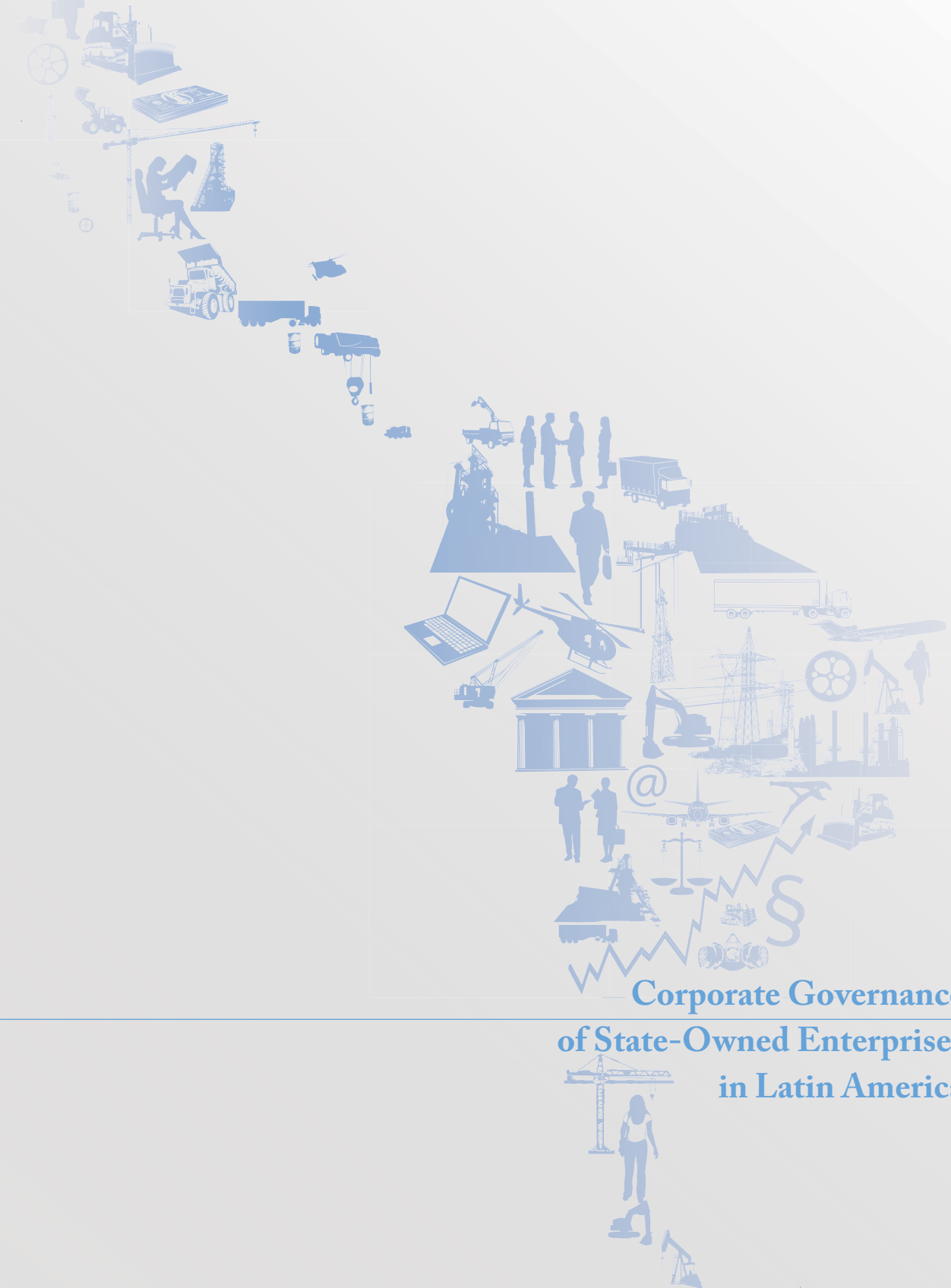


Corporate Governance of State-Owned Enterprises in Latin America

World Bank
Poverty Reduction and Economic Management
Public Sector Unit
Latin America and the Caribbean Region

February 2014

The World Bank

Corporate Governance of State-Owned Enterprises in Latin America

World Bank
Poverty Reduction and Economic Management
Public Sector Unit
Latin America and the Caribbean Region

February 2014

Main Abbreviations and Acronyms

General (throughout document)

CDB	China Development Bank
CEO	Chief Executive Officer
GDP	Gross Domestic Product
IFRS	International Financial Reporting Standards
MF	Ministry of Finance
OECD	Organization for Economic Co-operation and Development
SOEs	State-Owned Enterprises

Chapter 2 | The Case of Brazil

BNDES	Brazilian National Development Bank *(Banco Nacional de Desenvolvimento Ecoômico e Social)*
DEST	Department of Coordination and Control of State Enterprises *(Departamento de Coordenação e Controle das Empresas Estatais)*
ELETROBRAS	Brazilian Power Electricity Company *(Centrais Elétricas Brasileiras S.A.)*
PDG	Comprehensive Plan of Expenditures *(Plano de Dispêndios Globais)*
PETROBRAS	Brazilian Oil Company S.A. *(Petróleo Brasileiro S.A.)*
SEST	Secretariat of Coordination of State-Owned Enterprises *(Secretaria de Controle de Empresas Estatais)*
SIIF	Integrated Financial Information System *(Sistema Integrado de Informação Financeira)*

Chapter 3 | The Case of Chile

CODELCO	National Copper Corporation *(Corporación Nacional de Cobre)*
CORFO	Production Development Corporation *(Corporación de Fomento de la Producción)*
ENAP	National Oil Company *(Empresa Nacional del Petróleo)*
SAE	Enterprises Management System *(Sistema Administrador de Empresas)*
SEP	State-Owned Enterprise System *(Sistema de Empresas Publicas)*
SVS	Chilean Securities and Insurance Supervisor *(Superintendencia de Valores y Seguros de Chile)*

Chapter 4 | The Case of Colombia

CONPES	National Council of Economic and Social Policy *(Consejo Nacional de Política Económica y Social)*
DNP	National Planning Department (Departamento Nacional de Planeación)
ECOPETROL	Colombian Oil State Company *(Empresa Colombiana de Petróleos)*
MCC	Mixed-capital Corporations
OPN	National Budgeting Office *(Oficina del Presupuesto Nacional)*

Chapter 5 | The Case of Paraguay

ANDE	Paraguayan Power & Electricity Company *(Administración Nacional de Electricidad)*
ANNP	National Administration of Ports and Waterways *(Administración Nacional de Navigación y Puertos)*
CNEP	National Council of SOEs *(Consejo Nacional de Empresas Públicas)*
COPACO	Paraguayan Telecom Company *(Compañia Paraguaya de Comunicaciones)*
CTI	Inter-Institutional Technical Commission *(Comisión Técnica Inter-institucional)*
ESSAP	Paraguayan Water & Sewage Utility *(Empresa de Servicios Sanitarios del Paraguay)*
INC	National Industry of Cement *(Industria Nacional* del Cemento)
PETROPAR	Paraguayan State Oil Company *(Petróleos Paraguayos)*
PGN	National Budget *(Presupuesto General de la Nación)*
UMEP	State-Owned Enterprises Oversight Unit *(Unidad de Monitoreo de las Empresas Públicas)*

Chapter 6 | The Case of Peru

CGR National General Comptroller
(Controladoría General de la República del Perú)

CORPAC S.A. Peruvian Corporation of Airports & Commercial Aviation
(Corporación Peruana de Aeropuertos y Aviación Comercial)

FONAFE National Fund for Financing State Business Activity
(Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado)

Chapter 7 | The Case of Spain

IGAE General Comptroller and Accounting Directorate's
(Intervención General de la Administración del Estado)

POA Annual Operational Plan
(Plan Operativo Anual)

RTVE Spanish Radio & Television
(Radiotelevisión Española)

SEPI State Holding for Industrial Participations
(Sociedad Estatal de Participaciones Industriales)

Chapter 8 | The Case of Uruguay

ANCAP State Oil Company
(Administración Nacional de Combustibles, Alcoholes y Portland)

ANTEL National Telecom Company
(Administración Nacional de Telecomunicaciones)

BROU Bank of the Oriental Republic of Uruguay
(Banco de la República Oriental del Uruguay)

DEP Department of State-Owned Enterprises *(Departamiento de Empresas Públicas)*

IAS International Accounting Standards

OPP Office of Planning and Budgeting
(Oficina de Planeamiento y Presupuesto)

SIIF Integrated Financial Information System
(Sistema Integrado de Información Financiera)

TCR National Court of Accounts *(Tribunal de Cuentas)*

UTE State Power & Electricity Utility
(Administración Nacional de Usinas y Transmisiones Eléctricas)

Chapter 9 | Leading State-Owned Enterprises: The Cases of the Panama Canal and PEMEX

ACP	Panama Canal Authority *(Autoridad del Canal de Panamá)*
CA	Management Council *(Consejo de Administración)*
CAED	Audit and Performance Evaluation Committee *(Comité de Auditoria e Evaluación de Desempeño)*
CNH	National Commission of Hydrocarbons *(Comisión Nacional de Hidrocarburos)*
CRE	Energy Regulatory Commission *(Comisión Reguladora de Energía)*
OIC	Internal Control Agencies *(Órgano Interno de Control)*
PEMEX	Mexican State Oil Company *(Petróleos Mexicanos)*
SENER	Energy Secretariat *(Secretaría de Energía)*
SFP	Secretariat of Public Administration *(Secretaría de la Función Pública)*

Table of Contents

Main Abbreviations and Acronyms I

1 | Acknowledgements 1

Chapter 2 | The Case of Brazil 2
2.1 | State-Owned Enterprises Portfolio 2
2.2 | Ownership Function: Institutional Framework and Organization 5
2.3 | Accountability and Oversight Mechanisms 4
2.4 | BNDES: A Key Player in the Brazilian Economy 7
2.5 | Reform Initiatives 11

Chapter 3 | The Case of Chile 14
3.1 | State-Owned Enterprises Portfolio 14
3.2 | Ownership Function: Institutional Framework and Organization 16
3.3 | Accountability and Oversight Mechanisms 17
3.4 | Reform Initiatives 20

Chapter 4 | The Case of Colombia 24
4.1 | State-Owned Enterprises Portfolio 24
4.2 | Ownership Function: Institutional Framework and Organization 26
4.3 | Accountability and Oversight Mechanisms 27
4.4 | Reform Initiatives 31

Chapter 5 | The Case of Paraguay 32
5.1 | State-Owned Enterprises Portfolio 32
5.2 | Ownership Function: Institutional Framework and Organization 33
5.3 | Accountability and Oversight Mechanisms 34
5.4 | Reform Initiatives 37

Chapter 6 | The Case of Peru 40
6.1 | State-Owned Enterprises Portfolio 40
6.2 | Ownership Function: Institutional Framework and Organization 42
6.3 | Accountability and Oversight Mechanisms 44
6.4 | Reform Initiatives 50

Chapter 7 | The Case of Spain 52
7.1 | State-Owned Enterprises Portfolio 52
7.2 | Ownership Function: Institutional Framework and Organization 54
7.3 | Accountability and Oversight Mechanisms 56
7.4 | Reform Initiatives 60

Chapter 8 | The Case of Uruguay 62
8.1 | State-Owned Enterprises Portfolio 62
8.2 | Ownership Function: Institutional Framework and Organization 63
8.3 | Accountability and Oversight Mechanisms 64
8.4 | Reform Initiatives 67

Chapter 9 | Leading State Owned Enterprises: The Cases of the Panama Canal and PEMEX 70
9.1 | Introduction 70
9.2 | The Case of the Panama Canal 71
9.3 | The Case of PEMEX 76

Annexes 82
Annex A | List of Brazilian SOEs under DEST Federal Oversight 82
Annex B | List of SOEs in Chile 86
Annex C | List of Colombian National SOEs 86
Annex D | List of Peruvian SOEs under FONAFE's Oversight 92
Annex E | SOE Portfolio Managed by SEPI 94
Annex F | Six Largest SOEs in Uruguay 96

Bibliographical References 97

Acknowledgements

1

The present case studies are part of a forthcoming publication on state-owned enterprise (SOE) corporate governance covering Brazil, Chile, Colombia, Paraguay, Peru, Spain, and Uruguay, as well as the Panama Canal and Mexico's state-owned oil company (*Petróleos Mexicanos* - PEMEX). This World Bank publication was supported by the Ministry of Finance of Spain through the Spanish Trust Fund for Latin America and the Caribbean (SFLAC).

The country cases provide a synthetic description of the country's SOE portfolio and they analyze key aspects of SOE corporate governance, in particular: state ownership, oversight and accountability, performance supervision, information disclosure, audit mechanisms, and the role of the board of directors. On the basis of these case studies, the forthcoming publication, expected for mid-2014, will identify trends in corporate governance of SOEs in Latin America and provide comparative examples from other regions of the World.

The case studies stemmed from the partnership between Paraguay's Ministry of Finance and the World Bank on the SOE Governance reform process during the period 2008-2011. It is part of a series of knowledge exchange initiatives organized by the Paraguay SOE Oversight Unit (*Unidad de Monitoreo de Empresas Pública,* UMEP) and the World Bank including an *International Seminar on the Institutional Framework of the Ownership Function and Supervision of SOEs* in Asunción, Paraguay on April 15, 2010 and an *International Seminar on SOE Oversight in Latin America* held in December 2011 in Punta del Este, Uruguay, with participants from the SOE ownership entities from Brazil, Chile, Colombia, Dominican Republic, Mexico, Panama, Paraguay, Peru, Spain, and Uruguay.

The present cases studies were prepared by Alexandre Arrobbio (Task Team Leader), Fanny Weiner (Task Team Leader), Federico Guala, Santiago Pinto, Maria Ines Vasquez, Alejandro Guerrero, and Ana Mie Horigoshi Reis. Marisa Sanguinetti, Jacob Bathanti, and Viktoria Kirjuchina contributed to the translation, the editing and the design of the document. Guidance was provided by Rodrigo A. Chaves, Arturo Herrera, Rossana Polastri, Henri Fortin and Rajeev Swami.

We are very grateful to Dionisio Borda (Ex-Minister of Finance of Paraguay) and Manuel Caballero (Ex-Vice-Minister Economy and Integration of Paraguay), and to Rogelio Cáceres, Patricia González, Yenny Alfonso, Leticia Antúnez and Francisco Servín (UMEP Paraguay) and to all participating governments and the heads of their SOE Oversight Units and their teams for their collaboration: Noel Giacomitti and Cláudio Machado (Brazil); Mónica Singer González, Hugo Caneo, Víctor Selman and Augusto Veas Rojas (Chile); Ciceron Fernando Jimenez Rodriguez (Colombia); George Reinoso (Dominican Republic); Alma Rosa Moreno (Mexico); Diego Galindo and Elizabeth Lau Chong (Panama); Titto Almora, Mercedes Auqui and Mario Gonzales (Peru); Angel Fernández Álvarez and Natividad Bris Barrio (Spain); Gabriela Pérez Montero, Teresa Chávez and Germán Benítez (Uruguay).

The Case of Brazil

2

2.1 State-Owned Enterprises Portfolio

1. Despite a recent history of privatizations, federal State-Owned Enterprises (SOEs) in Brazil remain important actors.[9] A number of key statistics confirms their relevance in Brazil's economy. For instance, they employ around 500,000 people (0.7 percentage of total employment); the aggregate budget for SOEs is approximately 30 percent of GDP;[10] and total investment by SOEs amounts to roughly 2.3 percent of GDP. At the same time, they pay dividends and contribute to government finances by paying taxes and fees that amount to almost 3 percent of the GDP or 9 percent of total government revenue.[11]

2. The universe of SOEs in Brazil includes 147 linked to the Federal Government. Of this set of companies, 38 are wholly owned by the government, and 25 are directly controlled by the state due to their being fully financed by the state budget. The rest of the companies finance their activities with their own resources or through the market, and are indirectly controlled by the state.

3. SOEs in Brazil operate in both competitive and non-competitive markets. Their activities are concentrated in the oil and natural gas, finance, electricity, and service sectors. A few large SOEs play a leading role in their respective sectors: Brazilian Oil Company S.A. (*Petróleo Brasileiro S.A.* - PETROBRAS) is the largest company in oil and natural gas with a budget that represents almost 7 percent of Brazil's GDP - *Banco do Brasil, Caixa Econômica*, and the Brazilian National Development Bank (*Banco Nacional de Desenvolvimento Econômico e Social* - BNDES) are the most important actors in the finance sector with an aggregate budget equal to approximately 4.3 percent of GDP. The budget of the postal service company, *Empresa de Correios Brasileira*, is 0.33 percent

9 This work focuses on SOEs linked to the Federal Government

10 It is important to note that the combined budget of the ten largest SOEs in Brazil (*PETROBRAS, BR, Banco do Brasil, Caixa Econômica, BNDES, Empresa de Correios Brasileira, ELETROBRAS, Banco do Nordeste do Brasil, Empresa Infra Estrutura Aero, and Casa da Moneda do Brasil*) added up to almost 13 percent of GDP and contributed 86 percent of SOE employment in 2010.

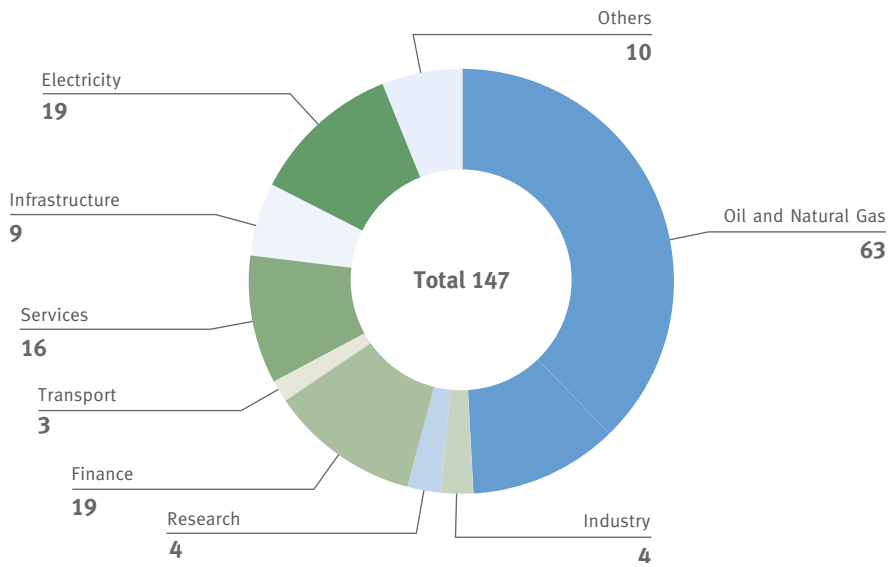
11 The figures are for 2010 and were calculated using official data obtained from the Ministry of Planning and the Ministry of Finance.

of GDP; and the Brazilian Energy Company (*Centrais Elétricas Brasileiras S.A.* - ELETROBRAS) leads the electricity sector a budget of 0.3 percent of GDP. In terms of distribution of firms across sectors, the table below shows that 48 percent of Brazilian SOEs operate in the oil and natural gas sector, and 37 percent in the electricity, finance, and service sectors.

