, including The Green Book: Enhancing Board Effectiveness (2006), The Blue Book: Intensifying Performance (2005), and The Red Book: Procurement Guidelines and Best Practices (2005). These are important publications that continue to be relevant until today.

And under the stewardship of the PCG, the SOEs that they supervised produced some very good results. Between 2004 and 2015, the selected SOEs saw total shareholder return grew 11.1% per annum, their market capitalisation grew 2.9 times from MYR 134 billion (USD 33.5 billion) to MYR 386 billion (USD 96.5 billion), total net profit increased by RM16.3 billion (USD 4.075 billion) or equivalent to an increase of about 10.2% per annum, total tax contributions was MYR 63.5 billion (USD 15.875 billion), and total revenue from overseas grew from 28% to 34%. The PCG clearly had made positive contribution to the performance of the Malaysian SOEs that participated in the programme.

But the PCG does not cover all SOEs in the country. As stated earlier, it only covers the top 20 SOEs, and these SOEs are already performing better than the rest anyway. Hundreds, if not, thousands of others are not in the programme as no one knows how many SOEs there are in Malaysia today. This limited scope has contributed to one of the biggest failures of SOE governance ever seen in the country's history, as exemplified by the case of 1 Malaysia Development Berhad (1MDB).

The story of 1MDB started in September 2009 when the SOE was incorporated as a company owned by the federal government via its GLIC holding company, the Minister of Finance Inc. 1MDB was set up with an ambitious aim of channelling funds from sovereign wealth funds in the Middle East, China and elsewhere into Malaysia, as long-term investments to commercialise new ideas.

The business model employed by 1MDB is heavily driven by its ability to borrow money. This debt-driven strategy led to the company accumulating almost MYR42 billion (USD10.5 billion) of borrowings. For a country whose GDP sits at around USD300 billion, the debt level is very significant for one company to hold. Bearing in mind that a portion of that debt is guaranteed by the Malaysian government, the performance of this SOE has the potential to impact Malaysia's economy as a whole.

1MDB has made international headlines for all the wrong reasons. There have been various allegations of wrongdoings and scandals. At the time of writing this essay, it has been reported that authorities in nine other countries – the US, the UK, Luxemburg, Switzerland, UAE, Thailand, Hong Kong, Singapore and Australia - are investigating 1MDB or companies and individuals linked to the SOE for allegations of financial irregularities and money laundering.

The Malaysian Parliament, through its Public Accounts Committee (PAC), conducted its own investigation too. The findings on governance failures of the company are astonishing. The PAC investigation found that the CEO of 1MDB repeatedly ignored direct orders from the Board of Directors. Yet no action was taken by the Board on him. There was one case where the CEO defied the instruction of the Board on the basis that the Chairman of the Advisory Board disagreed with the Board's decision.

This highlights the confusion in the governance structure. The most powerful person in the country – the Prime Minister – sits in a position that implies he does not hold the burden of legal and fiduciary responsibilities. But he is clearly in charge as it is unimaginable that any of the Board member would be willing to defy him.

This confusing governance structure makes 1MDB a classic case of governance failure. No one is willing to question the 'advice' of the Chairman of the Advisory Board because he is also the Prime Minister of the country. Unsurprisingly, the PAC made a strong recommendation for the whole structure of Advisory Board to be abolished and that the Prime Minister should be removed from the governance of the company altogether.

The saga of 1MDB still continues at the time of writing this essay. In July 2016 the US Department of Justice filed a civil forfeiture complaint seeking the forfeiture of assets worth more than USD1 billion, allegedly linked to an international conspiracy to launder funds misappropriated from 1MDB. The complaint also alleged that 1MDB officials and their associates misappropriated more than USD3 billion in total. This is now the largest action ever brought to court under the US' Kleptocracy Asset Recovery Initiative and a huge blow to the reputation of Prime Minister Najib.

The experience of Malaysia shows how important it is to ensure SOEs must be well governed, and any potential conflict of political interest must be removed from the beginning. If the founders of 1MDB were to read the OECD Guidelines, they would have realised that there is an explicit need to define the state's role as an owner, and that "the state should let SOE boards exercise their responsibilities and should respect their independence". When such a clear and concise guidance is ignored, the repercussion is significant.

Malaysia is still processing the lessons from the 1MDB saga. It is not known if the weak governance seen in 1MDB is an isolated case or a widespread phenomenon. The 1MDB case is something that researchers can now study because it was one that was "caught". As stated at the beginning of this essay, the problem in Malaysia is that we do not even know how many SOEs there actually are in the country, let alone their performance and state of governance. The full and proper picture can only be known when the government gets more serious in documenting and monitoring all the SOEs in the country.

## Transparency and disclosure measures for state-owned enterprises

*Seungju Baek, Senior Policy Analyst, Corporate Affairs Division, Directorate for Financial and Enterprise Affairs, OECD*

The internationally-agreed standard *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (“SOE Guidelines”) espouse the principle that SOEs should be as transparent towards the general public as a publicly listed corporation is expected to be towards its shareholders. The SOE Guidelines provide recommendations specific to ameliorating transparency and disclosure, at both the company level and the level of the state, to enhance accountability for SOE performance. They call for SOEs to keep accounts in accordance with internationally-agreed accounting standards and to subject their financial statements to an independent external audit, based on relevant internationally accepted auditing standards. Effective internal audit procedures should also be in place, overseen by an audit committee within the board of directors or its functional equivalent.

The SOE Guidelines also requires the state as an owner of commercial enterprises to prepare periodic comprehensive reports on the activities and performance of SOEs and evolutions over time. It should publish this information annually in the form of aggregate reports that cover all SOEs, which will serve as a key disclosure tool directed to the relevant stakeholders, the general public, the legislature and the media. Aggregate reports developed by the state could primarily focus on financial performance and the value of the SOEs, but should also include information on performance related to key non-financial indicators – such as enunciated by the state’s ownership policy – as well as the results of performance reviews.

To examine to what extent countries have implemented OECD recommendations on disclosure and transparency, the OECD has recently conducted a stocktaking study examining national practices in 12 countries<sup>11</sup>. According to the study, a key challenge for governments is putting in place an effective legal and regulatory framework for implementing adequate disclosure and aggregate reporting practices for state-owned enterprises. SOE disclosure and reporting practices differ significantly among the countries<sup>12</sup> that were reviewed in the study. Less than half of the surveyed countries produce an annual aggregate report on SOEs at the state level. In addition, among the countries with regular aggregate reporting, the quality and credibility of material financial and non-financial information varies significantly across countries. In many cases, inconsistent legal frameworks, a lack of an ownership policy and a clear strategy on SOE reforms create confusion and subject SOEs to varying degrees of disclosure.

The diversity reflects a number of factors, including (i) the institutional arrangements for SOE reporting within member countries, (ii) the different legislative, regulatory or policy requirements of the countries relevant to the SOE sector, and (iii) the quality of national accounting and auditing standards. In particular, governments with decentralised ownership functions have resulted in both weak enforcement of public corporate disclosure and poor quality of data. Another important question is the degree of corporatisation of government business activities and the extent to which commercial and non-commercial activities are structurally separated. Often, SOEs that are not fully corporatised are subject to weak disclosure standards. Often they are not subject to the same auditing, accounting and reporting requirements as private incorporated companies, because the government does not impose similarly rigorous requirements on enterprises that operate closely to the state. Incorporating public entities that have a commercial activity and operate in competitive, open markets, as normal corporate entities enhances transparency. Countries where the majority of SOEs are fully corporatised are more likely to have strong disclosure requirements and practices at the company level.

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<sup>11</sup> This paper on “Transparency and disclosure measures for state-owned enterprises (SOEs): Stocktaking of national practices” will be available on the OECD website in fall 2016.

<sup>12</sup> The following twelve countries provided detailed information: Argentina, Brazil, India, Korea, Lithuania, Malaysia, Mexico, Peru, Paraguay, Philippines, Sweden and Viet Nam.

In consequence, disclosure improvements should take place in combination with other equally important reforms, such as harmonising the legal forms under which SOEs operate to enhance overall transparency, completing corporatisation of those that undertake primarily commercial activities and improving regulatory frameworks on anti-corruption and business integrity. Also, reporting systems should be put in place that allow an authority independent of the government to regularly monitor, audit and assess SOE performance. To provide more details, policy makers could consider the following issues when developing and implementing transparency and disclosure measures of SOEs.

### ***Centralisation of the ownership function***

The SOE Guidelines posit that centralisation of the ownership function can be a strong driver in the development of aggregate reporting on state ownership. Centralisation of the ownership function can help reinforce and mobilise relevant competencies as it requires organising pools of experts on key matters, such as financial reporting or board nomination.

### ***Good practices for aggregate reporting and quality of SOE financial reporting***

As the SOE Guidelines point out, governments can significantly improve transparency and the quality of financial reporting by SOEs through the annual publication of an aggregate report that covers all SOEs. Moreover, good practice calls for the use of web-based communications to facilitate access by the general public. This reporting could be developed in a way that provides the public and the media with a comprehensive view of the overall financial performance and evolution of SOEs.

### ***Robust audit system***

In many cases, the quality and credibility of SOEs' disclosure is limited by lack of strong internal control systems which are important for monitoring compliance with laws and regulations and reporting any irregularities to the board. Moreover, in some cases SOEs' financial statements are not subject to an independent external audit, which is another important tool for detecting irregular transactions. SOEs are often subject to different audits, including external audits and state audits, of which respective roles are not always clearly defined and which in some cases overlap with each other. Therefore, establishing a robust audit system could require a reconsideration of the respective roles and focus of internal, state and external audits as well as SOEs' degree of corporatisation and their independence from the general government.

### ***Listing and corporatisation***

Listed SOEs are more likely to respect high standards of disclosure and have enhanced transparency as they are subject to stock market listing (and maintenance) requirements and securities laws. Their accounting standards are required to follow internationally agreed methods and their financial statements are subject to external audit. Wholly-owned SOEs could potentially have weaker incentives to monitor or disclose incomplete information due to lack of separation of accounts.