4. SOEs have an important presence in the Brazilian stock exchange. Eight companies are listed on the BM&F BOVESPA exchange, accounting for approximately 25 percent of its total market capitalization; PETROBRAS alone represents 17 percent of market capitalization.[12]

Figure 2.1: Distribution of SOEs across Sectors

Source: Ministry of Planning



2.2 Ownership Function: Institutional Framework and Organization

5. Brazil's government follows a hybrid model for SOE oversight. While the Ministry of Finance (MF) takes the lead on rate-setting, the Ministry of Planning focuses on budgeting. The MF is also responsible for strategic planning, investment programs, and SOE organization and performance oversight, through the Department of Coordination and Control of State Enterprises (*Departamento de Coordenação e Controle das Empresas Estatais* - DEST), its coordinating agency for SOE oversight. The DEST reports to the Executive Secretariat of the Ministry of Planning and is responsible for overseeing 122 SOEs.[13] Among its duties, the agency coordinates SOE budget preparation and monitors its execution (including the fiscal goals and investments), compiles SOE economic and

12 The Governance of Mixed-Ownership Enterprises in Latin America: Discussion Paper, OECD 2012

financial data, and promotes good practices of corporate governance. Several sector ministries (listed in Annex A) also play a significant role, both in sector planning and technical aspects, such as defining benchmarks and targets for performance in that sector, and for service delivery. Finally, regulatory agencies are responsible for sector regulation, consumer protection, and guarding against anti-competitive behavior by SOEs.

6. The oversight of most SOEs in Brazil has been technically strengthened and balanced by the role of DEST, and institutionally consolidated through the SOE Governance Committee. On one hand, and playing a particular role, DEST is a technical department within the Ministry of Planning in charge of the direct oversight of SOEs. On the other, the SOE Governance Committee is a political body composed of three permanent members (Minister of Finance, the Minister of Planning, and the Executive Office of the President) and upon special request, other representatives from sector ministers The SOE governance committee is charged with coordinating the main institutional actors involved in SOE oversight, and plays a leading role in strategic decisions regarding the SOE portfolio, such as in the case of merger & acquisitions or privatizations. DEST is responsible for providing the Governance Committee with support on technical issues.

7. The Ministry of Planning assumes the leading role in defining the general framework for SOE staffing policies. The Minister of Planning is empowered (by means of Decree 3.735) to approve or reject staffing plans and ceilings; labor collective agreements; profit-sharing programs for employees; incentivized resignation programs; and other personnel policies. Some personnel policies are outside the immediate purview of the Minister of Planning; for example, Law 3.255 establishes limits to SOE staff benefits.

2.3 Accountability and Oversight Mechanisms

Statements of Objectives & Planning Documents

8. Management/performance contracts. In the last decade DEST has piloted performance contracts with four SOEs.[14] These companies' contracts included clearly defined results, which had been agreed upon between DEST (or in certain cases the company's board of directors) and the SOE: financial targets (e.g. return on liquid assets), service delivery targets, and some indicators on internal management (e.g. human resources, internal control, technical aspects, etc). The performance contracts impose financial penalties (partial or complete elimination of bonus/dividends) for failure to achieve these targets. However, according to DEST, the impact of these accountability tools on improving performance has not been significant so far. It should be pointed out, that DEST signed annual programs with about 20 SOEs, which link the salary payment with the achievement of the pre-defined goals.[15]

9. SOEs budgets and investment plans. Those are approved by the executive and by the legislative, respectively, as stipulated in the Constitution and Budget Guidelines Law. The Budget Guidelines Law (*Lei de Diretrizes Orçamentárias*) assigns responsibil-

13 Conceptually, the fiscal budget in Brazil differentiates between two types of SOEs: (a) those companies that finance their activities with their own resources or market earnings; and (b) those that depend on the fiscal budget to pay for their current expenditures. Only the first group of companies is under DEST oversight are being discussed in this chapter (Annex A shows a complete list of state companies under DEST).

14 The State Electric Energy Company (*Companhia Estatal de Energia Elétrica* - CEEE) and the Water Company of the Federal District of Brazil (*Companhia de Saneamento Ambiental do Distrito Federal* - CAESB) signed performance contracts with the authorities that formulate their respective sectoral policies. These authorities are also in charge of monitoring and enforcing the contracts. The Sanitation Company of Rio Grande also signed a performance agreement, but in this case a committee was specially created to oversee the contract.

ity for approving SOEs' current expenditure budget to the Presidency. However, SOEs investment plans are to be approved by national Congress, within the framework of the government's general investment plan for the year. In the particular case of fully state-owned enterprises, the Fiscal Responsibility Law (LC-101) imposes expenditure limits and constraints. DEST is in charge of preparing the Comprehensive Plan of Expenditures (*Programa de Dispêndios Globais* - PDG) for SOEs using the integrated information system, SIEST.

10. Budget formulation and approval. SOEs in Brazil prepare and submit their budgets annually, jointly with the rest of government entities. Results-based budgeting is common for SOEs distributing dividends/bonuses to employees, while the rest usually practice simple program budgeting. The proposed budget of each SOE is cleared by the shareholders' assembly, and then submitted for approval to the Ministry of Finance, or the corresponding line ministry, which works toward a consensus decision with the advice of the Ministry of Planning. Once these steps are cleared, SOEs' budgets are submitted to the legislature for approval. SOEs' approved budgets are published jointly with the national budget, which is made available to the public.

Reporting: Monitoring of Performance & Ex post Disclosure

11. Budget Execution Reports. DEST oversees the budget execution and financial operations of SOEs using the SIEST information system. SOE expenditures are monitored monthly and reconciled with the budget accounts on a cash basis. Every two months, DEST publishes online reports covering budget execution for each SOE based on their respective investment plans[16].

12. Other SOE key reports. On a regular basis, the CEOs of SOEs prepare reports containing financial information, as well as complementary information on performance and other technical details on the company's status. These reports are submitted to the board and retained for internal audit. The board of each SOE is responsible for submitting to several government control entities (internal and external) an annual financial report containing aggregate information. Additionally, the SOE boards disclose their annual reports and financial statements, both internally, to the relevant control bodies in the executive and legislative, and externally, via online publication.[17] Also, as per the annual budget law of the federal government (*Lei de Diretrizes Orçamentárias*), SOEs receiving transfers from the treasury are required to prepare an annex containing an estimation of fiscal risk.

Auditing of SOEs

13. SOEs are required to undergo external audits. The Accounting Court and the Office of the Comptroller General (*Controladoria Geral da União* - CGU) are both entitled to perform external audits on SOEs. In addition, the respective SOE's board of directors selects external firms to audit the company. This external audit, performed annually, covers financial and accounting aspects of SOE management. The results of these audits are published online and submitted to the executive's and the legislature's control

15 These programs are referred to as the Program for Participation on Profit and Results (*Programa de Participação nos Lucros e Resultados* - PLR).

16 All this information is made publicly available at http://www.planejamento.gov.br/secretaria.asp?cat=20&sec=4

17 Please refer to http://www.planejamento.gov.br/secretaria.asp?cat=20&sec=4.

bodies.[18]

14. However, independent external auditors are frequently selected through a public procurement process that does not necessarily consider the relevance of technical qualification. Brazil's Public Tender Law[19] sets forth different specifications for public tenders, which may include technical qualification and cost, or cost only. Some independent auditors have been selected using the "lowest bid" modality. For tenders in which technical competence is considered, proficiency is still not always the most heavily weighted factor in the final decision; instead, cost is considered the leading factor under consideration, which has the potential to jeopardize audit quality standards.

SOEs Boards of Directors and Management

15. Boards of directors oversee all SOEs linked to the federal government, either directly or through a holding company. Each of these boards is composed of several members, including a specialized technical representative from the Ministry of Planning, several representatives from the respective sector ministry, also with a strong technical background; since 2010, a representative of the SOE's staff has also been part of the board. Each board is then further structured, with a president, a vice-president, and a variable number of directors. Usually, area experts also participate regularly in board meetings as advisors. In some specific cases, the board also relies on a technical advisory body, independent from the SOE staff.

16. Although board members are selected on a discretionary basis, they have a fixed term mandate, unrelated to the government's mandate. The supervisory ministries select their respective board members according to technical criteria, but without a systematic competitive basis the final decision. Appointments must be further vetted and approved by the *Casa Civil* (Executive Office of the President) to ensure technical soundness in the selection. The duration of their mandate is fixed, and generally unrelated to the government's mandate.

17. There is a clear division of roles between the board and the SOE director. Whereas the director's area of responsibility is focused on the SOE's business management, the board is in charge of the following oversight responsibilities:

- Providing general guidelines for the SOE's business activities;
- Assessing the performance of the SOE's director;
- Organizing the shareholders' general assembly;
- Evaluating the firm's annual management report;
- Deciding on public offerings or stock warrants;
- Authorizing the lease or sale of fixed assets; and
- Selecting and dismissing independent auditing firms.

18. Board meetings are frequent and mainly treat technical issues. Executive board meetings take place on a weekly basis, with content usually related to routine decisions and procedures. The meetings of the Fiscal Council and the Management Council take place on a monthly basis. At these meetings, the agenda for discussion adopt a more strategic dimension.

19. However, selection mechanisms for SOE directors remain discretionary. SOE directors are appointed to fixed-term contracts by the National Treasury General At-

18 Audited reports are publicly available at the companies' website. For example, in the case of PETROBRAS, the independent auditors' report can be found at http://www.petrobras.com.br/rs2010/en/

19 Law No. 8666/93.

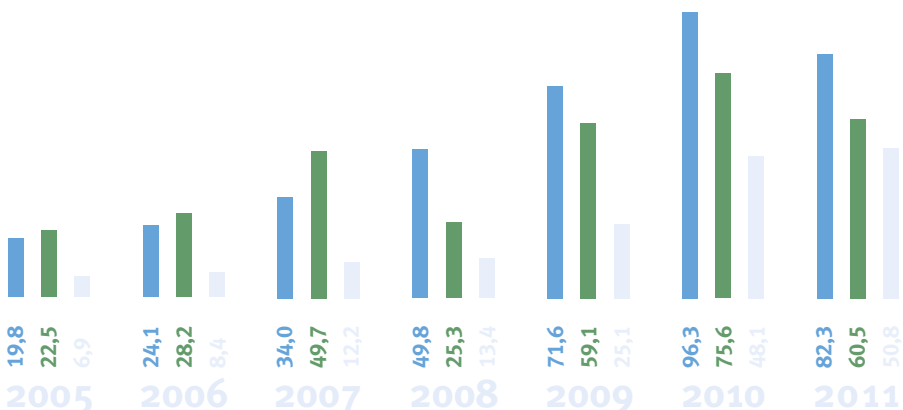
torney's Office (*Procuradoria Geral da Fazenda*, under the Ministry of Finance), by the suggestion of sector ministries. The *Casa Civil* reviews the candidates' background, but in only a few cases are there clear regulations indicating a minimum experience. Informally, political affiliation has played a role in some selection processes.

2.4 BNDES: A Key Player in the Brazilian Economy

20. Since its creation in the 1950s, the Brazilian Development Bank (*Banco Nacional de Desenvolvimento Econômico e Social* - BNDES) has provided most long-term financing for investments in all segments of the Brazilian economy. The actual relevance of BNDES can be illustrated through several different indicators. In 2011, BNDES had 2,500 employees and provided approximately half of the total credit in Brazil (total credit and BNDES credit as a proportion of GDP were, respectively, 46 percent and 21 percent in 2011). Total disbursements by BNDES totaled US$82.3 billion and reached a market value of approximately US$60.5 billion in 2011.

Figure 2.2: BNDES Disbursements and Equity Portfolio (in US$ billion)

Source: BNDES



21. BNDES was established on June 20, 1952, under Law 1628, as a government agency, with the aim of developing and carrying out national economic development policies. Subsequently, according to Law 5662, of June 21, 1971, BNDES was converted into a state-owned company under private law, which both reduced political interference, and gave the bank greater flexibility to raise and invest funds.

22. The size of BNDES' loan portfolio and equity is comparable to those from other well-known financial institutions. In order to assess its size and relevance, the

following table shows several indicators that compare BNDES to other international development banks. In terms of total assets and loan disbursements, BNDES ranks second after China's Development Bank (CDB). Relative to the size of their respective economies, however, loan disbursements by BNDES amount to 5 percent of GDP, while loans by the CDB are 2 percent. Additionally, BNDES's return on average equity (ROE) is the highest among international development banks considered in this sample.

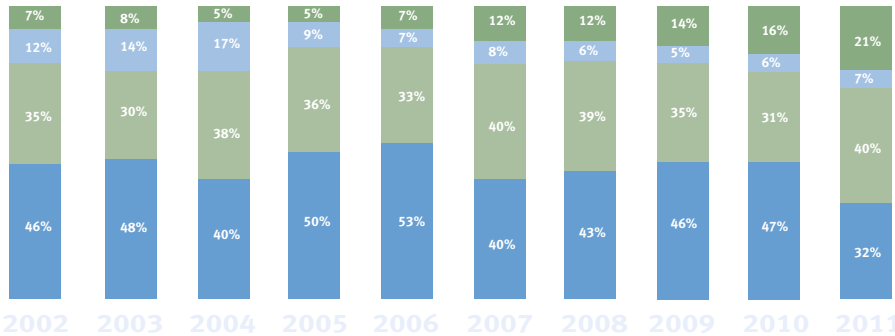
Table 2.1: BNDES Compared to Multilateral Banks (in US$ million)

	BNDES	IDB	IBRD	CAF	CDB
	Dec 31 2009	Dec 31 2009	Jun 30 2009(*)	Dec 31 2009	Dec 31 2009
Total Assets	222,050	84,006	275,420	15,887	665,168
Shareholders' Equity	15,867	20,674	40,037	5,287	55,471
Net Income	3,868	794	3,114	235	4,673
Loan Disbursements	78,910	11,424	18,564	4,584	92,998
Total Loans	162,917	58,049	105,698	11,687	543,196
Capitalization	7.10%	24.60%	14.50%	31.90%	8.30%
ROA	2.30%	1.00%	2.40%	2.40%	0.80%
ROE	29.00%	4.00%	8.00%	4.70%	8.80%
Founded	1952	1959	1945	1968	1994

Note: IDB = Inter-American Development Bank, IBRD = The International Bank for Reconstruction and Development (World Bank), CAF = Corporación Andina de Fomento, CDB = China Development Bank, Capitalization = Shareholders' Equity / Total Assets, ROA = Return On average Assets, ROE = Return On average Equity.
(*) Unlike other institutions, 12-month fiscal year ends June 30th

23. The presence of BNDES is significant throughout the Brazilian economy. BNDES provides support by financing projects including investments, equipment acquisition and exports of goods and services. In addition, BNDES strengthens the capital structure of private companies and devotes non-reimbursable financing to projects that contribute to social, cultural and technological development.

Figure 2.3: BNDES Disbursements by Sector



Corporate Governance

24. BNDES's policies are set by the Minister of State for Development, Industry, and Foreign Trade. However, the company still reports to DEST, within the Ministry of Planning, on its financial and economic performance. As mentioned above, DEST is in charge of preparing the Comprehensive Plan of Expenditures (PDG) for all SOEs under its oversight, including BNDES.

25. BNDES' corporate governance practices are based on the principles of transparency, fair treatment of all stakeholders, and accountability. The implementation of these practices is meant not only to optimize BNDES' performance, but also to protect its sole shareholder, the central government, and other stakeholders, such as employees, creditors, workers, and Brazilian society in general. Within the organization, the corporate governance practices are scrutinized at different stages by: (i) the Advisory Board, (ii) the Audit Committee, iii) the Fiscal Council and the Management Council, and (iv) the Ombudsperson's Office.

Advisory Board

26. The Advisory Board is the highest guidance body. It has eleven members, including the Chairman of the Board; four selected by the Ministers of State for Planning, Budget and Management; Labor and Employment, Finance, and Foreign Affairs, respectively, and the other by the Minister of State for Development, Industry and Foreign Trade. The President of the BNDES is the Vice-President of the Board. Members of the Advisory Board are appointed by the President of the Republic to a three year term, effective from the date the appointment is published and renewable for one additional. Prospective candidates should have outstanding knowledge and experience in the area, moral integrity and unblemished reputation. The Advisory Board meets every quarter, and for extraordinary sessions, called by the President at his/her discretion, or at the request of at least two of its members. The board only takes decisions in the presence of at least six of its members. The Advisory Board's duties include:

- Provide opinions and analysis, when requested by the Minister of Development, Industry and Foreign Trade, on issues pertaining to the economic and social development of the country and directly related to BNDES' efforts;
- Advise BNDES' President on general guidelines for the Bank's efforts and to promote disclosure of objectives, programs and results of BNDES' operations to the main nstitutions in the economic and social sector;
- Examine and approve proposals of BNDES' President, to ensure that general policies and long-term programs of the bank remain consonant with the economic and financial policy of the central government.

Auditing Committee

27. BNDES' Audit Committee acts as an auxiliary agency to the Advisory Board, to whom it must report. This relationship is stipulated by statutory provision and is in keeping with the guidelines of the Code of Best Corporate Governance Practices of the Brazilian Institute of Corporate Governance (*Instituto Brasileiro de Governança Corporativa* - IBGC). The Committee can consist of up to six members (at the time of writing, there are three) appointed by the Advisory Board. Members are appointed for an indefinite term, which may end at any time by resolution of the Advisory Board. The duties of the Auditing Committee include:

- Nomination of an independent auditor to be contracted by the administration;
- Reviewing BNDES' financial statements every six months prior to publication;
- Assessing the effectiveness of internal and independent audits;
- Recommending changes to correct or improve policies, practices, and procedures which fall within the ambit of the Board of Directors;
- Preparing a report of its own activities and assessing the effectiveness of internal control systems.

Fiscal Council

28. Brazilian legislation establishes a fiscal council to oversee limited liability companies and corporations. The fiscal council is essentially a supervisory and inspection body which reports directly to the shareholders. In the case of BNDES, the Brazil's Corporations Act Law defines the responsibilities of the Fiscal Council and of the Management Council, and appointment rules governing the appointment of their members. The fiscal council of BNDES is formed by three members and three alternates; all serve a two-year term, renewable for an equal period. Two members and their alternates are appointed by the Minister of Development, Industry and Foreign Trade, and one member and his/her alternate are appointed by the Minister of Finance, as representatives of the National Treasury; lines of responsibility are considered to run to the President of the Republic, in the sense that he or she appoints these ministers. The Fiscal Council's duties include:

- Examining and providing opinions on the balance sheets, other financial statements, and the half-yearly accounts of the BNDES' directors;
- Performing other duties established in the Stock Corporation Act. For instance, administrative agencies are required to provide the current members of the Fiscal Council with a copy of the minutes of their meetings, by means of formal communication, within ten days. Within fifteen days of their completion, copies of balance sheets and other periodically prepared financial statements, as well as reports on budget implementation, must also be supplied to the Fiscal Council.

Ombudsperson's Office

29. The Ombudsperson's office is charged with mediating issues between citizens and the institution. It provides clarification on items of contention, and seeks to strengthen ties between the BNDES, its clients, and the general public. To that end, it encourages decentralized, voluntary initiatives to effectively improve the services provided, in the process playing a role as an instrument of social inclusion. This office contributes to enhancing the democratic process by acting independently and impartially to confidentially convey demands and concerns from the public and clients to the BNDES. The Ombudsperson is appointed by the BNDES' President and remains in office indefinitely, ending his/her term at any time at the discretion of the President.

Reform Initiatives 2.5

30. After the 1980s debt crisis, the Brazilian Government began to shed an extensive SOE portfolio, which played a major role in the economy, with the initiation of a large-scale privatization plan. Before 1990, a limited privatization scheme was launched, and the central government privatized 38 enterprises. Between 1990 and 1992, 15 more SOEs were privatized, yielding about US$3.5 billion in total proceeds. Another 18 SOEs were sold afterwards, yielding over US$5 billion. By 1994, 25 state-owned enterprises had been sold, mostly in exchange for debt certificates and little hard cash.