Even where the listing of an SOE is not feasible, policy makers could streamline government businesses either in terms of corporate form or the organisation of value chains. Harmonisation of corporate forms could start with SOEs that pursue largely commercial objectives. Governments could aim to approximate the legal and regulatory frameworks of SOEs to those applying to private companies. This means developing similar disclosure requirements as well as external and internal controls to ensure that its management act in the best interests of the company and its owners.

## Definition and reform of state-owned enterprises in Viet Nam

*Nguyen Phuong Lan, Director, Division of SOE Reform, Agency for Enterprise Development, Ministry of Planning and Investment, Viet Nam*

### **1. Definition of SOE in Viet Nam**

Before 1995, organization, management and operation of SOEs in Viet Nam were regulated by different legal documents issued by the Government or Ministries. In 1995, the first Law on SOEs was enacted. Based on the Law, SOEs were defined as an economic organization, which is capitalized, set up, organized and managed by the State. The law also classified SOEs into two categories: (i) state business enterprises which operate on a profit basis and without subsidies; and (ii) state public service enterprises which operate in accordance with social and security policies of the State and are eligible for subsidies.

The 1995 Law on SOEs was replaced by the 2003 Law on SOEs. According to the new Law, not only enterprises with 100% state capital, but also joint-stock and limited liability companies with dominant state share (higher than 50%) are classified as SOEs. However, the Law on SOEs only applied to enterprises with 100% state capital. Other kinds of SOEs that are joint stock or limited liability companies have been regulated by the 1999 Law on Enterprises.

In 2005, the issuance of the new Law on Enterprises was a landmark in the history of Vietnamese economic policy. This is the Law that unified three different laws: the Law on state-owned enterprises, the Law on foreign direct investment and the law on private enterprises.

According to the 2005 Law on Enterprises, state-owned enterprises were defined as enterprises of which the State owns over 50% of charter capital. The corporate forms of SOEs included: one-member limited liability company (i.e. an SOE of which its capital is 100% owned by the State); joint stock company and limited liability company with more than one member (i.e. an SOE of which majority of its share or capital is owned by the State).

In 2014, the new Law on Enterprises was enacted with a new definition of SOEs. According to the new Law, state-owned enterprises are defined as those “fully owned by the State”, instead of “more than 50%” as prescribed previously.

With the new definition of SOE, the scope of SOE sector in Viet Nam shall be narrowed down and joint stock companies that are partly owned by the State must operate on the same legal basis as other private companies and thus cannot receive any preferential treatments from the State owners.

In addition, the 2014 Law on Enterprises also imposes stricter corporate governance requirements on SOEs. According to the Law, SOEs must conduct periodical and extraordinary disclosure of various information. The Chairman of Members’ Council or General Director of an SOE may be dismissed if they do not meet the business target in the approved business plan.

**Table 3. Evolution of legal framework for SOEs in Viet Nam**

Validity period	Name of Law	Scope of application
1995 – 2003	Law on State - owned Enterprises	This is the first law on SOEs in Viet Nam. The law provided an official definition of SOE (State companies are enterprises of which the entire charter capital is owned by the State. They are set up, organizationally managed and operationally registered under the provisions of this Law. The State companies shall be organized in form of independent State companies and General corporations.)  The Law was applied to independent SOEs, General corporations (holding companies) and its member companies.
1999 -2005	Law on Enterprises	This is the first law on enterprises in Viet Nam applied to enterprises that are not covered by the 1995 Law on SOEs.  This Law provides for the establishment, management, organization and operation of the following forms of enterprise: limited liability companies, shareholding companies, partnerships and private enterprises (i.e. companies of private sector).  State-owned enterprises shall, upon being converted into limited liability companies or shareholding companies, be subject to this Law.
2003-2010	Law on State- owned enterprises	The Law was the revision of Law on SOEs of 1995 and was applied for establishment, reorganization, dissolution, ownership conversion, organization of management and operation of State companies;  The Law also regulated the relationships between the owner being the State and representatives of enterprises of which its entire charter capital is owned by the State or its dominant shares are held by the State.
2005-2014	Law on Enterprises (normally referred to as the Common Law on Enterprises)	This Law unified three different laws for SOEs, private enterprises and foreign-invested enterprises in order to set up an equal level playing field for enterprises of all economic sectors.  This Law sets forth provisions on establishment, organizational management and operation of limited liability company, share-holding company, partnership and sole proprietorship (hereinafter referred to as enterprises) belonging to all economic components.
2014-present	Law on Enterprises (replacing 2005 Law on Enterprises)	This Law creates more favourable conditions for business establishment and operation. Under the new Law, SOEs are defined as limited liability companies that are 100% owned by the State.

## ***2. The reform of SOEs in Viet Nam***

Prior to the Doi Moi (Renovation) Policy of economic reform, the SOE sector played a dominant role in the economy as the private sector was not supported and encouraged by the Government. However, when a serious economic crisis began at the end of 1970s, a large number of SOEs experienced difficulties and incurred losses. The issue of the SOE sector's effectiveness became the Government's major concern. Therefore, when the economy was gradually transformed from a centrally planned system to a market-oriented one, SOEs were also given more autonomy to make and implement their own business plans in accordance with guidelines on socio-economic development set by the Government. Along with this, there was a recognition of the private sector and the relevant legal framework was improved in order to provide an equal treatment and encourage development of all sectors.

During 1990s, SOE reform was implemented mainly through a gradual reduction in subsidies for SOEs and restructuring measures. From 1990 to 2001, the total number of SOEs was halved from 12,000 to roughly 6,000 with a sharpest decline in the number of local SOEs. From 2011 to 2015, the speed of reform was slower due to economic recession. However, most of equitized SOEs in this period were generally of a larger scale and operated in important economic sectors such as airlines, seaports, airports, constructions, etc.

**Table 4. Number of 100% state-owned enterprises over 1990-2015 period**

Year	Number of 100% state-owned enterprises
1990	12,000
2001	6,000
2011	1,309
2015	800

Source: Compiled from reports of the National Steering Committee on Enterprise Renovation and Development

There are various measures for SOE restructuring and reform in Viet Nam, including: equitizing, merging, liquidating, selling, contracting out and assigning the employees. Among these measures, equitization is the most popular measure, accounting for around 69%. Mergers account for 9%. Assignment, sale or lease account for nearly 7%.

Decision on industries and sectors that should remain under the State ownership in Viet Nam is based on the outlook and objectives of SOE's roles in the national economy, which are elaborated as the following: (i) Ensuring a strategic objective of national security and social safety; (ii) Acting as a tool to make good for market failures or shortcomings (for instance, participating in economic sectors that private companies are not able to or do not want to participate in; and where no market or a competitive market is established); (iii) Creating and leading to establish and develop essential economic infrastructure, key industries and sectors to leverage the motivation for economic growth, ensuring social welfare and well-being; (iv) Playing a supporting role for other key tools (such as macro policies) to manipulate the economy when necessary (such as crisis and inflation).

In term of business lines, large state-owned corporations are currently operating in industries that ensure macro balances for the whole economy, specifically, oil and gas, electricity, coal mining, post and telecommunication, petroleum, chemicals, cement, railways and airlines, etc. In order to support the government development strategy, SOEs are investing in remote and difficult areas or business lines that are not profitable and attractive to private sector.

**Table 5. Data of fully owned SOEs (2014)**

Total Assets	139.26 USD billion
State equity	55.32 USD billion
Total revenue	76.67 USD billion
Profit before tax	8.42 USD billion
Contribution to GDP	28%
Employment	1.61 USD million

In 2015, the number of 100% state-owned enterprises and enterprises of which more than 50% of its capital is owned by the State only account for 0.8% of total enterprises (which used to be 45% in 2000), making up the smallest share among the three sectors (state, non-state and foreign direct investment). Regardless of its reduction in number, the SOE sector still provides around 85% of

electricity and petroleum output; 96% of coal output; 90% of telecommunication service; 60% of domestic air transport; 100% of rail transport; 56% of credit and financial services, etc. Moreover, the SOE sector's contribution to GDP still accounts for a significant portion (around 28%), although the Government policies are becoming more and more favourable for development of private sector.

After almost 30 years, there are still many challenges to the SOE reform process in Viet Nam. The number of firms that have been equitized in the last few years is truly impressive but largest SOEs are still in the waiting list. With many reasons, the pace of SOE equitization has slowed considerably. The Government is trying to accelerate the reform speed, on the other hand, seeking for more effective measures to increase SOEs' efficiency and transparency. In the next period, SOE equitization will still be a major policy and more regulation changes will be introduced to promote the process.

### ***3. SOE transparency policies in Viet Nam***

Since 2014, Vietnamese government has enacted some legal documents to require SOEs to regularly disclose their development strategy; 5-year and annual business and investment plans; reports on business results and fulfilment of public and social duties (if any); report on annual restructuring and innovation of the enterprise; report on organizational structure and corporate governance; biannual and annual financial statements; report on the enterprise's wage and bonus regime.

Additionally, SOEs must extraordinarily publish information on any suspension of their business operations; any violations of laws (concluded by authorized agencies); amendment or revocation of the enterprise registration certificate and other licenses in relation to the SOE's operations; the replacement of management personnel; the establishment, dissolution, amalgamation, merger, conversion of subsidiaries; decision on investment, capital decrease, or withdrawal capital in other companies, etc.

As regulated in the Decree, information will be disclosed on the websites of SOEs and its owners. Information of all SOEs will be published on Business Portal of the Ministry of Planning and Investment ([www.business.gov.vn](http://www.business.gov.vn)).

In order to ensure SOEs' compliance, the new regulations also define a range of sanctions in case SOEs do not fulfil their information disclosure duties, i.e. SOEs' managers shall be subject to disciplining, wage reduction or dismissal and criminal penalties imposed by competent authorities.