31. This second wave of SOE privatizations under the Cardoso administration, beginning in 1994, focused on SOEs responsible for the major part of Brazil's economic infrastructure, including, enterprises in the energy, transportation, and communications sectors. However, Brazil's largest state-owned enterprises, PETROBRAS, remained outside the program because of constitutional restrictions.

32. The government has taken some steps toward strengthening and centralizing SOEs oversight in the past few decades. Departing from a fully-decentralized oversight in which sector ministries played a key role, the central government initiated the centralization of oversight functions by creating in 1978 the Secretary of Coordination of State-Owned Enterprises (*Secretaria de Controle de Empresas Estatais* - SEST), under the Ministry of Planning. Regulatory agencies were also created after 1994 to reinforce the technical oversight and legal framework of strategic sectors.

33. Following privatization reforms throughout the 90s, the government opted for further centralization of the oversight function. In 2005, the central government created the SOE Governance Committee as a centerpiece of the centralization of oversight functions. The committee's permanent members are the Minister of Planning, the Minister of Finance, and the Executive Office of the President, while other sector ministries may participate by request of permanent members. DEST exercises the role of Executive Secretariat for the Committee, which focuses on the strategic oversight and planning of the SOE portfolio, and on improving management of SOEs, with an emphasis on public financial management of these firms.

34. The main three actors driving this gradual oversight reform process have been the Ministry of Planning, DEST (within the Ministry of Planning), and the Ministry of Finance. While the privatization process caused political turmoil and was mainly undertaken in response to distressed public finances, reform of SOE oversight was a gradual process initiated by the creation of SEST, and by the progressive consolidation of the institutional oversight structure. The resulting oversight structure, far from being completely centralized, distributes responsibilities between the oversight coordination

agency (DEST), the SOE Governance Committee, regulatory agencies, and several sector ministries.

35. In 2010, the legal framework was modified to introduce mandatory participation of a staff representative in every SOE Board.

Table 2.2: Legal Framework

	LEGAL PROTECTION			
	CONSTITUTION	LAW	DECREE	LOWER NORM
Division of Responsibilities between Ministries in the ownership function of the SOEs Portfolio	X	X	X	
Creation of SOEs Monitoring Unit			X	
SOEs Board/CEO's appointment & dismissal rules	Not established			
Reporting Requirements from SOEs, if any		X	X	
Auditing Requirements from SOEs, if any		X	X	
Assessment Mechanisms of SOEs Performance			X	X

Challenges Ahead

36. The main challenges in the area of corporate governance in Brazil concern the relationship between the state as the main shareholder and other shareholders. Specifically, the rules regulating this relationship have been subject to several modifications, and the current legal framework is still questioned. Keeping in mind the significant share of Brazilian SOEs that participate in capital markets, it is commonly argued, on the one hand, that government control of publicly-traded corporations can have unintended consequences, due primarily to the conflict of interest that may arise when the state is simultaneously a shareholder and a regulator. It is also generally assumed that corporate law could influence the behavior of the state as shareholder.

37. There are other specific areas of corporate governance that present concrete challenges to SOEs. In particular, it is important to continue implementing measures that ensures an appropriate functioning of the board of directors. Some of the issues that would require attentions are those related to the definition of roles and responsibilities between boards; independence of external directors; and, in some cases, remuneration of board members.

The Case of Chile

3

3.1 State-Owned Enterprises Portfolio

38. Even though the State-Owned Enterprise (SOE) sector is relatively small in Chile, some state-owned companies play an important role in strategic sectors of the Chilean economy.[21] Overall SOEs employ around 49,000 people (0.7 percent of overall employment); their aggregate expenditures account for approximately 9.4 percent of GDP; revenues generated by all SOEs amount to 12.8 percent of GDP;[22] and total investment 1.2 percent. At the same time, they contribute to government finances through taxes, fees, royalties, and dividends in an amount that reaches almost 2.5 percent of the GDP or 6 percent of total government revenue.[23]

39. The universe of SOEs in Chile comprises 33 SOEs linked to the central government. Twenty-seven of the 33 are entirely state-owned, and the rest has some private participation. They operate in both competitive and non-competitive markets, and their activities are spread across different sectors. However, SOEs are particularly important in the mining and financial sectors, where SOE revenues represent 11 and 1.1 percent of Chile's GDP, respectively.[24] They also actively participate in transportation, harbor infrastructure, communications, defense, water and sanitation, and services, but the revenues generated by SOEs in each one of these sectors represent less than 0.2 percent of GDP.

21 This work only focuses on SOEs linked to the central government.

22 It is important to note that CODELCO, the National Copper Corporation, and ENAP, the National Oil Company, combined contribute to almost 90 percent of total expenditures and total revenues generated by all SOEs in 2010. In addition, CODELCO is responsible for nearly 95 percent of all fiscal transfers from the SOEs to the State.

23 These figures are for 2010 and were calculated using official data obtained from the Budget Office

24 *Banco del Estado de Chile* is the only SOE in the financial sector.

Figure 3.1: Distribution of SOEs across Sectors

Number of SEOs

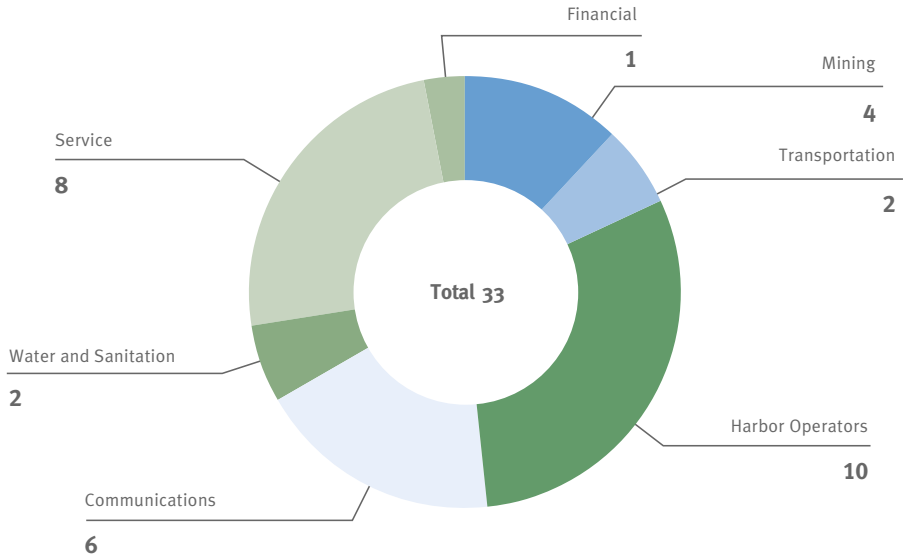


Table 3.1

Revenue (as % of GPD)

Sector	Revenue (as % of GDP)
Mining	11.0
Transportation	0.2
Harbor Operators	0.1
Communications	0.2
Water and Sanitation	Less than 0.1
Service	0.2
Financial	1.1
Total	12.8

3.2 Ownership Function: Institutional Framework and Organization

40. Chile currently has a hybrid structure ownership function. Ownership representation and responsibilities regarding the control and supervision of the majority of SOEs (23 out of 33 SOEs) reside in the State-Owned Enterprises System (*Sistema de Empresas Públicas* - SEP). The SEP is a technical advisory body, with authority to centrally oversee management of state-owned enterprises.[25] However, the largest Chilean SOEs are not under SEP control and supervision, but operate in a decentralized and autonomous way. They are linked to the government through the sector ministries of their line of competency. In particular, the National Copper Corporation (*Corporación Nacional de Cobre* - CODELCO), the national oil company (*Empresa Nacional del Petróle*o - ENAP), the Chilean State Bank, the companies active in the communications sector, and all defense-related state companies are subject to separate institutional arrangements. Many of these companies have a regulatory framework specifically developed for their operations and approved by special laws.

41. The SEP is overseen by a 9-member governing council[26], and managed by an Executive Director who reports to the Council. Under the Executive Director's supervision, three offices execute the SEP's functions: the Corporate Management Office, the Legal Office, and the Administrative Office. In addition, a Comptroller's Office also reports to the Executive Director. In total, the SEP's staff is composed of twenty-six officials.

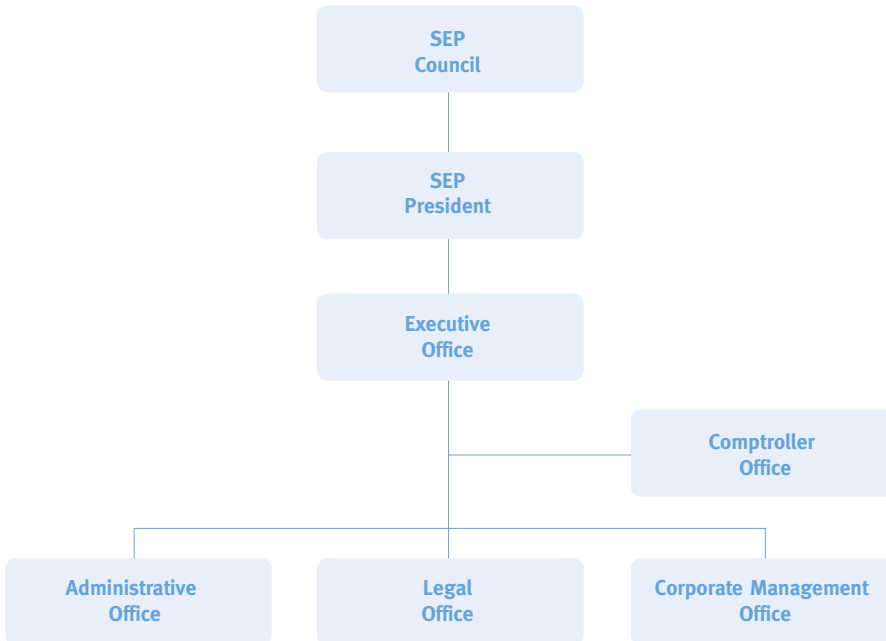
42. The SEP's main functions include nominating and appointing SOEs' directors, approving strategic plans, establishing annual goals and controlling the management of the SOEs under its supervision. The Ministry of Finance approves SOEs' annual budgets and investment projects, authorizes borrowing, and approves fiscal contributions. The SEP verifies that SOE budgets are reasonable and that their management, strategic initiatives and investment projects are aligned with the strategic planning. The management control function of the SEP is to evaluate the outputs it receives from the SOEs and to provide them with the necessary inputs with the aim of improving their functioning.

43. The SEP informs the Ministry of Finance of the investment projects and budgets of the SOEs. The Ministry of Finance in turn determines the approval or rejection of proposed projects and budgets. The SEP is also required to present an annual report on SOEs performance to Congress and the President of the Republic.

25 Legally, SEP is a committee of CORFO (Chile's Production Development Corporation) but is commonly referred to as a holding of SOEs. Annex B shows the full list of companies under SEP oversight.

26 From the members of the Council, 3 are appointed by the President of the Republic; two are appointed by the Ministry of Finance; one is appointed by the Ministry of Economy, Development and Tourism and three are appointed by the Vice-president of CORFO – out of these three, one is proposed by the Ministry of Mining and one by the Ministry of Transportation and Telecommunications.

Figure 3.2: SEP's organizational chart



44. Enterprises that take on loans with the guarantee of the state have to sign a contract with the SEP in which the objectives and expected results of the operation and investment program are laid out. The annual compliance rate of these contracts is specifically reported to the President of the Republic and the National Congress.

Accountability and Oversight Mechanisms 3.3

Statements of Objectives & Planning Documents

45. Management/Performance Agreements. SOEs' directors and managers are accountable to the SEP, which establishes annual goals through performance agreements. The SEP evaluates SOEs' performance through specific instruments: annual management plans for harbor companies; programming contracts; and performance agreements. The performance contracts include: financial indicators; performance indicators to measure service delivery; and internal management indicators (human resources, internal control, and technical issues). In general, SOE leadership and management are subject to penalties for not reaching the established goals.[27]

27 For example, in the case of harbor companies, board members do not receive a bonus in their stipends if they fail to meet targets specified in their management plans.

46. Budget formulation and approval. The Budget Office of the Ministry of Finance is in charge of assigning public resources to SOEs. Annually, in October, SOEs have to submit a budget proposal to the Budget Office (*Dirección de Presupuestos*), which finalizes the budgets in December based on a report developed by the SEP. Executed budgets and on-going budget execution are reported on the Budget Office website. [28]

Reporting: Monitoring of Performance & Ex post Disclosure

47. Budget execution reports. SOEs are required to provide monthly reports to the SEP indicating any deviations from the original budget. These reports are subsequently submitted to the Budget Office.

48. Chile has made significant progress in the harmonization of standards across SOEs in the areas of information disclosure, accounting provisions, and auditing. The Transparency Act, enacted in April 2009, requires all SOEs to disclose the same information and comply with the same accounting standards as private enterprises, mostly International Financial Reporting Standards (IFRS). SEP has established a list of criteria, systematized in the SEP Code, that intends to formalize and unify practices of corporate governance[29] across all SOEs. The policies to be harmonized include policies on internal management, internal audit, risk management, and board, CEO, and personnel supervision.

49. Each SOE has the obligation to elaborate quarterly Management Reports. The reports have to be issued within a month following the end of the quarter, and are submitted to the SEP Council for review.

50. Each SOE submits an Annual Report. They are not standardized, resulting in different formats and differences in the content of the report between SOEs. The length of these reports varies,[30] and their content can be divided into two topic areas. In the first, the company reviews the values and missions of the SOE, the statutes and the internal organization. The second usually covers areas of transparency and accountability, and it includes management reviews, external audit reports, and financial statements.

51. Since its creation in 2001, SEP has centralized all information from SOEs under its control, using this information to compile a consolidated Annual Report (*Memoria Anual*). This report is submitted to the President of the Republic and to the presidents of both chambers of Congress. The Annual Report contains a brief overview of the SEP (administration, history, Council officials, mission, etc.) focusing on the projects, investments, and results of the SOEs under its control. The rest of the report reviews the performance of each SOE in turn. In that respect, it is not a self-evaluation of the SEP, but rather an evaluation of the results and achievements of the each SOE in a given year. The reports are made available online at the corresponding SOEs's websites, and at the SEP website.[31] Since some of the largest SOEs are not under SEP oversight, however, the report does not fully represent the entire situation of the SOE sector in Chile.

---

28 More information at http://www.dipres.gob.cl/572/channel.html

29 These practices focus on three objectives: Board of Directors, Integrated Risk Management and Organizational Culture. For each of them, SEP has developed guidelines called "*Guías de Gobierno Corporativo Empresas*- SEP" that establishes the standards which the enterprises should comply with. They define the relation with topics such as external audit, code of conducts, complaint mechanisms, fraud prevention and replacement of key staff.

30 E.g., ranging from 14 pages (Coquimbo) to over 100 pages (Antofagasta and Metro S.A).

31 The reports can be found at http://www.sepchile.cl/en/documentacion/memorias

Auditing of SOEs

52. In Chile all SOEs are required to have internal auditors. The SEP Code stipulates the establishment of internal audit procedures monitored by the board. Internal auditors focus on risk management following the guidelines of the Government General Internal Audit Council using the Committee of Sponsoring Organizations methodology. The results are examined by the board and SEP. Non-SEP SOEs also have internal audit functions.

53. All SOEs are subject to an annual external audit by independent auditing firms. In the case of those SOEs that are limited liability companies, audits and audit firms are assigned at the shareholder meeting. For the remaining companies, the companies assigned to perform audits are selected by the board and approved by the SEP. An audit company cannot remain the auditor of a particular SOE for more than four years. These audits focus on financial statements, and the results are later included in the Annual Report. In 2011, for example, the harbor company *Empresa Portuaria de Iquique* was audited by KPMG and ENAMI (*Empresa Nacional de Minería*) by PWC. Listed SOEs are also subject to the oversight of the Chilean Securities and Insurance Supervisor (*Superintendencia de Valores y Seguros de Chile* - SVS).

54. In addition, SOEs are audited by the Office of the Comptroller General, the agency that supervises compliance with administrative regulations. These audits are publicly available on the Office of the Comptroller General website.[32]

SOE Boards of Directors and Management

55. All SOEs are headed by a board of directors. The board's responsibilities and duties are similar to those found in the private sector: appointment and dismissal of the CEO, appointment of the internal comptroller, proposal or appointment of an external auditor, definition of the SOE's strategic plan, determination of the compensation systems for CEOs, and supervision of SOE management.

56. In the case of entirely publicly-owned companies, the SEP Council is in charge of appointing the SOE's board of directors (see Box 3.1 below for details). These appointments are subject to the approval of the General Comptroller's Office. In SOEs organized as corporations, board's members are also nominated and selected by the SEP Council in the respective SOE's general shareholders' meeting and then ratified. Ministers, politicians and high-level civil servants may serve on some SOE boards. The duration of the appointments is between one and three years, and this period does not follow the government's mandate. It is not common to appoint alternate directors. In those SOEs that are not under SEP supervision, the appointment of board members follows their own legal or corporate regulations.

57. In general, SOE boards meet once a month. In some case, meetings take place twice a month, as in the case of harbor companies. It is common among SOEs to establish different committees in charge of supervising specific areas (audit, purchasing, remunerations, and risk management), and these committees convene monthly. The SEP Code provides for annual board evaluations, which are complemented by a self-evaluation.

58. There is a clear definition and division of the roles played by the SOE Board and the CEO. The CEO cannot chair the board of the same company, and its area of responsibility focuses on the SOE business management. Selection mechanisms for CEOs are the responsibility of the respective SOE's board.

32 Audited can be searched at http://www.contraloria.cl/appinf/basesdocumentales/bifaPortalCGR.nsf

Box 3.1

Box 3.1: SOEs: Rules and standards for the nomination of Board Directors

The President of the Republic of Chile, with the co-signature of the Ministers of Finance, Public Works and Reconstruction, issued decree Nº 113, 2001, in September 2001. This act authorized the SEP to advise the President of the Republic and cabinet ministers on the designation and removal of SOE Board Directors. There are four main criteria regarding the nomination of Directors:

(a) Candidates should be able to comply with high ethical standards; they should be sufficient with respect to integrity, character, common sense, competence and capacities to learn from the organization;

(b) Candidates should have experience and knowledge in the respective area;

(c) Candidates must be capable of carrying out cooperative team work in which there is mutual gain (complementarity); and

(d) Candidates should look after the best interest of the company with independence of who designated them.

A nominating committee proposes to the SEP Council a list of prospective candidates for the positions at the SOE's board. This committee is composed of the President and Vice-president of the SEP Council, four additional council members, and another individual is designated by the SEP Council. The Executive Director of SEP serves as the Secretary of the Committee. In line with good practice, an independent recruitment firm or "head hunter" selects the five candidates who will be evaluated by the nominating committee to choose the SOE Board Director.

3.4

Reform Initiatives

59. Until 1997, Chilean public enterprises were managed by the Production Development Corporation (*Corporación de Fomento de la Producción* - CORFO). Created in 1939 to foster industrial development and economic growth, CORFO promoted a wide variety of industries in the Chilean economy, most notably oil (*Empresa Nacional del Petróleo*), sugar (*Industria Azucarera Nacional*) and steel (*Compañía de Acero del Pacífico*). CORFO was and still is the main shareholder in many SOEs and as such, controls

the ownership of SOEs. The number of these enterprises rose from 46 in 1970 to over 500 in 1973. Then, Chile initiated an important privatization process, including large companies such as energy and telecommunications. CORFO's main goal in the 1990s was to restructure and write off SOEs high deficits. Since then, CORFO has focused on fostering technological research and development (R&D), promoting the development of private enterprise and the modernization of management practices, and facilitating business access to loans.