With the enactment of the new regulations, it is expected to better supervise activities of SOEs, helping them with improving efficiency of their use of state funds, business efficiency and competitiveness.

## Governance structure of the Brazilian Federal State Owned Enterprises – SOEs, focusing on corporate governance practices with a special emphasis on the role of Board of Directors

*Bruno Cirilo Mendonça de Campos, Manager, General Coordination Staff of Corporate Participation, National Treasury Secretariat, Ministry of Finance, Brazil*

Considering the growing recognition of the importance of SOEs' boards as a primary tool for corporate governance improvement and the positive trends that support boards' shift from oversight bodies entrusted with compliance toward driving performance and setting strategy, this paper aims to describe the presentation and later discussions at the meeting of the *Global Network on Corporate Governance of State-Owned Enterprises* held in Mexico City, on June 7<sup>th</sup> and 8<sup>th</sup> of 2016, about the governance structure of the Brazilian Federal State-Owned Enterprises – SOEs, focusing on corporate governance practices with a special emphasis on the role of Board of Directors<sup>13</sup>

Firstly, there were a brief description of the number of SOEs owned by the Federal Government that is responsible for a portfolio of 195 corporate participations, of which, 47 are directly controlled and 91 are subsidiaries of these enterprises. Besides that, 57 are minority corporate participations. These shares are from enterprises that either belongs to one of the 26 states of the federation or private- owned companies.

In addition, there were comments about SOE's main characteristics highlighting that they are present in almost all economic fields, especially in banking, energy and oil. In the financial sector, state-owned banks are responsible for more than 50 percent of total loans and almost 100 percent of long-run loans.

Secondly, in order to make it easier for the audience to understand board's nomination procedures in Brazil, a few words were spent about the OECD's main state ownership models and the Brazilian corporate ownership structure that is based on a tripartite (hybrid) model involving the Ministry of Finance; Budgeting and Company's Line Ministry, underlining its features that influence the way board members are appointed.

Before introducing the topic of board nomination practices, several slides were used to mention about the existence of two theoretical approaches concerning the organization of corporate boards: the Anglo-Saxon one-tier board model and the Continental European two-tier board model.

In the following, the presentation addressed the role of the board of directors, concerning its organization, size, composition and remuneration policy, focusing on the fact that the majority of the Supervisory Board members are appointed by the line (parental) ministry, including the Chairman; one member by the Ministry of Budgeting; one or two by the minority shareholders (when applicable) and one by employees.

As for the Management Board member's nomination, it was explained that the supervisory board is responsible for electing and dismissing its members. However, in fact, the line ministry effectively makes appointments for all the members, leaving the supervisory board only to ratify it.

It was discussed that this procedure may cause distortions concerning authority. The executives chosen to manage the company may not feel that they have to serve the supervisory board as the supervisory board is not directly responsible for their nomination, which can also lead to misalignment between guidance and business objectives.

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<sup>13</sup> The views expressed in this paper are those of the authors and do not necessarily reflect the institutional position of the National Treasury Secretariat of Brazil.

To finish, the challenges facing board of director's appointment procedures and some steps (actions) taken to overcome them were presented. They include the proposition of a Bill to Congress with the objective of establishing minimum requirements for board members nominations.

Concerning the Bill, it has gone through a legislative process and it was enforced on June 30th not only bringing minimum requirements, but also, with the goal of modernizing the management of state-owned companies and avoiding corruption, creating distance from political influences.

This new law enforces the rules regarding bookkeeping, corporate law and financial statements of Comissão de Valores Mobiliários – CVM (Brazilian equivalent to Securities and Exchange Commission) for all SOEs, independently if they are listed. It also requires that state enterprises have their financial statements audited by an external auditor.

Besides that, another action taken by the government was to transform the body from the Budget Ministry responsible for the SOEs from a single department into a Secretary with 3 departments, which enhances its ability to fulfil their goals, raises its status and strengthen its negotiation and commanding power.

The steps taken to improve the nomination process by assuring professionalism, independence and freedom from undue political influence, restraining political nominations and the creation of a Secretary to oversee the governance of SOEs can lead in the future to a more centralized model of SOEs governance with reduction of corruption cases.

## Governance of State Owned Enterprises; how close are we?

*Ashraf Gamal El Din, CEO, Hawkamah Institute for Corporate Governance, UAE*

One must say that the OECD has done an excellent job by releasing its first Corporate Governance Guidelines for State Owned Enterprises (SOEs) in 2005. Since then, the subject became a hot issue globally and in the Middle East and North Africa (MENA) region as well. I was then the head of the Egyptian Institute of Directors and advisor to the Minister of Investment, who then supervised the majority of SOEs in Egypt. It took us a year to develop a national code for SOEs, based on the OECD Guidelines. Although the code was well-written after a comprehensive consultation process, it was not easy to implement. A few years down the road, I can say that the government was not able to implement more than half of the Guidelines. Meanwhile, it is interesting that the Egyptian SOE code has been updated in 2016.