60. The first step in reforming the SOE ownership function in Chile was the creation of the Enterprises Management System (*Sistema Administrador de Empresas* - SAE) in 1997. The creation of this new entity served to separate the ownership function from industrial development policy, with the latter continuing to be exercised by CORFO. CORFO's governing council[33] delegated to SAE the administration of rights and shares of SOEs. In addition, the SAE was empowered to appoint and remove its own representatives in the shareholder's meetings of SOEs placed under its control. In parallel to this reorganization process, another privatization reform was enacted, which involved two steps: first, the transformation of many enterprises into joint corporations; and second, the introduction of private capital in public enterprises in the water sector, such as EMOS S.A. (today *Aguas Andinas* S.A.), ESVAL S.A., ESSBIO S.A., and ESSAL S.A.

61. The next move toward SOE reform was the creation of the *Sistema de Empresas* (SEP), seeking to attain a more clear ownership function. As a result of a consensual review process that concluded¬ with recommendations[34] to strengthen the state's ownership function, the SAE was replaced in 2001 by a new entity, the System of Public Enterprises (*Sistema de Empresas* – SEP). Soon after its creation, SEP was granted an important role in nominating and removing SOE directors of all SOEs under state control (except for CODELCO, *Banco Estado, Televisión Nacional, ENAMI,* and defense enterprises).

Table 3.2: Evolution of the Governmental Organization Supervising the SOEs

UNTIL 1997	1997 - 2001	SINCE 2001
Corporación de Fomento de la Producción (CORFO) Controls SOEs in Chile SOEs, with some exceptions	Sistema Administrador de Empresas (SAE) Exercises the ownership function SOEs at behest of main shareholder (CORFO)	Sistema de Empresas (SEP) Replaces SAE exercising the ownership function at behest of main shareholder (CORFO)

33 The governing council of CORFO is composed of 7 individuals: the Minister of Economy, Development and Tourism; the Executive Vice-president; the Minister of Foreign Affairs; the Minister of Social Development; the Minister of Finance; the Minister of Agriculture and a member appointed by the President of the Republic. For further details, see http://www.corfo.cl/acerca_de_corfo/estructura_corporativa/consejo_directivo

34 Institucionalidad y Criterios de Gestión para las Empresas Públicas (2001).

62. Chile has been focused for several years on incorporating good corporate governance practices in the management of SOEs. As a result of this decision, the performance of SOEs has substantially improved. Some of the most relevant measures are listed below:

- SOEs have been granted greater autonomy. Measures have been taken to shield enterprises from government "instructions" and to ensure that SOEs do not receive preferential treatment. At the same time, SOEs have also been allowed greater operational autonomy. The SEP's management practices strive not to "duplicate the work" of SOE boards.
- There have been noticeable improvements in transparency and information disclosure. Financial statements and other reporting of SOEs are generally made publicly available on trimestral basis. Consolidated annual reports are compiled by the SEP, and subsequently sent to the executive power and/or parliament, and publicly disclosed. The Transparency Act (April 2009) requires all SOEs to disclose the same information as corporations are required to provide to the SVS.
- Significant steps have been taken to strengthen the quality of financial and non-financial disclosure, including the adoption of International Reporting Standards.
- The SEP Code establishes an ethics standard that individual SOEs are required to implement, if necessary adapted to their specific situation and regulations.
- Chile is well advanced in assuring equal treatment of shareholders in SOEs with minority non-state participation. Minority shareholders are guaranteed, by law, nondiscrimination, access to information and access to vote in shareholder meetings. The state is not legally entitled to obtain information in preference over other shareholders in SOEs.

Challenges Ahead

63. The main challenge faced by the reforms implemented in Chile concerns the legal status granted so far to the new institutional arrangement in SOEs management. Certain new functions have been extended to the SEP by specific laws and decrees. Recently, new legislation has been drafted to strengthen the current institutional framework. The draft law currently under consideration would grant the SEP legal status as an autonomous public agency.

The Case of Colombia

4

4.1 State-Owned Enterprises Portfolio

64. As in many other Latin American countries, national State-Owned Enterprises (SOEs) in Colombia remain important actors despite a recent history of intense privatization.[35] The aggregate budget of SOEs linked to the central government in Colombia represents approximately 8 percent of GDP and 24.5 percent of the government budget; [36] total investment by SOEs amounts to roughly 5 percent of GDP; and SOEs contribute to the national government finances via dividends equal to almost 1.3 percent of GDP or 4 percent of total government revenue.[37] Three SOEs (Ecopetrol, ISAGEN and ISA) are listed on the national stock exchange; they constitute 15 percent of the National Stock Market and 50 percent of the total value of SOEs.[38]

65. The universe of SOEs in Colombia is made up of 37 SOEs linked to the central government.[39] This number includes state industrial and commercial companies, and mixed-capital corporations (MCC), as recognized by the current legal framework. SOEs in Colombia operate in both competitive and non-competitive markets. Their activities are widespread across sectors, but they play a significant role in the oil, financial, and electricity sectors. The Colombian Oil State Company (*Empresa Colombiana de Petróleos* – ECOPETROL), a mixed-capital corporation with majority state participation,[40] is dominant in the oil sector with a budget that amounts to almost 7 percent of Colombia's GDP (or 20 percent of the government's budget). In the financial sector, SOEs' aggregate budget is 0.87 percent of GDP (3.18 percent of the government's budget), and 0.44 percent of GDP (1.53 percent of the government's budget) in the electricity sector.

35 This work only focuses on SOEs linked to the central government. Counting SOEs that involve the participation of sub-national governments, however, there are a total of 105 SOEs in Colombia, representing 16.7 percent of GDP and 0.7 percent of employment (OECD).

36 It should be noted that expenditures by ECOPETROL, the state-owned oil company, represent almost 7 percent of GPD and 20 percent of the government budget.

37 The figures are for 2010 and were calculated using official data obtained from the National Planning Department and the Ministry of Finance.

38 The Governance of Mixed-Ownership Enterprises in Latin America: Discussion Paper, OECD 2013b. Corporate Governance Working Paper No. 12, Colombian SOEs: *A review against the OECD Guidelines on Corporate Governance of State-Owned Enterprises*, written by Hector Lehuede

39 Annex C provides a complete list of SOEs linked to the central government

66. There are 15 SOEs in the financial sector, six of which provide agricultural financial services. Another seven SOEs operate in the energy sector, providing public home utilities. Rounding out the list, four SOEs focus their activities in telecommunications, three in transportation, and the rest in areas such as veterinary products (VECOL S.A.), tourism (*Sociedad Hotelera*), and crafts (*Artesanías de Colombia*).

Figure 4.1: Distribution of SOEs across Sectors

Source: DNP, MF

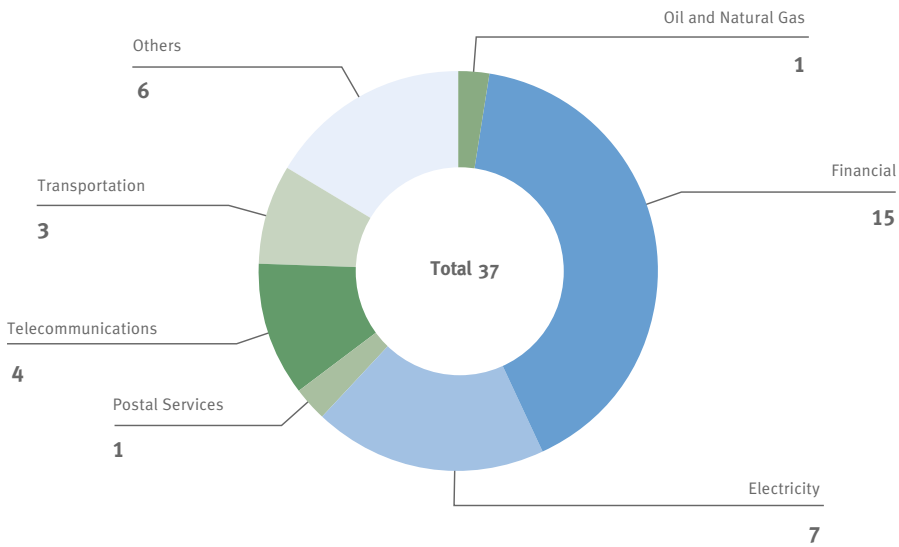


Table 4.1

Sector	Expenditures	
	% of Gov. Budget	% of GDP
Oil and Natural Gas	19.70	6.81
Financial	3.18	0.87
Electricity	1.53	0.44
Postal Services	0.04	0.01
Telecommunications	0.02	Less than 0.01
Transportation	Less than 0.01	Less than 0.01
Others	0.02	Less than 0.01
Total	**8.13**	**24.50**

4.2 Ownership Function: Institutional Framework and Organization

67. The SOE ownership function in Colombia is decentralized and exercised by several government units simultaneously or sequentially. In general, sector ministries or similar agencies are in charge of executing ownership rights. However, for some companies ownership rests entirely with the MF. Complementing these institutional arrangements, other relevant public sector entities may play key roles, intervening at different stages of the budgeting and oversight processes. For example, the National Planning Department (*Departamento Nacional de Planeación* - DNP) takes significant responsibility for, oversight of SOEs and control of royalties, and the National Council of Economic and Social Policy (*Consejo Nacional de Política Económica y Social* - CONPES) is responsible for financial programming of some enterprises.

68. In most cases, the sector ministry exercises ownership rights with another ministry or agency. These SOEs follow sector-specific policies and articulate their plans according to the sector planning process. For instance, companies in the telecommunication sector implement the sector policies dictated by the Ministry of IT and Communications or the National Television Commission. In a few other cases the Ministry of Finance exercises SOEs ownership rights along with the sector ministry. In this latter case, while the MF monitors financial indicators, the sector ministry focuses on performance indicators. For example, strategic and operational decisions taken by ECOPETROL are subject to the approval of the Ministry of Mining and Energy. However, the MF exercises the ownership function as the main shareholder of the company.[41]

69. Colombia's National Planning Department (DNP) is one of the main government entities in charge of supervising SOEs. DNP is a highly technical executive administrative agency that reports directly to the Presidency, and whose main objectives are the preparation, implementation, monitoring and evaluation of the activities performed by the entire public sector. DNP evaluates all public investment projects developed by the SOEs which are financed through the national government's budget, and monitors their results. SOEs are required to send their financial statements to DNP annually, but DNP may also request specific information at any time. DNP keeps centralized records of the information submitted by SOEs on potential financial surpluses and, in some cases, on their investment budget. It also receives financial information from other government agencies, and coordinates the formulation of the National Development Plan for the entire public sector. In 2010, DNP elaborated a methodology to monitor SOE performance.[42] The main objective of such methodology is to "create an integrated information system to monitor the management of SOEs in order to adopt policy strategies towards the optimization of SOEs performance." This methodology includes three dimensions: financial, internal organization, and performance.

70. The National Council of Economic and Social Policy (CONPES) is in charge of determining the amount of money from financial surpluses and profits of industrial and commercial enterprises and MCCs to be assigned to the national treasury[43]. At least 20

41 The last column of the table in Annex C shows the main sector ministry in charge of supervising the corresponding SOE.

42 DNP acknowledged in the 2003 National Development Plan the importance of clearly defining the concept of autonomy in the organizational policies applicable to SOEs. The DNP emphasized the need to clarify responsibilities and roles of sector ministries, MF, and DNP regarding SOE management (*Departamento Nacional de Planeación, Colombia,* 2003). It also highlighted the importance of implementing good corporate governance practices to improve the performance of SOEs.

43 This is applied to SOEs once their budget has been approved.

percent of these surpluses remain in the respective SOEs that generated them. CONPES informs SOE boards about the distribution of the surpluses generated by their company.

71. The Water and Sanitation, Energy, and Communications regulatory commissions also exercise oversight functions on SOEs. The regulatory commissions are administrative units within their respective sector ministries (Ministry of Economic Development, Ministry of Mining and Energy, or Ministry of Communications) with technical, financial, and administrative autonomy. The responsibilities of these commissions include setting tariffs and fees, ensuring compliance with contracts and acts, and collecting and analyzing all relevant information provided by public utility companies.

72. Various superintendencies oversee the performance of SOEs. The Public Utility Superintendence (*Superintendencia de Servicios Públicos Domiciliarios*), an agency that is part of the DNP hierarchy, oversees compliance with Law Nº 142/1994 (Public Domiciliary Utilities Law); rules, and performance indicators established by regulatory commissions (water and sewage, energy, and telecommunication); and contracts between users and public utilities, technical requirements established by sector ministries regarding procedures, equipment and public works. Commercial SOEs are controlled by the Superintendence of Mercantile Companies (*Superintendencia de Sociedades*), and the Financial Superintendence (*Superintendencia Financiera*) supervises those SOEs that provide financial services and those that trade in the stock market.[44]

73. The Office of the Comptroller General, in accordance with the Colombian Constitution, oversees the execution of the budget of all SOEs. This supervising function extends to all entities that receive or execute public funds.

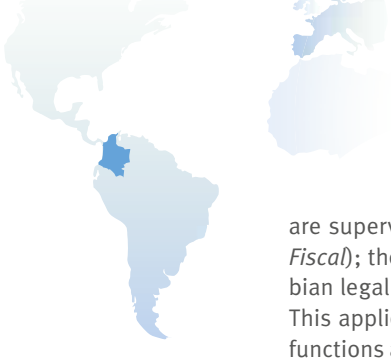
4.3 Accountability and Oversight Mechanisms

Statements of Objectives & Planning Documents

74. Management/Performance contracts. Financial and performance objectives in service delivery are defined by the SOE Boards. These objectives must be aligned with national goals, as codified in the National Development Plan, and have to be approved by shareholders. However, often the objectives derived from national plans are too broad to concretely inform the management of SOEs. . For this reason, each SOE tends to elaborate its own corporate plans, taking into consideration the strategic sector plans (e.g., the National Energy Plan) and their own objectives.

75. Budget formulation and approval. The National Budgeting Office (*Oficina del Presupuesto Nacional* - OPN) of the MF monitors the budgets of industrial and commercial SOEs, and MCCs operating in non-financial activities. The OPN gathers all relevant information about the budget planning processes of these SOEs through a financial information system which operates independently from the integrated financial information system (SIIF) that includes all other resources of the national government's budget. It also establishes rules and procedures for the disclosure of information. Annual budgets of non-financial SOEs with a majority of shares held by the central government

44 In a country report issued by the Financial Superintendent (2007), this institution argued that the Corporate Governance Code (*Código País*) "(...) will be used as a standard for issuers to provide the market with relevant and adequate information regarding their corporate governance. This information would become an important tool for the decision-making process leading to investments." Among the SOEs that have adopted this Corporate Governance Code are ECOPETROL, *Banco Agrario* S.A., FINAGRO (Colombian Credit Fund for Agriculture & Livestock) and *Fondo Nacional de Garantías*.



are supervised by the Superior Council of Fiscal Policy[45] (*Consejo Superior de Política Fiscal*); the corresponding sector ministries also participate in the process. The Colombian legal framework provides for the approval and modification of the SOEs' budgets. This applies to industrial and commercial SOEs, as well as the division of CONFIS that functions as a mixed-capital corporation, CONFIS, an institution attached to the Ministry of Finance and Public Credit and in charge of fiscal policy and the coordination of the budget system.

Reporting: Monitoring of Performance & Ex post Disclosure

76. Budget execution reports. The MF and the DNP supervise budget execution by SOEs with a majority of shares held by the national government. Monthly reports on budget execution are elaborated and published in the MF website.[46] These reports are based on the information collected by the ONP through a financial information system.

77. The DNP is in charge of collecting and disseminating information about the execution of the companies' investment plans, and the progress of the National Development Plan. The DNP also reports regularly to the President regarding the execution of public investments and the implementation of the development plan, and advises on the preparation of an annual report on these issues to Congress.[47]

78. Additional information disclosure and reporting requirements for SOEs. In general, there are no specific rules for citizens to access financial information of SOEs. However, SOEs are required to prepare and disclose the following information:

- *Financial Reports.* Financial statements are presented to the Investment and Public Finance Office of the DNP and are made available at the SOEs' websites.[48]
- *General Directors' or Corporate Governance reports.* The Chairman, on behalf of the board of directors, provides a report on the performance of the SOE to the general shareholder meeting.
- *Performance (Results in Service Delivery) reports.* Annual and quarterly management reports are produced. The CEO is responsible for officially submitting quarterly management reports.
- *Other specific reports required from SOEs.* Financial reports are submitted to the Financial Superintendence or Public Utilities Superintendence, depending on the type of SOE.
- *Disclosure of ex post reporting.* Financial and management reports are publicly available and usually posted on the company's website.

79. Additionally, superintendences collect and publish information about SOE performance. The Public Utility Superintendence, for instance, publishes management performance and quality indicators for the year under review. The indicators made available include information on claims, customer satisfaction, and sanctions placed on companies that do not comply with specified standards.[49]

---

45 SCFP is formed by the MF, the Director of the Administrative Department of the DNP, the Economic Advisor for the Presidency, the Vice Ministries of Finance, and the National Directors of the OPN, Office of Public Debt, Office of Taxes and Customs, and the Treasury.

46 This information is published at the MF website: http://www.pte.gov.co/

47 The information can be found at http://www.dnp.gov.co/Default.aspx

48 To cite a couple of examples, in the case of ECOPETROL, this information can be consulted at http://www.ecopetrol.com.co/english/contenido.aspx?catID=305&conID=41397, and in the case of the electricity company DISPAC, at http://dispac.com.co/nuestra-empresa/informes-empresariales/

49 Refer to http://www.superservicios.gov.co/home/web/guest/inicio

Auditing of SOEs

80. SOEs are subject to internal and external audits. The table below describes the audit arrangements that serve to exercise control on SOEs.

Table 4.2: Types of Audit

Type		Who is Responsible	Audit Scope	Frequency
Internal	Inside SOE	Auditor (fiscal supervisor)	Oversees financial statements and accounting processes.	Permanent
		Audit committee (formed by members of the board of directors)	Oversees internal control management.	
		Internal control office	Ensures processes, implementation of improvement plans, and the compliance of ISO norms.	
	Gov.	General Comptroller Office	Responsible for financial, legal and management control, auditing and evaluation of internal control processes, and verifying the results of these processes.	Annual
External		Private auditing firms	May be engaged to conduct an audit upon request of shareholders with more than 5% of shares.	Annual

SOEs Boards of Directors and Management

81. Boards of directors and CEOs. At the national level, the sector ministers and the directors of administrative departments coordinate and guide the activities of the industrial and commercial SOEs and MCCs in their respective sectors. Typically a board, with the director, president, or CEO of the company, is in charge of the direction and management of these SOEs.

82. There are no specific rules guiding the appointment of board members, directors, or presidents of SOEs. Law Nº 489/1998 only establishes generic guidelines. The President of the Republic or the respective Board of Directors selects CEOs or presidents of SOEs and can remove the appointees at any time. The designation of board members is established in the law or norm that creates the corresponding SOE. Members of the board must follow the sector policy guidelines and uphold the interests of the SOE. Members who come from the private sector are not considered public officials, although they execute a public service. In general, in appointing these positions SOEs must draw guidance from both Law Nº 489/1998 and their own governing statutes.

83. In practice, the selection criteria have not followed a standard procedure. In some cases, the CEO is required to have a specific background consistent with the type

of business developed by the SOE or the ministry that exercises the ownership rights. For example, the CEO of the *Sociedad Hotelera Tequendama* must be an official of the military since the Ministry of Defense is the major shareholder in this SOE.

84. The DNP stated in its 2003 National Development Plan that the appointment, term duration, and promotion of directors and managers are to be decided by merit-based criteria or performance, but in practice this is not always the case. In some cases, directors and managers are appointed, retained, and promoted based on their political allegiance, which can generate uncertainty within the organization. This may also create perverse incentives for appointees, as in such cases, directors and managers tend to devote a significant amount of resources to goals determined by political expediency, sometimes at the expense of sound long-term policies for the companies they guide.

85. The following characteristics define the functioning of SOE boards in Colombia:

- *Frequency of meetings:* Ordinary shareholder meetings are held annually, while the boards of the companies meet monthly or bi-monthly (depending on the company).
- *Record-keeping of meeting minutes:* In accordance with the Commercial Code a secretary is designated to keep minutes, which must be approved by the respective meeting participants.
- *Rules or code of ethics informing the board's behavior and composition:* Many SOEs have code of ethics approved for the entire enterprise, but these do not apply specifically to the board.
- *Rules for board members' appointment and dismissal:* Regulations regarding the composition of the board are stated in the law that creating the SOE in question.
- *Length/duration of appointment:* One year.
- *Board responsibilities:* Interaction with the CEO (supervision, dismissal) and with the Ministry / SOE Management Unit.
- *Mechanism of Board's performance appraisal:* Self assessments are presented by the Chairman of the Board in the shareholders meeting.

86. Salaries of managers, members of the board and other employees are not in all cases based on performance. There is a fixed salary scale which limits the incorporation of salary incentives or bonus for good performance. One attempt at reform in this area was the creation of an additional "technical bonus," which was applied to those SOEs operating under public law. In practice, however, this bonus was incorporated into the regular salary for employees at these SOEs, negating its original purpose. In the case of companies operating under private law, bonus payments based on results are more firmly established.

87. SOEs that operate in the financial sector must comply with additional rules and guidelines. In 2005, Congress passed the Securities Market Law (*Ley del Mercado de Valores-964*). The law established mandatory corporate governance practices for issuing institutions.[50] Among other things, it established a minimum mandatory percentage (25 percent) of directors on the board that must be independent, and established the requirement for an audit committee, to be formed by independent board members. Additionally, in 2006, a working group led by the Financial Superintendent elaborated a code to promote good governance practices. The code enumerates recommendations for the functioning of the board of directors, setting best-practice standards for the number of directors, their desired qualifications and degree of independence, responsibilities of the board, and frequency of board meetings.

50 Issuing institutions are companies with registered securities in the National Registry of Securities and Issuers.

Reform Initiatives 4.4

88. As in many other countries, in Colombia improving corporate governance is seen as an opportunity for SOEs to advance their access to international markets, and their ability to compete openly in those markets. Companies see transparency, probity, good enterprise practices, and effective control as key to achieving their mandated objectives in an effective and efficient manner.

89. Two types of reforms in the area of corporate governance of SOEs should be highlighted. First, the creation and proliferation of MCCs and the subsequent incorporation of private shareholders to SOEs have contributed to improving the performance and transparency of the companies. Moreover, some SOEs have introduced a code of ethics for their firm. It should be noted, however, that no general guidelines have been provided for the creation of such codes.

Challenges Ahead

90. The efficient management of SOEs in Colombia is still a significant challenge for the public sector administration. The government has focused on reinforcing good practices of corporate governance in several areas. Some of the issues that present specific challenges are the lack of a centralized ownership structure; the existence of reporting standards based on local norms instead of international requirements (International Financial Reporting Standards - IFRS); and, for some SOEs, insufficient separation between commercial and political objectives.

The Case of Paraguay

5

5.1 State-Owned Enterprises Portfolio

91. Despite a recent history of privatizations, State-Owned Enterprises (SOEs) in Paraguay remain important actors.[51] A number of key items of information confirm their relevance in economy. For instance, they employ around 17,000 people in total; the aggregate budget for all SOEs is equal to 14.5 percent of GDP, and accounts for 32 percent of the national budget (*Presupuesto General de la Nación* - PGN). Moreover, total investment by SOEs amounts to roughly 1.3 percent of GDP (3.3 percent of the national budget).[52]

92. The universe of SOEs in Paraguay includes 13 SOEs linked to the central government. Five of the companies are directly controlled by the state; the operation of these enterprises is regulated by *Cartas Orgánicas* and four are mixed corporations with majority state participation.[53] Of the remaining four, which are not included in this chapter, three are public financial entities and one is the postal company. SOEs in Paraguay operate in both competitive and non-competitive markets. The participation of SOEs is widespread across sectors, but concentrated in oil, electricity, and telecommunications. Typically the important SOEs play a strategic role in their respective sectors. For instance, in the oil sector, the state-owned company *Petróleos Paraguayos* (PETROPAR), has a budget that amounts to almost 6.2 percent of Paraguay's GDP (13.8 percent of the PGN); in the electricity sector, the Paraguayan Power & Electricity Company (*Administración Nacional de Electricidad* - ANDE) has a budget that reaches 5.1 percent of the GDP (12.8 percent of the PGN); and in the telecommunication sector, the Paraguayan Telecom Company´s (*Compañia Paraguaya de Comunicaciones* - COPACO) budget is 1.4 percent of the GDP (3.6 percent of the PGN). Other relevant sectors include transportation, water and sanitation, and beverages production.

51 This work only focuses on SOEs linked to the central government.

52 The figures are for 2010 and were calculated using official data obtained from the Ministry of Finance.

53 A complete list of SOEs is provided in table 11. The companies considered here are those listed in the National General Budget of Paraguay as state companies and corporations with government participation. Not included are public financial entities such as *Banco Nacional de Fomento*, *Fondo Ganadero*, *Crédito Agrícola de Habilitación* and the *Agencia Financiera de Desarrollo*". The postal company, *Correo Paraguayo*, operates as a decentralized entity within the structure of the Ministry of Public Works and Communications.

Table 5.1: List of National SOEs in Paraguay

Source: MF

Sector	SOE	SOE Budget	
		As % of Gov. Budget	As % of GDP
Oil	Petróleos Paraguayos (PETROPAR)	13.8%	6.3%
Electricity	Administración Nacional de Electricidad (ANDE)	11.4%	5.2%
Telecommunications	Compañía Paraguaya de Comunicaciones S.A. (COPACO)	3.6%	1.5%
Construction	Industria Nacional del Cemento (INC)	1.7%	0.7%
Water and Sanitation	Empresa de Servicios Sanitarios del Paraguay S.A. (ESSAP)	0.8%	0.4%

5.2 Ownership Function: Institutional Framework and Organization

93. Paraguay's government has recently taken a series of measures aimed at establishing a centralized model for the ownership function of SOEs. These measures have been addressed to gradually leaving behind the traditional decentralized model, where sectoral ministries supervise SOEs and implement a more centralized model, whereby a single entity acts as the SOE shareholder on behalf of the state. Most of these initiatives have been promoted by the Ministry of Finance (MF), as an attempt to reduce fiscal and social undesired effects related to poor management and sub-optimal service delivery of SOEs.

94. The introduction of a Governing Council of SOEs CNEP (*Consejo Nacional de Empresas Públicas*) in 2008 constituted the basis of the current organization of the SOEs ownership function in Paraguay. The CNEP is formed by representatives of the Ministry of Finance, Ministry of Public Works and Communications, Ministry of Industry, and the Office of the State Attorney General. The Minister of Finance holds the presidency of the CNEP. Its main objective is to administer, coordinate, and execute the plans, programs and modernization strategies of SOEs delivering public services, while also providing supervision and oversight of these companies.

95. To better exercise its management and oversight functions, the CNEP has created the Monitoring Unit for SOEs (*Unidad de Monitoreo de las Empresas Públicas* - UMEP) as its internal decision-making and implementing body.[54] UMEP is situated within the organizational structure of the State Sub-Secretariat of Economics and Integration (SEE), one of the main sub-secretariats of the MF which has recently been granted the status of a Directorate. The unit is staffed by a director and department heads (*Jefatura de Departamento*) who oversee departments of management control, research and planning, and regulation. It also has a multidisciplinary professional team, organized into working groups to supervise each of the SOEs.

96. The CNEP is currently working on its multi-annual strategic plan within the policy guidelines formulated by the National Government. The UMEP professional team has been progressively assuming a leading role in the elaboration of this plan, which is intended to provide greater predictability to sector policies, and lays out specific actions that the national government intends to take in policy implementation over the next few years. The plan is designed on the basis of the following five strategic objectives: (i) strengthening the institutional framework for SOE supervision; (ii) further developing the CNEP's capacity to monitor and supervise SOEs; (iii) regularizing payment arrears for public utilities by the government's central administration; (iv) strengthening the regulatory framework for the provision of public services, and (v) implementing rules for corporate governance of SOEs.

97. At the same time, the CNEP intends to develop inter-institutional relationships that may also impact favorably on SOE oversight. In this case, it has an agreement on inter-institutional cooperation with the State Audit Office (*Contraloría General de la República* - CGR). Currently, UMEP is also in discussions with the National Directorate for Public Procurement (*Dirección Nacional de Contrataciones Públicas* (DNCP)) on signing a similar agreement on inter-institutional cooperation.

98. The creation of the CNEP and UMEP has contributed to significant improvement in SOE oversight from an institutional standpoint. The CNEP contributes inter-institutional agility in decision-making with professional and technical monitoring by UMEP. The CNEP meets regularly, to discuss priority topics concerning SOEs with an agenda prepared by UMEP; and based on discussions following the agenda, executive decisions are taken. The progress and impact of these decisions are regularly monitored and followed-up by specialists.

5.3 Accountability and Oversight Mechanisms

Statements of Objectives & Planning Documents

99. Management/performance contracts. Between 2009 and 2010, the UMEP defined a standardized model for SOE management contracts. These contracts have a time span of 3 years and are based on standardized indicators that measure qualitative and quantitative goals. These goals, and the indicators used to measure progress

54 Decree no 955 from November 26, 2008, defining the role and mandate of the UMEP.

toward them, are agreed upon between the SOEs and UMEP, and based on the SOEs' medium-term strategic objectives. These include indicators and goals in the financial, commercial, and economic areas, as well as technical and public services. The provisions of each management contract also include monthly and quarterly reporting requirements, as well as external audit reports. In addition, the UMEP is currently establishing an automated system to access SOEs' data in order to enhance the effectiveness of this monitoring process.

100. Five of the main Paraguayan SOEs (ANDE, COPACO, ESSAP, INC, and PETROPAR)[55] signed their respective management contracts in 2010. In 2011, a sixth SOE, the National Administration of Navigation and Ports (*Administración Nacional de Navegación y Puertos* - ANNP)) signed its management contract. These contracts contemplate the systematic compliance of a series of performance indicators on both quantitative and qualitative dimensions by the SOE and the UMEP. As a result, the CNEP now uses a standardized monitoring mechanism, with the results displayed on an online "dashboard," which allows access to a database of performance indicators, and to the results of the periodic systematic evaluations of SOEs.

101. Budget formulation and approval. SOEs in Paraguay submit their budgets annually, jointly with the rest of government entities. Diverging from current practice in most countries, Paraguayan SOEs' budgets are consolidated and approved as part of the overall budget PGN, which also incorporates the budget of the central administration and of other decentralized (non-commercial) entities. The national budget with all of its components is annually consolidated by the MF's General Directorate of Budget and submitted to Congress for approval.

102. For SOEs constituted as corporations, the National Budget Law states that starting in 2011 corporations with shares held by the state must submit their budgets to the Ministry of Finance once they have been approved by their respective ordinary shareholder meetings.

Reporting: Monitoring of Performance & Ex post Disclosure

103. Budget execution reports. The Directorate General of Public Accountancy (*Dirección General de Contabilidad Pública*) is the body responsible compiling an annual report of the financial statements prepared by SOEs and the rest of governmental entities and agencies. These consolidated financial statements include complete information on revenue, expenditure and financial assets and liabilities, in accordance with the provisions of the financial administration law, and are submitted each year to the CGR, and subsequent submitted to Congress for review.

104. Other key reports for SOEs. Since 2010, UMEP has collected and processed quarterly information on various indicators established in the performance contracts. Although this information is not yet available to the public, the results of the evaluations carried out by CNEP in its session on SOE management are occasionally published. On the other hand, UMEP's multi-annual strategic plan, which is currently under execution, is available on the website of the Ministry of Finance.[56] Finally, despite the relatively large size of SOEs, and their strategic role in the Paraguayan economy, no evaluation of their aggregate fiscal risk has been carried out.

55 These companies jointly represent around 80 percent of 2010 SOEs' consolidated total expenditures.

Auditing of SOEs

105. Following a period of low compliance, external audits were successfully implemented in 2009 for most SOEs, and have continued regularly since. For the audit of the 2009 financial statements, the UMEP required SOEs to improve their procedures for external auditing, and expand the scope of external audits, to accord with international good practices. By May 2010, three large-scale SOEs (ANDE, COPACO, and ESSAP) signed contracts for the preparation of external audits with independent audit firms, following the procedures established by the National Public Procurement Law (No.2051/03). As part of the effort to improve the transparency of SOEs, the results of those external audits were made publicly available on MF's official website.[57]

106. The main oversight body for economic and financial activities of the state in Paraguay is the Comptroller General (CGR). The CGR is empowered to perform financial, administrative, operational, and management audits on SOEs. The CGR bases its selection of SOEs to be audited by the CGR depends on an audit risk assessment done by this institution. For instance, the 2009 annual financial statements of the Paraguayan telecom enterprise (COPACO S.A.) were audited by CGR in 2010.

107. UMEP receives and reviews the external audit reports. In addition, UMEP makes all the necessary arrangements for their publication at the MF's website,[58] and monitors SOE compliance with the recommendations of the external audit.

SOE Boards of Directors and Management

108. Boards of directors and CEOs. SOEs constituted as corporations have started to form boards of directors that are generally composed of a president, two board members, and one trustee. The responsibilities of the board generally include: to execute, comply with, and enforce the company's bylaws, national laws, and resolutions of shareholder meetings; to prepare and submit aggregate reports to meeting; to perform financial operations; sign contracts; and propose to the meeting the distribution of dividends and creation of cash reserves. Those SOEs entirely owned by the government only have a CEO, who jointly with the line minister is in charge of the decision making process.

109. There are currently no specific rules or guidelines in place to govern the appointment of SOE authorities and the functioning of the board. The President of the Republic has the ability to appoint and remove SOE directors through a presidential decree. Board members and CEOs are accountable to the President of the Republic through the CNEP. There are no specific criteria in place to guide the selection of candidates. Appointments to the board do not have a specific duration, but in general, they tend to coincide with presidential terms. There is no specific requirement for frequency of board meetings, but boards generally meet once a week.

56 http://www.economia.gov.py/umep/_admin/uploads/umep_plan_estrategico.pdf

57 http://www.economia.gov.py/umep/empresas.php

58 Published at http://www.hacienda.gov.py/web-sseei/index.php?c=322

5.4 Reform Initiatives

110. From the 1950s to the present, the largest companies of Paraguay have been under state ownership. Some of these companies were privatized in a public administration modernization process that was initiated in 1991 and that developed in several different stages. However, the number and economic and strategic relevance of companies under state control remains very important.

111. The government of Fernando Lugo, which took office in 2008, introduced significant reforms in the supervision framework for SOEs in Paraguay. Establishing effective state oversight of SOEs and improving their performance was a major part of the plan introduced by the government. The reforms focused on the establishment of an effective State oversight of SOEs through the creation of the *Consejo Nacional de Empresas Públicas* (CNEP). However, it also included specific actions to improve business management and even, increase private sector participation in SOEs. The government sought to fashion a new institutional framework in order to: (i) create an adequate structure for supervision of SOEs and the exercise of the ownership function; (ii) ensure transparent reporting of financial management by SOEs; and (iii) promote an effective regulatory framework for public utility services.

112. Since the last quarter of 2008, the organization of the ownership function within the state administration has made important progress. After the creation of the CNEP and the regularization of the mandate of UMEP, progress has been observed in at least three areas: in terms of institutional development; in the measurement and monitoring of SOE performance; and in the level of transparency in financial management of SOEs.

113. Instruments supporting the transparency of SOE finances and operations, and enabling more effective oversight, are being progressively implemented. In particular, procedures for the annual publication and dissemination of SOEs' audited financial statements are already in place, as well as the elaboration of new rules that require the contracting of independent audit firms, in line with international best practices. Also, by mid-2010 elaboration and definition of medium-term financial and performance targets were advanced for at least five SOEs, representing almost 80 percent of total SOE-consolidated expenditures.

114. The government has also initiated actions to regularize public utilities payment arrears from the central administration. By the end of 2009, three main Paraguayan SOEs, responsible for the delivery of utilities and basic goods (ESSAP, ANDE, and COPACO) claimed accumulated payment arrears to the central administration in the consolidated amount of US$ 110 million.[59] As a response, the CNEP formally designated representatives from the Ministry of Finance, the Comptroller General, and the respective SOEs to create an inter-institutional technical commission (*Comisión Técnica Interinstitucional* - CTI) responsible for calculating and verifying the legitimacy of accrued debits and credits that were maintained between the SOEs and the central administration over time.

59 According to SOEs reported data collected by the UMEP.

Challenges Ahead

115. Despite significant progress achieved over the last few years, Paraguay still faces several challenges. One main challenge is to strengthen the institutional framework for supervision of SOEs. To this end, a key hurdle is to ensure the sustainability of the reform effort by approving the draft law for the legal establishment of the CNEP, which was submitted to Congress in 2011. Another important challenge in the medium term is to create a consolidated regulatory framework. Among other measures, this would involve the creation of an independent regulatory body for the energy sector, as well as further progress towards the effective implementation of the water and telecommunication regulators and the eventual harmonization of standards governing these bodies.

116. Recent achievements represent the initial phase of a more ambitious medium-term plan. Next steps would include, inter alia, the implementation of strategic plans in five SOEs, the repayment of debt held by several SOEs and public sector entities, and to carry out accounting, financial and tax audits on five SOEs which have not yet been subjected to this level of scrutiny.

The Case of Peru

6

6.1 State-Owned Enterprises Portfolio

117. Despite an intense wave of privatization in the 1990s, State-Owned Enterprises (SOEs) in Peru remain important actors in the national economy.[60] For instance, in 2012 SOEs employ around 22,000 people (0.3 percent of total employment in the country)[61] ; SOE aggregate (operating) expenditures are nearly 3.1 percent of GDP; and total investment by SOEs amounts to roughly 0.33 percent of GDP. At the same time they contribute to the government finances through taxes and direct transfers in an amount that reaches almost 2.4 percent of the GDP.[62]

118. The universe of SOEs in Peru includes 31 companies overseen by the centralized ownership agency National Fund for Financing State Business Activity (*Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado* - FONAFE). The central government of Peru is owner of at least 87 percent of each SOE, and owns 24 SOEs in full.[63] Moreover, the Peruvian state holds a small percentage of another 13 companies (with state participation up to 10 percent), and 13 companies are in process of liquidation due to bankruptcy.

119. SOEs in Peru operate in both competitive and non-competitive markets. Their activities are concentrated in the electricity sector (generation and distribution), the financial sector, the oil and gas sectors, and in environmental rehabilitation. Aggregate expenditures by SOEs that operate in the electricity sector are nearly 1.3 percent of GDP; aggregate expenditures in the financial sector are 0.6 percent, and in oil and gas and environmental rehabilitation 0.6 percent. SOEs are also active in sectors such as transportation and communications, and in sewage sanitation and port infrastructure,

60 This work only focuses on SOEs linked to the central government and overseen by FONAFE, which includes 31 companies. The national oil company *Petróleos del Perú* – PETROPERU S.A is overseen by Ministry of Energy and Mining. It is also important to note that the social and health insurance company (*Seguro Social de Salud* (ESSALUD), the maintenance company *Servicios Integrados de Limpieza S.A.* (SILSA), and the security company *Empresa de Seguridad, Vigilancia y Control S.A.C.* (ESVICSAC) are not included in this work; these were incorporated under FONAFE's budgetary oversight through the 2011 Budget Law. (*Ley N° 29626, Ley de Presupuesto del Sector Público*).