The OECD Global Network Meeting on SOE governance in Mexico City in June 2016 was an excellent opportunity for me to share with the participants the latest developments in the MENA region and also to listen to developments across the world. Throughout the presentations and discussions, on and off the record, I became more sceptical. I am not sure that good governance can really be applied in SOEs. During the two days in Mexico City, it was clear that all countries are trying to put in place good frameworks, and to adhere to the OECD Guidelines. Challenges are visible and different countries have dealt with them differently. But there are still many problems in implementation. Off the record, some of the experts expressed disappointment at the political interference in SOE affairs. Others talked about favouritism and even corruption in nomination and selection processes for board directors.

From experience, I would like to share my thoughts on the challenges and solutions. SOEs in the MENA region dominate many strategic sectors such as utilities, communications, military, oil and mining, and financial services. The private sector is either not present in some of these sectors, or is small in other sectors. This affects the quality and price of the services in those sectors. Crowding out is very clear in some cases where the private sector cannot compete with the SOEs, or even not allowed to compete. It is ironic that some studies refer to profitability of some of the SOEs in the MENA region, considering that these companies are successful despite the state ownership. What has to be evaluated as well is their cost structure, quality of services, and their impact on the private sector operation, if any, in the market.

Who are on the boards of SOEs in the MENA region? And how are they selected? For a start, not all SOEs in the MENA region have boards. Some of the quite large ones have only executive boards controlled by politicians or officials. Selecting board members is usually a responsibility of a Minister in charge of SOEs. The ownership entity that is suggested by the OECD is not implemented in most countries in the region. Different ministries, municipalities, and federal governments own different companies. Boards are composed of politicians, ruling families, current and ex-ministers, government employees and university professors. The selection process makes it very difficult for directors to be truly independent or able to exercise the duty of loyalty correctly.

SOEs are subject to state auditors, and they are the worst. They have a very rigid understanding of rules and regulations and there are prevalent forces of short-termism. Concepts such as strategic decisions and long term success is not something that they sympathize with easily. SOE boards and management are much safer when they blindly follow rules and regulations and make losses as opposed to when they try to be creative and flexible and make profits.

Political interference occurs in various ways. It occurs through Ministers, other senior officials on boards, various government organizations present on boards and directions from the state. It would be impossible to ask government employees and professors to challenge such pressures.

One of the OECD Guidelines carries the main part of the solution; the rationale for state ownership. If a government has a political will and power to improve governance of SOEs, it should start by creating a table that lists all SOEs in the first column, and the reason why the state has to own each one in the second column. By doing so, the government will be surprised to find out that there is no specific reason why it owns most of its SOEs. The third column should feature the actions needed if a company is not supposed to stay as an SOE, floated and sold to an anchor investor, etc. For companies that have to remain as SOEs, it could be due to a natural monopoly or a temporary situation. If temporary, then a clear time line for exit must be developed.

In all cases, without a strong political will for reforming SOEs, governance will not happen. When such will exists, then the government can think of the right governance framework, making the most out of the excellent work done by the OECD.

## Corporate Governance in Argentina

*Alejandro Díaz, Audit Manager of Companies and Societies, Sindicatura General de la Nación (SIGEN), Argentina*

The Argentinian public sector is separated into centralised and decentralised public administration. SOEs are considered as belonging to the decentralised category. They do however differ from the above groups, in that they are incorporated or organised along lines commonly found in the primary sector and primarily tasked with commercial and industrial objectives. This group consists of 138 companies, in half of which the central government, or institutions or enterprises controlled by it, exercises the ownership rights. The other 50% are incorporated similarly to private companies, mostly with a state shareholding via pension and retirement funds. They are subject to ordinary company law and are listed in stock exchanges.

As for the SOEs where the state controls the ownership, all private sector laws generally apply. However, they have emphasized and engaged in certain activities which are subject to public administration law, for instance related to the fight against corruption, transparency, internal controls, risk management and accounting. These requirements are not considered as an obstacle to competitiveness and to fulfilling the so-called “Triple E” principles: economy, efficiency and effectiveness.

The appointment of board members generally does not involve a uniform and standardised process. The board of the Office of the Comptroller General (SIGEN) appoints representatives in each SOEs. These representatives called “sindicados” are public officials required to have the requisite professional capability and capacity to supervise and oversee these entities. These officials participate in board meetings with a right to speak, but not to vote. They are separated from political cycles and general government.

Board members of SOEs are considered public officials in the purview of certain ethics-related laws, and the SIGEN representatives in the board and key staff must, in order to join or leave a SOE and on an annual basis, submit statements of assets and conflicts of interest arising from their personal or family affairs. The rules are very stringent with a view to ensuring the alignment of interests of the staff, and to preventing an accumulation of mandates, or if not, ensuring that multiple paid positions are each addressed separately and without time overlaps. This policy of public ethics prevent decision makers in SOEs (and the public sector in general) from deciding on issues related to people, companies or matters with those individuals have had a significant role in the past three years.