61 Press Release N° 064-30 Abril 2013, *Instituto Nacional de Estadística e Informática*

62 The figures are for 2012 and were calculated using official data obtained from FONAFE.

63 Annex D shows a complete list of SOEs.

but, as indicated in table 6.1, their contribution is relatively less significant. The category "Other Sectors" includes companies in the defense sector (weapons production, maintenance, and engineering), in trade, and companies engaged in shipbuilding and metalworking. In terms of distribution of firms across sectors, the table below indicates that half of Peru's SOEs operate in the electricity sector. In fact, almost 27 percent of the energy distributed through the National Interconnected Electrical System (*Sistema de Electricidad Interconectado* - SEIN) is generated by national SOEs, and state-owned electric distribution companies satisfy 60 percent of total demand.

Figure 6.1: Distribution of SOEs across Sectors

Source: FONAFE

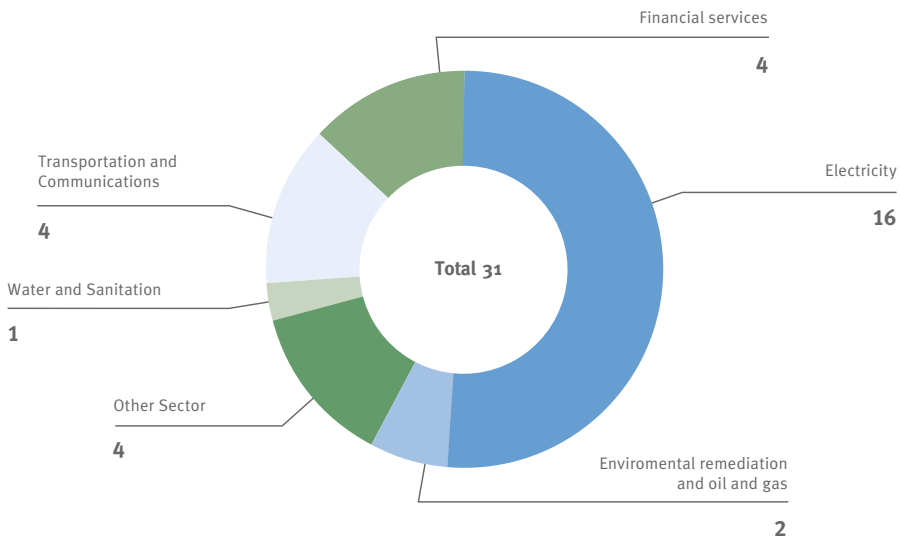


Table 6.1

Sector	Budget as % of GDP
Electricity	1.3 %
Environmental remediation and oil and gas	0.6 %
Financial services	0.6 %
Water and Sanitation	0.4 %
Transportation and Communications	0.2 %
Other Sectors	0.1 %
TOTAL	**3.2 %**

6.2 Ownership Function: Institutional Framework and Organization

120. The main actors in the Peruvian model of SOE ownership are the sector ministries, the National Fund for Financing State Business Activity (FONAFE), and the SOE management (boards of directors and CEOs). Other institutions play a key role in ensuring the accountability of SOEs: the Comptroller General's Office, the National Congress, and regulatory bodies, such as the Institutional Control Office.

121. The ownership function for SOE management and oversight in Peru has been centralized since the creation of FONAFE in 1999. The creation of FONAFE established legal separation between SOE ownership and other state functions,[64] as the agency functions as a public holding company, responsible to the Ministry of Finance (MF), and charged with regulation of all state enterprises (expect PETROPERU S.A.) linked to the national government, including oversight of SOE budgets.

122. Among other duties, FONAFE is responsible for:

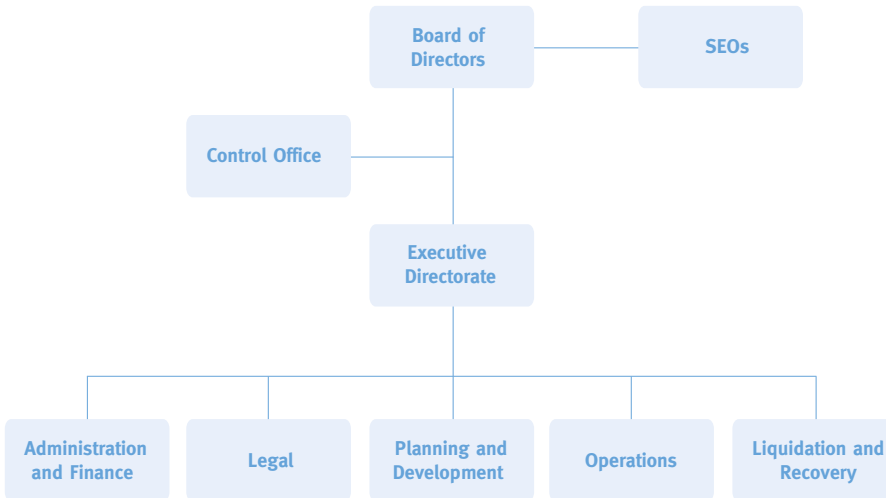
- Regulating and supervising the state's business activity;
- Exercising ownership of the shares of SOEs (under any legal form) and the rights over any company under public law;
- Approve the consolidated budget of SOEs;
- Establishing corporate governance regulations for all SOEs;
- Managing resources generated by the exercise of the ownership function; and
- Designating members for SOEs' shareholders meetings and boards.

123. FONAFE is also in charge of ensuring that SOEs comply with applicable administrative systems in the execution of their activities. These norms include budgetary, procurement of goods and services, acquisitions, investment, recruiting of new staff, and accounting and auditing norms. General corporate law and civil law may also be applicable and may supplement administrative guidelines.

124. FONAFE's institutional structure reflects the inter-ministerial coordinating role of the holding. FONAFE is led by a board of directors composed of the following ministers: (i) Minister of Economy and Finance, who presides; (ii) President of the Council of Ministers; (iii) Minister of Transport and Communications; (iv) Minister of Housing, Construction and Sanitation; and (v) Minister of Energy and Mines. FONAFE's executive director is appointed by the Minister of Economy and Finance. Figure 6.1 shows its organizational structure.

64 FONAFE's legal framework is Law Nº 27170 and Legislative Decree Nº 1031. These rules were enacted through Supreme Decree 072-2000-EF and Supreme Decree Nº 176-2010-EF, respectively.

Figure 6.2: FONAFE's Organizational Structure



125. In the past few years, FONAFE has begun to put into practice a new approach for the management of SOEs, which involves the creation of business networks. Each business network is formed by CEOs of different companies, who collaborate to identify common projects (or strategies) that would increase the value of the participating companies. By encouraging the creation of these networks, FONAFE aims to optimize the use of resources, enhance corporate integration and collaboration, and strengthen good practices of corporate governance across the companies of the holding.[65]

126. FONAFE has also been leading reforms in areas such as human resources and IT. FONAFE has introduced higher standards in the selection of board members and CEOs, and taken steps to make the process more transparent. In IT, FONAFE has implemented a System for Electronic Documentation Interchange (*Sistema para Intercambio de Documentación Electrónica* - SIED), a software package that connects SOEs to FONAFE, and allows them to share documents and improve communications through electronic signatures. Recently, a data sharing system and paper recycling were also introduced.

65 One example is the "Business Portfolio Network," formed by CEOs from electric generation and distribution, financial, and non-electrical infrastructure companies, among others. Another example is the "Cross-Corporate Business Processes Network," which integrates a series of different key processes, including those related to budget, investment, information technologies and communication, and corporate acquisitions.

6.3

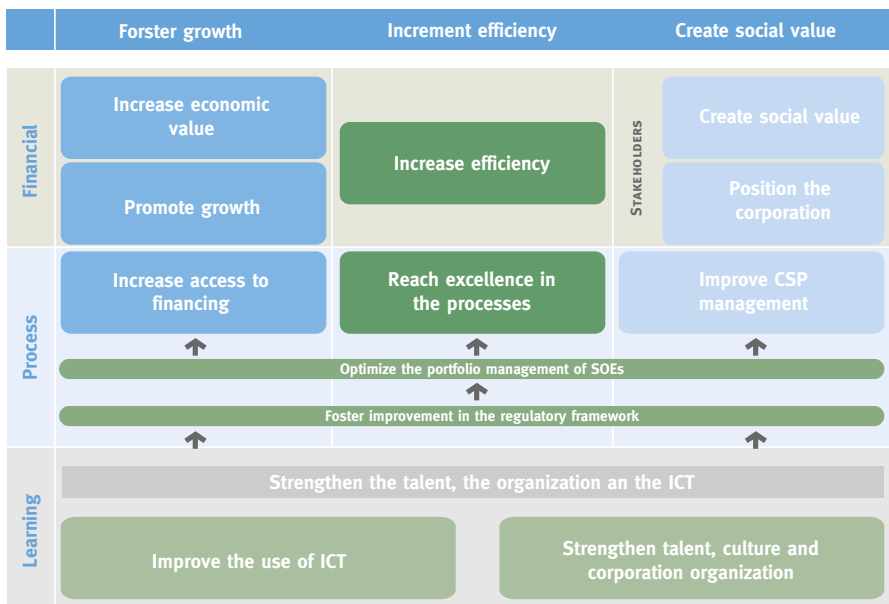
Accountability and Oversight Mechanisms

Statements of Objectives & Planning Documents

127. Management/performance contracts. SOEs' 5-year strategic plans. Peruvian SOEs are required to produce a 5-year strategic plan with specific objectives, as well as to explicitly outline how they plan to achieve these objectives, which in turn, as mentioned above, have to be aligned with the Strategic Corporate Plan approved by FONAFE.

128. For the period 2012-2016, FONAFE has established the following general strategic objectives: (i) foster dynamic SOE growth to contribute to the country's development; (ii) increase efficiency through operational excellence; (iii) foster the creation of social value; iv) strengthen human resources and develop talent, corporate organization, and the use of information and communication technology in FONAFE.

Figure 6.3: General Strategic Objectives



129. SOEs' Strategic Plans. These plans provide a management instrument defining the institution's short, medium, and long-term objectives. They are formulated by each SOE in accordance with FONAFE's directives, corporate policies, and strategic plan, and are required to be aligned with their sector's policy plans. They should also be put

in place for a 5-year period, and incorporate a diagnostic description of a company's current state of health, along with the company's strategic objectives, financial and non-financial performance indicators and goals linked to the achievement of those indicators. These plans are first approved by the board of the company, the sector ministry and then by FONAFE's board. Upon approval, they must be ratified by the General Meeting of Shareholders of each company and published online.[66] The strategic plans are updated frequently, and approved changes are also published on the corresponding websites.

130. Budget formulation and approval. The budgetary process of SOEs is governed by the National Budgetary Law, which regulates this process for the entire Peruvian state aparatus. However, the annual national budget is not applicable to FONAFE and its SOEs unless stated explicitly in the law. Typically, FONAFE consolidates all SOEs' budgets following the guiding principles of the National Budgetary System and submits them for approval to FONAFE's board.

131. FONAFE has developed several guidelines to inform SOEs about planning instruments, including their strategic plans and budgets. As stated above, FONAFE is the main entity in charge of managing SOE budget processes. In 2008 FONAFE approved *Directives to formulate SOE Strategic Plan*[67] and, in 2010, *Directives of Programming, Formulation and Approval of Operational Plan and Budget*.[68] These directives establish a set of guidelines, rules and principles to foster enhanced planning of SOEs' activities in accordance with their objectives. Also, they contain detailed forms that allow FONAFE to gather information from all SOEs in a standardized way.

Reporting: Monitoring of Performance & Ex post Disclosure

132. FONAFE's electronic document exchange system, SIED. This system is used by FONAFE to centralize the submission of SOEs' reports. It also facilitates exchange of documents between SOEs. Table 6.1 outlines the reports required by FONAFE to individual SOEs.

66 For instance, the strategic institutional plan of CORPAC S.A. can be found at http://www.corpac.gob.pe/Main.asp?T=4529

67 *Directiva de Formulación del Plan Estratégico de las Empresas bajo el ámbito de FONAFE*, approved by Board Agreement N° 001-2008/019-FONAFE.

68 *Directiva de Formulaciónon del Plan Operativo y Presupuesto de las empresas bajo el ámbito de FONAFE*, approved by Board Agreement Nº 001-2010/014-FONAFE.

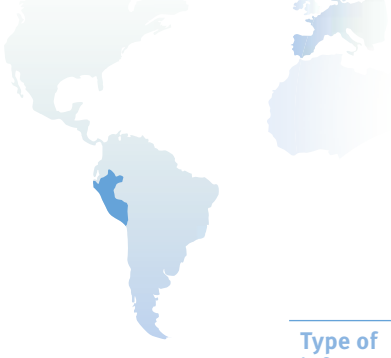


Table 6.2: SOE reports required by FONAFE

Type of information	Documents	Frequency	Specifications
Strategic management	Operational Plan's Control Report	Quarterly	
	Evaluation of compliance with goals and objectives established in the Operational Plan and the Strategic Plan	Annually	
Budgetary information	Financial statements	Monthly, Quarterly, Annually	
	Executive report	Monthly, Quarterly, Annually	Financial and budgetary analysis in comparison with the same period under evaluation from previous year
Audit information	Short- and Long-form Audit Reports	Annually	Short- and Long-form audit reports on financial statements as of 31 December
Corporate Governance	Executive Report on the implementation of good corporate governance	Annually	

133. In general, all information regarding the management of SOEs is available to the public and published at both FONAFE's and SOEs' websites.[69] FONAFE has issued a specific resolution regarding transparency regulations with which SOEs must comply, entitled "*Transparency in the Management of State Owned Enterprises under FONAFE*"[70], and closely monitors compliance with it. Table 6.2 contains the information that SOEs must publish on their websites:

69 Refer to http://www.fonafe.gob.pe/portal

70 *Directiva de transparencia en la gestión de las empresas bajo el ámbito de FONAFE*, approved by Executive Direction's Resolution No. 010-2009/DE-FONAFE, published on February 11th, 2009.

Table 6.3: SOE Reports Available Online

Type of information	Documents
Budgetary information	Budgetary information: Initial budget of income and expenditures; Modification to the Initial budget of income and expenditures; implementation of the budget of income and expenditures
Financial information	Initial budget of Income Statement, Balance sheet and Cash Flow forecast; Modifications to the Income statement, Balance sheet and Cash Flow forecast; Budget execution of the Income Statement, Balance sheet and Cash Flow forecast; Financial statements, including notes to these Financial Statements and the auditors' opinion
Public investment projects in execution	List of projects
Performance indicators	Compliance report on Operational Plan's indicators Compliance report on Strategic Institutional Plan's indicators

134. According to the provisions of the Transparency and Public Information Law SOEs can classify certain information as "restricted access." This information can be classified as secret, reserved or confidential, e.g. in areas related to national security, or to banking, trade, or industrial secrecy.[71]

135. An annual report is prepared by FONAFE, and publicly disseminated. The report aggregates fiscal and financial SOE-related information, and it is submitted to the ministries, the Presidency of the Republic, the cabinet, and the Comptroller General, among other institutions.

136. The Budget Law establishes that once a year FONAFE has to report to Congress' Budget Commission. During the session FONAFE presents, and may be required to explain or justify, the results of the previous fiscal year, and introduces the consolidated budget of SOEs for the following fiscal year. The Congress has the authority to request information from FONAFE, or from any SOE at any time.

Auditing of SOEs

137. In 2006, FONAFE approved the Code of Internal Control for all SOEs under its supervision. The code was developed accordingly to the National Control Law and its objective is to provide guidelines for the implementation of measures regarding the internal control of the enterprises. This code proposes a standard system and internal control structure to support the implementation of internal control processes, in turn

71 This information may be technical, trade or business related, including secret processes, formulas, programs, marketing plans, research and development information, studies, special pricing plans or other information that may merit a reasonable effort at maintaining secrecy, particularly insofar as it derives commercial value from its secrecy.

fostering an ethical environment, preventing risks and promoting the permanent improvement of SOE management. In 2008, the Comptroller General approved guidelines for the implementation of the internal control system and FONAFE instructed the SOEs to comply with the guidelines for implementation of internal control.

138. Internal control measures implemented by SOEs are supervised by the Institutional Control Office (ICO). Each SOE has an ICO unit within its organizational structure. It reports directly to the board of directors, and it is responsible for monitoring administrative, financial and economic resources and assets of SOEs, in line with the National System of Controlled by the National General Comptroller (CGR). The CEO of the ICO is appointed by the CGR, and reports to and is remunerated by this institution.

139. SOEs' annual financial statements are audited by external independent auditors selected through an open "request for proposal" process. This process is managed by the CGR and includes technical requirements proposed by the SOEs. Furthermore, additional external audits may be requested by a general shareholders meeting at any time. Audit results are required to be submitted to FONAFE and the CGR, and must report on the following topics: (i) achievement of objectives and goals outlined in the Strategic and Operational Plans; (ii) execution of budget process and procedures; (iii) compliance with tax obligations; and (iv) the financial state of the company.

SOEs Boards of Directors and Management

140. All SOEs in Peru are governed by a board of directors, while CEOs are responsible for the daily operations of the companies. After the general shareholder meeting, the SOE Board of Directors is the highest authority of the company, with the responsibility to oversee the company and establish its strategies, plans and objectives, as well as ensure compliance with these. The companies' bylaws determine the number of board members. In no case, however, is this number less than three or larger than seven. For the majority of SOEs, directors are appointed by FONAFE (through its board). The line ministry and/or MF proposes a candidate or candidates to FONAFE, which then makes an official nomination to the General Assembly of the Shareholders, which then confirms the candidate. The board regularly convenes twice a month.

141. In general, professional requirements and the appointment/selection procedure for board members are established by law.[72] According to the *Decreto Legislativo* 1031, board members must be professionals with strong ethics, be familiar with the business of the SOE, and have extensive experience in strategic and business management. However, FONAFE defines additional rules for companies under its supervision,[73] establishing detailed procedures for the designation and dismissal of board members. This includes strengthening the professional requirements established by the law; for instance, the candidate must hold a university degree, and between five and 10 years of professional experience or 10 years of professional experience in the sector in which the SOE operates. FONAFE also sets several restrictions that on individuals becoming board members; for example, on-going judicial process involving the SOE, having been

72 The evaluation procedure is defined in the Supreme Decree 085-2006-EF. This decree establishes precise steps that should be followed in the evaluation process. It defines several categories and assigns scores to each categories that prospective candidates should meet.

73 The guidelines are entitled *Directivas aplicables a los directores de las Empresas públicas en las que FONAFE participa como accionista"* (Directives applicable to Directors of the State Owned Enterprises in which FONAFE participates as shareholder). The rules are also applicable to board members in companies where the state participates as a minority shareholder.

sanctioned or dismissed due to an administrative fault from any public institution or public enterprise, or being in a commercial relationship with the SOE.

142. In August 2010, a decree supported by FONAFE established that at least one of the board members shall be selected through a public, competitive search. This search is conducted by the National Authority for Civil Service (*Autoridad Nacional de Servicio Civil* - SERVIR) or by a private recruitment firm or "head hunter." When the selection is the result of such an open search, candidates are required to meet higher professional standards (such as holding a master's degree in a field related to the SOE sector) and additional qualifications.[74]

143. Board members do not have a contractual relationship with the SOE. Therefore, they are not considered employees in legal terms and do not have the benefits or protections provided by private or public labor regulations. Members of SOE boards may have their SOEs appointments revoked by FONAFE at any time without cause. Board members receive an honorarium for attending board meetings. The regulations specify that these payments should be set at a level appropriate to create incentives for improved productivity and performance, but in practice they are lower than those received in the private sector.[75] The duration of the appointment is effectively indefinite since it has not been established in any regulation. However, usually at the end of a presidential term, several changes take place in public administration and tending also to affect SOE boards.

144. FONAFE establishes certain guidelines to evaluate board members.[76] However, the guidelines focus on SOE performance rather than on the specific contributions of the board. In 2006, FONAFE approved the *Code of Ethics for State Owned Enterprises' Workers*, which also applies to board members[77] and the *Directive on Neutrality and Transparency of State Owned Enterprises during electoral processes*[78] which regulates the behavior of SOE boards during electoral campaigns.

145. CEOs are selected through a public, competitive job search conducted by private head hunters, and appointed by the SOE board. In 2009, FONAFE established a general policy to select CEO and other managerial positions using private recruitment agencies or "head hunters," and develops guidelines for this purpose.[79] CEOs are accountable to the SOE's board and to FONAFE. Since 2010 administrative regulations mandate that FONAFE develop mechanisms to evaluate the performance of CEOs, but these mechanisms have not yet been approved.[80] In general, managerial personnel in the SOEs are hired under private labor laws. This practice grants SOEs more flexibility in managing human resources compared to other public entities. There are no specific rules for dismissing CEOs since they are hired "at will" by the SOE boards.

146. In Peru, the mandate of an SOE CEO is supposedly not tied to the government's mandate. However, political interference in bureaucratic institutions is still high

74 For instance, board members should not be related to SOE's personnel, management, board or shareholders; shall not be a public official or have had a direct or indirect contractual, commercial or labor relationship with the company for at least two years before the designation. See D.S. 126-2010-EF, art.15.

75 This practice prevents FONAFE from attracting competitive professionals to the boards. Recently, in an attempt to foster directors' involvement in the SOEs, FONAFE included a variable amount in these payments. However, this measure has not yet been implemented.

76 No information, however, is available regarding the results of these evaluations.

77 Agreement No. 010-2006/004-FONAFE of the Board of Directors, published on February 3, 2006.

78 Agreement No. 001-2006/003-FONAFE of the Board of Directors, published on January 18, 2006.

79 Directive applicable to the selection of managers and equivalent positions in the SOEs under FONAFE. Approved by the Agreement of FONAFE's Board of Directors No. 006-2009/09-FONAFE on the 04.09.09 (Published on October 20, 2009).

80 In practice, FONAFE evaluates CEOs' performance through the performance of the SOE. This means that if SOEs objectives are achieved, it is assumed that the CEOs have performed well.

in the country, so changes in ministerial positions may affect SOEs' management stability, in particular in the nomination of the boards.

6.4 Reform Initiatives

147. The SOE ownership framework in force in Peru until 1990 did not deliver good results. The supervision and accountability mechanisms were inadequate and unclear. In practice, the sector ministries exercised the ownership function: they were in charge of appointing board members, and deciding and implementing sector-specific policies. However, these decisions were generally driven by political motives and there was no coordination across sectors. MF intervened in budgetary issues or salary policy, but it did not effectively control the companies. All this led to poor performance by SOEs, an inefficient provision of goods and services, and consequently, low investment levels in the sector.

148. In 1990, an aggressive privatization process led by the MF began in Peru. This wave of privatization transformed Peru's SOE portfolio from over 300 companies owned by the central government to the 31 currently under FONAFE's oversight. The main sectors that participated in the privatization process were energy (hydrocarbon and electricity transmission) and infrastructure (ports and airports). The main purpose of this process was not to separate the ownership functions from regulatory or public policy functions, but was mostly aimed at downsizing and reorganizing SOEs to privatize them.

149. A new constitution, approved in 1993, established that state business activities must be authorized by law, must be complementary to private activities, and must serve the public interest. To organize and carry out the privatization process of SOEs, the Peruvian government created the *Oficina de Instituciones y Organismos del Estado* (OIOE), an office with financial autonomy, under the MF. All supervision and control functions pertaining to public enterprises were transferred to this new office which had absolute control over SOE management (procurement, investment, salaries) and budget. In 1998, when the privatization process came to an end with some SOEs still under state control, the OIOE adopted measures to improve SOE management at three levels: budget, personnel costs, and management agreements.

150. In 1999, FONAFE was created as the holder of all state shares and as the governing body for state business activities. All public entities that held shares in a SOE transferred them to FONAFE. The creation of FONAFE as a governing body of state business activity effected a separation of the ownership function from public policies.

151. The following table summarizes the level of legal protection granted to the new institutional arrangement in SOE ownership and oversight in force since the creation of FONAFE in 1998.

Table 6.4: Legal Protection of the Reforms

	Level of Legal Protection			
	Constitution Protection	Law	Decree	Lower-rank Norm
Division of Responsibilities between Ministries in the ownership function		X		
Creation of SOEs Monitoring Unit		X		
SOEs Board/CEO's appointment & dismissal rules		X	X	X
Reporting Requirements from SOEs		X	X	
Auditing Requirements from SOEs		X	X	X
Assessment Mechanisms of SOEs Performance		X	X	X

The Case of Spain

7

7.1 State-Owned Enterprises Portfolio

152. Overall, the size of the public enterprise sector in Spain is relatively small.[81] Aggregate current expenditures of the entire sector amount to nearly 5 percent of GDP or 13 percent of the central administration's budget; and total investment is roughly 0.5 percent of GDP or 1.3 percent of the government's consolidated budget. At the same time SOEs contribute to the government finances through taxes, profits, and other transfers in an amount that reaches almost 1.3 percent of the GDP or 3.6 percent of total government revenue.[82]

153. The public enterprise sector[83] in Spain is composed of approximately 260 state-owned enterprises (SOE). This number includes companies directly controlled by the central administration through the Ministry of Finance and Public Administration (*Ministerio de Hacienda y Administraciones Públicas* - MHAP)) and/or sector ministries (Industry, Agriculture, Development), and public companies under the supervision of the Public Holding for Industrial Participations (*Sociedad Estatal de Participaciones Industriales* - SEPI), a public entity attached to the MHAP .[84]

154. SEPI is the biggest holding of the public sector. As of December 31, 2012, SEPI had a direct and majority participation in 18 companies that together employ more than 80,000 workers. Under its economic and financial control are also the public radio and television company *Corporación de la Radio y Televisión Española* (CRTVE)[85], currently a public foundation. In addition, SEPI participates as a minority direct shareholder in seven companies (of which 5 are traded at the stock market), and indirectly in more than 100 companies. Total current expenditures of companies in the SEPI group add up

81 This work only focuses on SOEs linked to the central administration.

82 The figures are for 2010 and were calculated using official data obtained from the Ministry of Finance.

83 The public enterprise sector is defined by the National General Budget Law 47/2003, art. 3.

84 See www.igae.pap.minhap.gob.es/sitios/igae/es-ES/ClnInvespe/Paginas/invespe.aspx for more information on the structure of the central administration.

85 In 2006, the public entity RTVE declared bankruptcy (under the supervision of SEPI) and the *Corporación de Radio y Televisión Española S.A.*, was founded

to almost 0.4 percent of the GDP and 1 percent of the central administration's budget.[86]

155. Table 7.1 groups SOEs by percentage of state participation. As indicated in the table, most of the SOEs are entirely owned by the government.

Table 7.1: State Participation in SOEs

Source: MF

State Participation	Number of Entities	%
100%	192	73.28
≥ 90% and < 100%	17	6.49
≥ 70% and < 90%	10	3.82
≥ 60% and < 70%	7	2.67
> 50% and < 60%	35	13.36
≤ 50%	1	0.38
TOTAL	**262**	**100.00**

156. activities SOEs in Spain operate in both competitive and non-competitive markets. Their are spread across the economy. Table 7.2 below describes SOE participation by sectors calculated by aggregating SOEs current expenditures by SOEs in each respective sector. As the table indicates, SOEs in Spain tend to concentrate their operations in trade, transportation, and tourism activities (SOE aggregate expenditures in this sectors are nearly 2.6 percent of the GDP and seven percent of the central administration's budget), artistic and recreational activities (one percent of GDP and almost three percent of the budget), and financial and insurance activities. SOE participation in other sectors is relatively minor.

86 A complete list of companies in the SEPI group is shown in Annex E.

Table 7.2: Participation of SOEs across Sectors

Source: MF

Sector	SOE Sectoral Budget	
	As % of Budget	As % of GDP
Agriculture, Livestock, Forestry, Fishing	0.07%	0.02%
Artistic, Recreational	2.00%	0.74%
Construction	0.96%	0.35%
Defense, Education, Sanitary and Social Service Activities	0.24%	0.09%
Extractive Industries, Manufacturing, Energy, Water, Sanitation	2.06%	0.76%
Financial, Insurance	0.37%	0.14%
Information, Communications	0.20%	0.07%
Professional, Scientific, Technical, Administrative	0.79%	0.29%
Real Estate	0.18%	0.07%
Trade, Transportation, Hospitality	6.04%	2.22%
TOTAL	**12.92%**	**4.74%**

7.2 Ownership Function: Institutional Framework and Organization[87]

157. SEPI centralizes the ownership function of the state as applied to the public companies under its control – that is, when it holds the majority of the shares. SEPI was initially constituted by the Law 5/1996 for the creation of specific legal entities as a public corporation of the Central Administration, and under the responsibility of the Ministry of Industry. This responsibility was transferred to the Ministry of Finance in 2011.[88] The legal framework which regulates the current functioning of SEPI is based on the General Budget Law No. 47/2003.

158. The law defines SEPI as a body, whose economic activities and contrac-

87 The institutional framework and the oversight mechanisms described in the next sections are those that apply to SOEs under the supervision of SEPI.

88 This law was then partially modified by the following: Law 13/1996, on fiscal and administrative matter; Decree-Law 15/1997; Law 66/1997, on fiscal and administrative matters and social order; and Law 20/2006.

tual obligations are governed by the civil, mercantile and labor stipulations from the private-sector legal code. However, in certain areas (such as recruitment of staff, procurement and budgeting), its activities are governed by public law and subject to the same control mechanisms (budget oversight, audits, public control, etc) as the rest of the public sector.

159. SEPI acts as an instrument of government policy in the restructuring and modernization of public enterprises. Furthermore, SEPI plays an important role in promoting economic development. According to its internal regulation and guiding norms, its main functions are:

- promoting and coordinating the activities of the entities it controls;
- setting strategy and supervising the planning processes of the enterprises in which it holds the majority share;
- managing the portfolio of its shares and SOEs in which it participates as a shareholder;
- carrying out all active and passive financial operations related to its own capital and the capital of the entities in which it directly and indirectly participates[89]
- facilitating the process of privatization in SOEs it controls, as well as other processes delegated to it by the government

160. SEPI functions fundamentally as a financially autonomous corporation. In order of significance, the main sources of SEPI's financing are: (i) management of its own assets; (ii) revenues from privatization proceeds; (iii) dividends from participation in enterprises (as majority or minority shareholder); (iv) borrowing from private financial markets, within the limits laid out by the annual general budget law. Also, since 2006, SEPI has had the option to receive, if necessary, transfers from the general budget; however, at the time of writing, fiscal year 13, this had not been necessary.

161. To exercise the delegated supervisory and control functions for the enterprises of the SEPI Group, SEPI applies the following two management instruments:

- An integrated planning and oversight mechanism called the Integrated Planning, Follow-up, and Monitoring System. This is a series of formal instruments through which SEPI exercises strategic economic and financial control of the management of the companies and foundations in its group. Through this system SEPI applies homogeneous guidelines to SOEs for accounting, fiscal, and financial issues. It is implemented in three stages; (i) oversight of the companies' budgetary process, (ii) periodic control (monthly or quarterly) of budget execution, and (iii) required reporting of companies' results and a final evaluation of the companies' performance.
- A series of regulations which govern the relationship between SEPI and its compa nies, which also establish functions and operations executed by the companies. These regulations must be submitted for previous authorization by SEPI's governing bodies (Administrative Council and Directorate Committee).

89 In some cases those operations require a previous administrative authorization. Also, the maximum debt level for SEPI is determined annually in the government's Budget Law.

7.3 Accountability and Oversight Mechanisms

Statements of Objectives & Planning Documents

162. Management/performance contracts. The General Budget Law assigns SEPI the responsibility of monitoring SOE performance. Generally, the companies are required to meet some minimum performance levels (in terms of rate of return, service provision, etc.) set by SEPI at the first stage of the Planning, Control and Monitoring System. The conditions are laid out in performance contracts between each company and SEPI. At the end of the year, SEPI reviews the information provided by the firm, evaluates each company's success in achieving these objectives, and, based on this performance, establishes the course of action for the following year. Detailed information about performance indicators is published in the companies' websites and frequently incorporated into the companies' annual reports. The General Comptroller and Accounting Directorate's (*Intervención General de la Administración del Estado* - IGAE) also includes information about the companies' performance in the report *Empresas Estatales: Informe Provisional*, but with some lag.[90]

163. Annual and multi-annual budgeting formulation and approval. At the beginning of each fiscal year, SOEs are required to prepare an Annual Operative Plan (*Plan Operativo Annual* - POA) and a four-year projected budget (*Plan a Largo*; PL) for SEPI's approval. The POA also lays out the objectives for each company, the basis for the application of the incentive system (this is a variable portion of the salary) for the managers of the companies, and submits these to the Directive Committee of SEPI for approval. Once the POAs and PLs of all companies have been compiled, the Multi-Annual Action Plan (*Plan de Actuación Plurianual*; PAP) of SEPI and its group is consolidated. It is then approved by the Administrative Council of SEPI and submitted to the Ministry of Finance for the preparation of the general budget. SEPI also prepares annually an operating and capital budget (for each company individually, and on a consolidated basis for the group as a whole), which is integrated into the general budget of the government in each budget cycle.

Reporting: Monitoring of Performance & Ex Post Disclosure

164. SEPI's comprehensive "Integrated Planning, Follow-up and Monitoring System" constitutes the main reporting tool throughout the year, including ongoing and ex post reporting and review processes. The type of reports and their frequency are described in the table below.

90 http://www.igae.pap.minhap.gob.es

Table 7.3: Types of Reports and Frequency

Type	Documents	Frequency
Ex Ante	POA (Annual Operative Plan), PL (Long Term Projected Budget, for 4 years)	Annually
Ongoing	POA and PL monthly and quarterly execution report	Monthly/Quarterly
Ex Post	Annual Comprehensive Report (business trends, performance, financial statements, proposed targets and actions for next year)	Annually

165. Budget execution. SEPI performs regular (monthly and quarterly) assessments regarding the level of POA-PL budget execution, sector trends, the level of progress in the implementation of planned activities, and monitoring of follow-up indicators. The type of oversight exerted by SEPI is less administrative and more managerial, focused on results and on increasing the competitiveness and profitability of the SOE portfolio. This approach facilitates significant management autonomy within the SOEs, and SEPI's role is more focused on supervision and authorization of strategic decisions and actions. SEPI also submits annually to Congress and publishes its Annual Report, which presents the consolidated budget execution of all SOEs under its supervision.

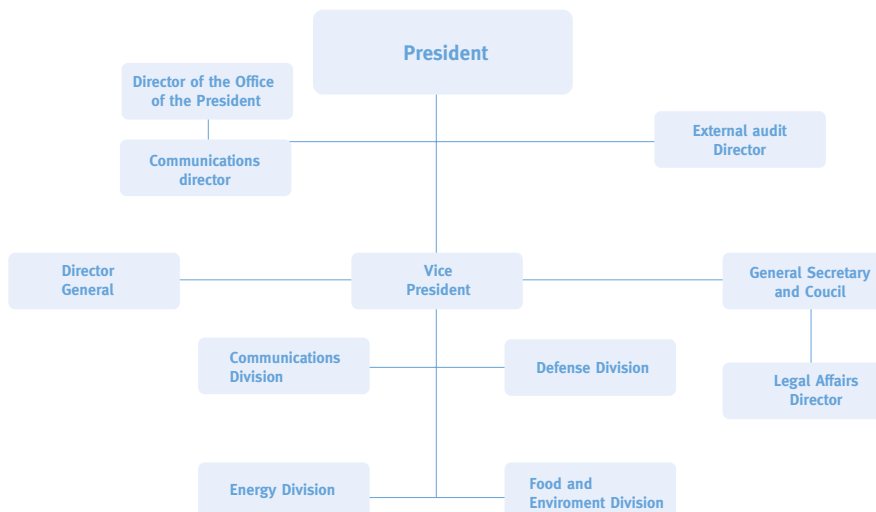
166. Other key SOE reports. At the end of the fiscal year, SOEs are required to provide a comprehensive annual report to SEPI. As part of this global evaluation, which is submitted for approval to the Directive Committee of SEPI, it is determined which proposals will be submitted for authorization to the Administrative Council of SEPI. This includes proposals on functions and operations of the companies, which subsequently will be submitted to the respective General Shareholder Meetings. Furthermore, SEPI evaluates the work of the management team of the enterprises during the past fiscal year. Specifically, the achievement of the objectives set for the companies in the POA-PL are used for the application of the incentive system (that is, the award of a variable portion of the salary to the management teams).

SOEs Boards of Directors and Management

167. As established in Law 5/1996 (Art 15), SEPI is headed by a President and its Administrative Council (*Consejo de Administración*). The President of SEPI is appointed by the government, as nominated by the Ministry of Finance and Public Administration, and is considered a high-level position. His or her remuneration is set by

the government. The board of directors is composed of the president and a maximum of 15 board members, who themselves nominate up to two vice-presidents from among their number.[91] The council members are nominated by the MHAP based on proposals by other ministries. Usually, the counsels are political designees holding high level public posts (State Secretaries Undersecretaries and General Directors) and represent the ministries linked to the activity of the company. With the exception of the president and the vice president, the members of SEPI's board do not receive compensation for attending the board meetings.

Figure 7.1: SEPI's Organizational Structure



168. In general, the functioning of the boards of directors of public enterprises is regulated by public commercial law[92] and does not have a specific body of regulation that applies to it. Some characteristics common to the boards of SOEs under SEPI are laid out below:

- *Board Composition:* State representation in the board of SOEs is proportional to the ownership of the SOE. The most common proportion of public participation is 100%, sometimes accumulated through different public institutions, e.g. partici pation by the Ministries of Industry or Agriculture.

91 In early 2013, there was only one vice president.

92 Through the *Ley de Sociedades de Capital (Real Decreto Legislativo 1/2012, July 2) and Normativa reguladora del Registro Mercantil.*

There are no independent board members, with the exception of some of the SOEs in the SEPI Group which have private minority shareholders represented at the board. Also, in some enterprises, unions have representation on the board by agreement with the particular enterprise. In 2012, the government established by law a maximum number of board members for all SOES.

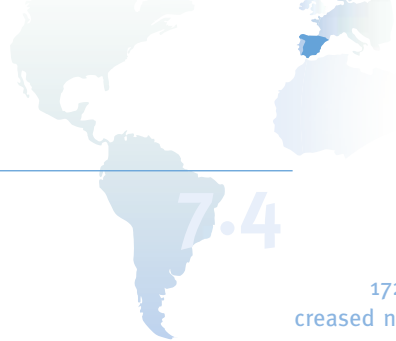
- *Nomination:* The members of the boards of public enterprises under SEPI are typically proposed by the relevant ministry, and then officially appointed to the respective boards by the Ministry of Finance and Public Administration. SEPI's board then communicates this appointment to the board of directors of the respective company.
- *Meetings and Regulation:* The legal framework governing commercial enterprises requires the boards to meet regularly and at least for the discussion of the annual statements.
- *Board Evaluation:* There is no formal board evaluation.
- *Remuneration:* Board members are not remunerated, except stipends to defray the cost of attendance. In the cases of high-ranking officials (General Director and above), the remuneration is not received by the member of the board, but transferred to the Treasury.