There is also a law requiring SOEs to provide public access to information relating to their internal controls, subject to which SIGEN is empowered to issue regulations. It requires SOEs to apply a model commonly known as Committee of Sponsoring Organizations of the Treadway Commission (COSO). SIGEN is also empowered to assess the quality of the procedures for conducting internal auditing in the SOEs. The SIGEN representatives appointed in different organisations publish annual reports on the conduct of business which are taken into account by those bodies exercising state ownership rights (Argentina follows a hybrid model of ownership). They assess the enterprises’ transparency with a view to enhancing it without affecting their levels of competitiveness vis-a-vis private companies in like circumstances.

## Governance of state-owned entities: State of play and outlook

*Ahmed Belfahmi, Head, Restructuring and Programming Direction of Public Enterprises and Privatization, Ministry of Economy and Finance, Morocco*

Public institutions and enterprises (state-owned entities)<sup>14</sup> are dynamic actors in Morocco's process of modernisation and socio-economic development. They notably play an important role in implementing public policy, providing basic services, building public infrastructure, supporting territorial development and mobilising financing related to these activities.

The state's portfolio is composed of 253 entities held directly by the state, of which 209 are public institutions and 44 are public enterprises with shares held directly by the treasury. Together these entities have a total of 442 subsidiaries or direct shareholdings, in which the state is a majority owner of 236. Within this portfolio, 172 entities operate at the municipal and regional levels, while 50 subsidiaries operate internationally and constitute real drivers of growth.

### *Performance of public institutions and enterprises*

Public institutions and enterprises have undergone continuous improvements in their financial performance and productivity, reinforcing a positive trend over recent years in their levels of investment, their productivity and the optimisation of their financial relationship with the state.

Furthermore, it is worth highlighting that these entities have maintained an upward trend in their sales revenue, which stood at 198 billion dirhams in 2014 and has increased at an average annual rate of 7% over the past few years.

In addition, the value added created by public institutions and enterprises stabilised at around 72.7 billion dirhams in 2014, driven mainly by strong results in the energy, mining, housing and transportation sectors. The value added of public institutions and enterprises represents 7.9% of GDP, which reflects their dynamism in supporting Morocco's growth.

In addition, in recent years there has been a sustained momentum in the level of investment made by public institutions and enterprises, signifying the important role that public investment plays in economic growth. At the global level, public institutions and enterprises have maintained high volumes of investment, which reached 77 billion dirhams in 2015.

Indeed, these state-owned entities are showing increased dynamism in many sectors of activity, in particular in the development of infrastructure or strategies in energy, mining, housing and tourism. They have also been pivotal in the implementation of important social projects, in particular in the domains of education, training, health and the opening up of rural areas.

### *Improving the governance of public institutions and enterprises*

#### 1. Launch of the Code of Good Governance Practices for Public Institutions and Enterprises

The new 2011 Constitution enshrines the right of access to information as well as the principles of good governance, transparency and accountability in the management of public affairs. In application of these principles, efforts were made to strengthen the governance of public institutions and enterprises, notably through the launch of a Code of Good Governance Practices for Public Institutions and Enterprises. The good governance standards put forward by the code seek to promote the development of a competitive economy, restore trust, attract domestic and foreign investment, facilitate companies' access to capital and reinforce their viability and sustainability.

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<sup>14</sup> In the case of Morocco this includes a number of state-controlled entities that would under national law not necessarily be considered as enterprises

The elaboration of the code is the fruit of a participatory approach involving consultations with public institutions and enterprises as well several other stakeholder bodies. These notably include the Business Association of Morocco (*Confédération Générale des Entreprises du Maroc/CGEM*) the Central Instance for the Fight Against Corruption (*Instance Centrale pour la Lutte contre la Corruption/ICPC*) and the Moroccan Institute of Directors (*Institut Marocain des Administrateurs/IMA*). The development of the code was also enriched by broader consultations with a large network of national and international partners, including notably the OECD, the World Bank and experts from the German public administration.

The code is founded on the same principles of the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*. It aims to ensure that public institutions and enterprises implement the best governance practices, anchored in the values and principles of transparency, sound communication and accountability. It also endorses the principle of “comply or explain”, by which enterprises are expected to comply with the recommendations or explain their reasons for non-compliance. The code comprises five chapters concerning:

1. The role of the state, making a clear distinction between its different functions and missions, particularly those which can contribute to improvements in the governance of public institutions and enterprises.
2. The roles and responsibilities of the board of directors (or relevant governance body), recognising the need for this organ to be equipped with the mandate, competencies and objectivity necessary to fulfil its functions of setting strategy and supervising management.
3. The rights and equitable treatment of shareholders. Both the state and public institutions and enterprises should respect the rights of shareholders and, in accordance with the laws in force, ensure that shareholders are accorded equitable treatment and equal access to information.
4. Transparency and disclosure of information, notably calling for regular communication of material financial and non-financial information on public institutions and enterprises, digitisation of information and the elaboration and dissemination of codes of ethics; and
5. Stakeholder relations, including their equitable treatment and the preservation of their rights, notably through the recognition of and respect for the rights of employees, of third parties affected by the entity’s operations and of independent bodies. It also underlines the importance of respecting the environment (corporate social and environmental responsibility).

The code was the subject of a circular addressed by the Head of Government to the members of Government, dated 19 March 2012, calling upon them to ensure its implementation. The circular was also addressed to the governance organs of public institutions and enterprises, inviting them to undertake governance assessments, to adopt governance improvement plans and to monitor their implementation.

Since the official launch of the code in March 2012, its roll-out has taken place according to a pre-established action plan involving communication and dissemination activities, training, the establishment of governance organs within state-owned entities and technical assistance.

The participatory approach that led to the development of the code has been further strengthened during the implementation phase through the strong involvement of public institutions and enterprises as well as line ministries. Effective implementation of the code has been reinforced by concerted actions involving line ministries and state-owned entities, including the gradual implementation by state-owned entities of governance assessments, improvement plans and the elaboration of model governance templates.

Real progress has taken place at the level of individual entities, notably through more regular meetings of their governance organs and an intensification of activity at the committee level (notably audit, governance and investment committees). This has helped to further professionalise the state-owned entities' governance organs, reinforce their relevance and improve the quality of their decisions, leading ultimately to improvements in performance and monitoring of their activities.

## 2. Assessment of the implementation of the Code of Good Governance Practices for Public Institutions and Enterprises

Four years after its launch, the Code of Good Governance Practices for Public Institutions and Enterprises is being implemented through targeted actions in the fields of communication, dissemination and training. These actions have supported the implementation of the code's recommendations and helped to promote and disseminate its contents among a large number of public institutions and enterprises.

Forty of these state-owned entities have undertaken governance assessments and their governance organs have either adopted, or are in the process of adopting, governance improvement plans. This signals that the governance organs and managers of state-owned entities increasingly regard good governance as a priority.

In addition, concerning transparency and quality of management – and in accordance with the good practice recommendations put forward by the code – several actions have been undertaken with the aims of establishing multi-year contracts to formalise the relationship between the state and state-owned entities, certifying and publishing state-owned entities' accounts, formalising nomination procedures for directors and managers, modernising public procurement procedures and upgrading management practices. Similarly, efforts have been made to improve stakeholder relations, notably in offering support to state-owned entities in monitoring their payment periods and in settling outstanding debts. A number of actions in several other priority areas – notably digitisation of information, risk management and social and environmental responsibility – are also increasingly the subject of concrete action by public institutions and enterprises.

## 3. Key reform projects

A number of major reforms are underway to reinforce the process of improving state-owned entities' governance. These include: reforms to the legal framework for the governance and control of state-owned entities; efforts to strengthen the state's ownership function; and measures to promote public-private partnerships.

- **Reform of the legal framework for the governance and control of public institutions and enterprises.** A related reform proposal is being finalised for presentation to Parliament. The proposal includes a section on governance, incorporating many of the recommendations included in the aforementioned code. The reform proposal aims to strengthen the governance of public institutions and enterprises, strengthening their accountability, transparency and the efficient functioning of their governance organs.
- Similarly, a new reform project was recently initiated to strengthen both internal and external evaluations of governance organs. This will certainly help accelerate the professionalisation of state-owned entities' governance organs.
- **Strengthening of the state's ownership function.** The state has conducted an in-depth examination of possible measures to strengthen the exercise of its ownership function and make it an "active" shareholder in its portfolio entities. A related reform proposal calls for the establishment of a legal framework specifying that the Ministry of Finance is responsible for determining the state ownership policy, which would be applicable to all portfolio

operations (including privatisation) and would recognise the importance of transparency, supervision and accountability of all actors involved in the decision-making process.

- **Increase in the use of public-private partnerships.** Following the 2015 publication of Law No. 86-12 on the Contract for Public-Private Partnerships and Decree No. 2-15-45 concerning its application, the use of public-private partnerships is expected to increase. The new legal framework will strengthen the involvement of private operators in public projects, while improving the business climate through more efficient, speedy and transparent operations.

These reforms will certainly contribute to a continued strengthening of the financial and operational performance of state-owned entities. They will also reinforce state-owned entities' continued role in strengthening Morocco's economic and social fabric, through the implementation of complementary strategies of action that are coherent with the country's development model.

In this respect, improving the governance of state-owned entities through continued and substantive action is a crucial element of broader efforts to improve public action as a whole. Public institutions and enterprises, who are decisive actors in implementing government policy, are constantly called upon to be exemplary in terms of ethics, transparency and efficiency, in view of their role in economic and sectoral development and in the improvement of public services to citizens.

Moving forward, the Moroccan Code of Good Governance Practices for Public Institutions and Enterprises is expected to be updated to reflect the following recent developments:

- Implementation of the reforms mentioned above, notably those concerning the legal framework for governance and control of state-owned entities and the role of the state as an active shareholder;
- Recent changes in the operating environment for state-owned entities (New Organic Law relative to the Law on Finances, Regionalisation, Payment Terms, Access to Information, Digitisation); and
- The revised OECD Guidelines on Corporate Governance of State-Owned Enterprises.