169. In the case of very senior management staff (President, Vice President, and SEPI Executives), the government sets their maximum remuneration. As explained above, the president of SEPI is the only manager directly appointed by the government. The directors of the SOEs are nominated by their respective boards, based on the proposal of SEPI's Board. SEPI and SOE management staff members are recruited through the same mechanisms as other private companies, and the lower-level employees of SEPI and its enterprises are hired through public recruitment processes.

Auditing of SOEs

170. SOEs are subject to the same auditing mechanisms as the rest of the public sector. External audits on economic and financial issues are performed by the Office of the State Comptroller (IGAE) and the Court of Auditors (*Tribunal de Cuentas*); and audits on labor relations are performed by specific commissions (*Comisión de Seguimiento de la Negociación Colectiva* and *Comisión Interministerial de Retribuciones* - CECIR). As a result, the companies are subject to very stringent audit mechanisms.

171. The legislative branch also exercises an oversight function in several different ways. One the one hand through the legislative committees' *ad hoc* oversight. Both legislative chambers and/or any parliamentary group may request the presence of SEPI and SOE representatives to discuss issues related to their performance. Furthermore through financial oversight; SEPI and the SOEs are required to submit economic and financial information to the legislature on a regular basis. Finally, the European Union, through specialized committees, controls SOEs' performance on issues concerning sector-specific policies and anti-competitive practices.



7.4 Reform Initiatives

172. Over the last two decades, the role and importance of SOEs in Spain decreased notably due to the privatization process that started in the early 1980s. Between 1982 and 1996 public stakes in 70 enterprises were sold, and in some cases the state pulled out completely. The privatization process accelerated in 1996, when the government approved a cabinet agreement which organized and regulated the procedures for the selling of shares in public companies. Between 1996 and 2009, shares from 60 companies were sold, bringing in some 34 million euros. These sales included significant disinvestments in all major state monopolies and affected some of the largest national companies in Spain.[93]

173. The creation of SEPI and the consolidation of results-based SOE oversight (1997-2004). The reform of SOE oversight in the 1990s and 2000s has been led by both the Ministry of Industry and the Ministry of Finance. SEPI was created as a public-law entity by decree in 1995; its status was then protected by law in 1996. A notable event in the evolution of SEPI was the decision by the government to restructure the public enterprise sector through government agreements[94]. Since then, and through succeeding legal reforms, other enterprises and corporations were transferred to SEPI and given possession of minority participation in some companies in strategic sectors (electricity, gas).

174. SEPI was put in charge of supervising a portfolio of SOEs that supposedly performed under competitive and unregulated markets. To succeed in that environment, SEPI requested the firms to implement a results-based management focus. Within this framework, the industrial policies remained under the control of the line ministries, the regulating authority was implemented by technically savvy autonomous regulating agencies, and SEPI was in charge of supervising the financial management and performance of the supervised firms.

175. The key legislation reforming SOE oversight in Spain was promoted by European Union directives which were in turn incorporated into the government's strategy. Initiated by the Ministry of Finance and approved by Congress, the new legal framework for SOE oversight established lines of accountability, and mechanisms for enforcing these; both from SOEs to SEPI, and from SEPI to the rest of government, including the Ministry of Finance, the Wage Bill Inter-Ministerial Committee, the Advisory Committee on Privatizations, Parliament, and the Court of Accounts/Auditors. The progressive reform of SOE oversight took almost two decades (1983-2001) to complete the transformation of the institutional regime into a results-based management framework governing SOEs in competitive markets.

176. The European Union has played a fundamental role in pushing forward reform of SOE portfolio management. During the 1980s and 1990s, European institutions and treaties transformed the role of the state in the economy. New directives and agencies were established to ensure the protection of the single market and guarantee fair competition within sectors, which forced EU members to adapt their national legislation. The resulting EU guidelines enacted in the last two decades promoted the restruc-

93 These companies remain large, and have grown to become large-scale multinationals such as Repsol (oil production and distribution), *Telefónica* (telecoms), Iberia (national airlines), ARCELOR-MITTAL (steel industries), Endesa (electricity production and commercialization), *Red Eléctrica de España* (electricity distribution), and ALTADIS (tobacco production and distribution).

94 Through the *Ley de Patrimonio de las Administraciones Públicas* (Ley 33/2003, de 3 de noviembre).

turing (or privatization) of uncompetitive SOEs, the removal of subsidies for SOEs, the establishment of a results-based approach to SOE management, and the rationalization of regulatory frameworks. Finally, the EU also added an additional layer of public oversight of SOEs, by stipulating that SEPI, the public holding, would be accountable to EU agencies in charge of sectoral regulation and the guarantee of fair competition.

177. The latest reforms of the public enterprise sector have been taken up by the government in 2010 and 2012. These efforts have included the approval of regulation establishing the close-out of some companies and the sale of others, as well as the transfer of an important SOE to SEPI – the postal company *Grupo Correos y Telégrafos* in March 2012.

178. The analysis here has focused on those companies under SEPI oversight. However, an important number of SOEs in the Spanish public enterprise sector remain under direct ownership of the central administration, either through the MF or sector ministries. The main challenge for the government in the area of corporate governance is to continue developing and adopting measures that could benefit a much broader set of SOEs.

The Case of Uruguay

8

8.1 State-Owned Enterprises Portfolio

179. State-owned enterprises (SOEs) play a major role in Uruguay.[95] A few key items of information confirm their relevance in the economy. SOEs employ around 35,000 people (2.3 percent of total employment in Uruguay and 16.8 percent of public sector employment); SOE aggregate current expenditures are approximately 12 percent of GDP; and total capital expenditures amount to roughly 1.7 percent of GDP.[96]

180. There are about 15 significant SOEs in Uruguay that operate in both competitive and non-competitive markets. Their activities are concentrated in the oil, electricity, telecommunications, financial, water and sanitation, and infrastructure sectors. The six largest SOEs in Uruguay (measured in terms of employment and current expenditures) represent nearly 70 percent of the SOE sector. Table 8.1 below shows several indicators that describe the relevance of these companies in the economy.[97] Current expenditures of the state-owned oil company *Administración Nacional de Combustibles, Alcoholes y Portland* (ANCAP) amount to 6 percent of Uruguay's GDP and almost 30 percent of central government current spending; in the electricity sector, current expenditures of the State Power & Electricity Utility (*Administración Nacional de Usinas y Transmisiones Eléctricas* - UTE) are approximately 2.6 percent of GDP and 16 percent of government spending; and in the telecommunication sector, ANTEL's current expenditures represent 1.7 percent of GDP and 10 percent of government spending. Aggregate expenditures by SOEs operating in other sectors represent around 2 percent of GDP.

95 This work only focuses on SOEs linked to the central government and regulated by public law (autonomous entities and decentralized services). There are no subnational public enterprises.

96 The figures are for 2010 and were calculated using official data obtained from the Ministry of Finance.

97 Additional information about these companies is shown in Annex F.

Table 8.1: Significance of the Six Largest SOEs in Uruguay

Name	Sector	Employment	SOE Current Expenditures As % of	
			GPD	Gov. Current Expend. (*)
Administración Nacional de Combustibles, Alcohol y Pórtland (ANCAP)	Oil	2353	6.0	29
Administración Nacional de Usinas y Transmisiones Eléctricas (UTE)	Electricity	6150	2.6	16
Administración Nacional de Telecomunicaciones (ANTEL)	Telecommunications	6034	1.7	10
Banco República (BROU)	Finance	4279	1.1	5
Obras Sanitarias del Estado (OSE)	Water and Sanitation	4605	0.6	4
Administración Nacional de Puertos (ANP)	Infrastructure (port administration)	1087	0.2	1
TOTAL		**24508**	12.1	**65**

(*) Central Government current expenditures

8.2 Ownership Function: Institutional Framework and Organization

181. The ownership function of SOEs[98] in Uruguay is based on a hybrid model, which combines several aspects of both the centralized and dual arrangements. The Office of Budgeting and Planning (*Oficina de Planeamiento y Presupuesto* - OPP), along with the Ministry of Finance (MF), sector ministries, and, in some cases, other autonomous control agencies, are jointly responsible for SOE oversight.

182. SOEs enjoy some budgetary and financial autonomy. However, they still report all economic and financial decisions and ongoing SOE business documentation to the OPP, which is in charge of the public sector general planning system. The OPP is directly responsible to the President of the Republic; its director holds the same rank as a minister, and maintains direct communication with ministries and other government

98 These entities are collectively referred to as *Entes Autónomos y Servicios Descentralizados del Dominio Comercial e Industrial del Estado*, Article 221 of the Constitution.

entities. Its director, however, in contrast to other ministers, is exempt from parliamentary questioning. OPP advises the president on various economic and technical issues, and jointly with the MF and the sector ministries is responsible for the national budget and assessing budget performance.

183. OPP is directly linked to SOEs through its Department of Public Enterprises (*Departamento de Empresas Públicas*, DEP).[99] The main tasks of this department include: (i) to generate budgetary and policy guidelines[100] that SOEs should follow in the preparation of their budgets; (ii) to examine and approve the budgets proposed by SOEs; (iii) to collaborate in the preparation and monitoring of management agreements signed between the Executive and SOEs; (iv) to examine SOEs' fee structures; (v) to modify and adjust SOEs' organizational and compensation structures; (vi) to examine SOEs' balance sheets; (vii) to assess SOEs' investment projects whose costs exceed a certain minimum threshold; and (viii) to collaborate in the preparation and monitoring of financial programs.

184. The MF also plays a role in the supervision of SOEs. MF sets, through its Macroeconomic Advising Unit, the macroeconomic guidelines that the OPP (and, consequently, SOEs) should follow in developing their investment plans. Given the significant fiscal impact of SOEs' aggregate operating results, and to ensure that SOEs work within the government's financial program established by both the five-year budget plan and the annual budget reviews (*Rendición de Cuentas*), MF along with OPP (through DEP), also monitors the financial position of SOEs on a monthly basis.

8.3 Accountability and Oversight Mechanisms

Statements of Objectives & Planning Documents

185. Management/performance contracts. The use of management and performance contracts in Uruguay is still in early stages of development. The Constitution of Uruguay (articles 221 and 231) establishes general guidelines for the use of performance indicators and performance agreements, and approves the use of a variable pay scale depending on performance. The government, through DEP, has been working lasting recent years on the implementation of performance agreements between the government and those SOEs[101] which receive subsidies to their general income. The contracts drafted by DEP specify a series of financial and non-financial or operating performance indicators, such as indicators that assess the provision of services, and indicators that evaluate internal management (human resources, control systems, technical aspects, etc.). These contracts also include penalties for poor performance: the board may be pressed to resign, board members may not be entitled to incentive payments, and the government may deny financial assistance and/or support for access to external financing. Furthermore, DEP is developing a variable compensation system which implies improved compensation subject to the achievement of global, sectoral, and individual goals.

186. Budget formulation and approval. Uruguay's National Constitution and its associated current legal framework allow for a multiplicity of budget formulation and approval mechanisms, depending on which entity is involved.[102] SOEs are considered

99 OPP's activities focus on five main areas: Public Budgeting, Public Enterprises, Regional Policies, Development Strategies and Investment Policies, and State Management and Performance Evaluation.

100 The policy guidelines are determined by the executive through sector ministries and MF.

101 Article 752, Law 18.719 requires of the use of performance agreements. The law also establishes that these contracts should be supervised by OPP and MF.

"decentralized services," and as such, they prepare their own budget annually, which is then submitted for evaluation to OPP. Once the evaluation report has been prepared, the budget proposal is approved by the executive branch which requires signatures from the appropriate sectoral ministry, the Ministry of Finance, and the President of the Republic. The Parliament intervenes only to resolve eventual disagreements that may arise in the course of this approval process. Those disagreements could stem from various interests of the executive branch or the legal mandate of the Court of Auditors. If within 40 days, the Parliament does not issue a statement, then it is presumed that observations of the Court of Auditors are lifted, and that any observations issued by the executive branch will prevail.

187. Multi-annual investing and planning. Every SOE is required by law[103] to prepare long-term investment and financing plans. These reports should contain an explanation of plans, goals, and projects, extending through the current government's mandate. However, OPP requests SOEs to prepare five-year plans on a rolling annual basis. This information is submitted to OPP and the corresponding sector ministry for approval. A similar approval mechanism applies to ongoing investments, contracts, asset sales, and tariff structures.

Reporting: Monitoring of Performance & Ex post Disclosure

188. Budget execution reports. All SOEs submit annual financial statements, including information on budgeted expenditures, revenues, assets and liabilities to the Accounting General Office (*Contaduría General de la Nación* - CGN), OPP, and the Court of Accounts (*Tribunal de Cuentas de la República* - TCR[104]), Uruguay's Supreme Audit Institution. Additionally, given the fiscal importance of SOEs operating results, there is continuous internal reporting on actual financial results between each SOE, the Ministry of Finance, and OPP.[105] SOEs publish at the companies' website their annual financial statements, net worth, and aide memoires.[106]

189. SOEs are subject to a uniform accounting regime, essentially the same as that applied to private companies, including the requirement to report according to the 2003 version of IFRS. SOEs in Uruguay enjoy special privileges under the Constitution, including operational autonomy *vis-à-vis* the government. They are governed by statutes or bylaws specific to each entity and also fall within the scope of the laws on public sector accounting and auditing. Article 211 F) of the Constitution empowers the Court of Accounts with accounting standard-setting authority in relation to SOEs. In December 2002, the TCR issued Ordinance no. 81, *Preparation and Presentation of Financial Statements*, which mandates accounting standards. The upshot of this ordinance is that, with the exceptions already mentioned, in practice SOEs report under the 2003 version of IFRS.

---

102 For example, the Constitution requires a 5-year budget for the central government and a yearly budget for SOEs and other decentralized entities. However, Law 16211, Art. 4, establishes that decentralized services and autonomous entities (with the exception of BROU, BCU and BPS) are responsible for preparing an "informative report" containing information about plans and goals for the following five years. For SOEs, Article 221 of the Constitution of the Republic is applied.

103 See previous footnote.

104 The TCR is the supreme audit institution and is independent of the executive branch of government. The President of the TCR is appointed by the legislative branch.

105 Budget execution is monitored using the information collected through an integrated financial information system (SIIF). SIIF allows OPP and MF to examine SOEs' financial situation and assess their compliance with the government financial program on a monthly basis.

106 For example, information on ANCAP can be found at http://www.ancap.com.uy/

190. The 2006 Report on the Observance of Standards and Codes (ROSC) examines reporting practices followed by a sample of four SOEs. The report focuses on financial statements audited under Ordinance 81. The report concludes that the overall presentation of SOEs' 2004 financial statements is good. The following detailed comments were also indicated:

- *Comparative information:* Unlike most private companies reviewed, Uruguayan SOE financial statements present comparative information and had a very user-friendly lay out.
- *Audit reports:* Two companies did not publish their audit reports even though such audits did take place.
- *A number of disclosures required by IFRS were missing:* cash and cash equivalents, employee benefits, details of foreign exchange gains and losses, interest-rate for borrowing costs capitalized, compensation for management, risk management policies (IAS 32), and relevant explanations on contingent liabilities.
- *Impairment of assets:* Except in one case, the financial statements did not indicate whether assets had been tested for impairment, and if loss of value had been recognized.
- *Other:* In one case, loans were not carried at amortized cost and other financial instruments were not measured at fair value, as required by IAS 39. Moreover, one company made no tax allocation (in equity) to a transaction recognized in equity.

Auditing of SOEs

191. Under Uruguay's Constitution, the body charged with the annual control over SOE financial management and reporting is the TCR. TCR regulations mandate the use of international standards of accounting and audit.[107] Its role has traditionally focused on verifying the legal conformity of expenditures with budget appropriations made by the Congress. TCR does not have the ability to sanction SOEs or their auditors; its monitoring activity is limited to pointing out problems uncovered by the audit.

192. Most SOEs in Uruguay hire independent professional firms to conduct an external and independent audit even though they are not required by the companies' bylaws. The majority of SOEs choose to have their financial statements reviewed by one of the four largest international audit firms to assure better compliance of the audit with international standards.[108] More recently, the TCR has begun to conduct external audits of SOE financial statements as well. Although some level of coordination exists between the TCR and private auditing firms, there is much room for improving their coordination. One of the main issues has to do with the timing of TCR's audits, which usually end later than those of their private counterparts.[109] The independent external auditor's opinion and report are published by the SOEs at their websites, alongside the annual financial statements. Publication of audit reports in the official gazette, the "*Diario Oficial*," is mandated by law.[110]

107 Ordenanza 81 of the Tribunal de Cuentas (TCR).

108 KPMG, Deloitte, PricewaterhouseCoopers, and Ernst & Young are the largest four audit firms. It should also be noted that, as in many other countries in the region, these international accounting firms tend to dominate the market for audit services in Uruguay. SOEs typically contract external auditors for two- to three-year engagements, with the option to renew.

109 TCR's monitoring activity is limited to pointing out problems they have uncovered in the course of conducting an audit; it lacks the ability to impose sanctions on SOEs.

110 http://www.impo.com.uy

SOEs Boards of Directors and Management

193. Article 185 of the Constitution establishes that state-owned industrial and commercial services are to be managed by boards. The article also states that board members shall be appointed by the President in in consultation with the Council of Ministers, and approved by the Senate.[111] In practice, the appointment of SOE board members has usually been shaped by political concerns, hindering the implementation of effective accountability arrangements in these organizations.

194. SOE boards were previously all composed of five members, but some companies have recently modified their bylaws to reduce this number to three. Traditionally, the political arrangement is that the majority party in Parliament appoints 60 percent of members, and the opposition appoints the rest. Boards are majority or 100 percent executive, which has some shortcomings. First, top management is changed with each government election, and has a limited opportunity to specialize in the job. Second, it is not possible for the board to exercise the usual oversight function on management.

195. Most SOE boards in Uruguay do not form specialized committees. There are some exceptions, such as the Bank of the Republic (*Banco de la República Oriental del Uruguay* - BROU), whose board has planning, credit approval, and audit committees. In general, the respective sector ministries and government agencies wield considerable influence over decision-making by SOE boards. Boards do not seem to fully engage with, or benefit from, their relationship with auditors. For example, directors do not engage in regular contact with the external audit team, delegating instead such communication to the government audit agency, do not actively monitor the accounting, audit, and control processes.

8.4 Reform Initiatives

196. Since 1992, a series of reforms were introduced in the Uruguayan public sector, including the privatization of several SOEs. At the same time, other reforms were proposed to improve accountability and transparency in the public sector, including SOEs. These included the implementation of a program oriented budgeting including the definition of precise objectives and goals, and performance agreements, and variable remuneration scales depending on performance.

197. However, most of these reforms have not addressed the fact that SOEs are subject to public sector law with the consequence that several SOEs have created corporations operating under private law to achieve their objectives. Examples include the construction of a sanitation and rainwater system in Ciudad de la Costa, a regasification plant, and an energy conversion project with Brazil. In the last few years, Uruguay has initiated a drive to boost SOE efficiency by introducing a few important changes:

- SOEs are now subject to international accounting and reporting standards;
- It is now mandatory that SOEs undergo an external audit;
- Some monopoly rights have been relaxed; and
- The DEP has started to design a model to systematically evaluate the performance of all SOEs.

111 National Constitution article 187. Directors are appointed by the Executive Branch with 3/5ths approval by Parliament.

Challenges Ahead

198. The level of professionalism of SOE board members and the follow-up of audit recommendations are two areas that require further attention. The level of professionalism of SOE board members could be strengthened even further. Effective boards are difficult to achieve, even in the private sector, and require training, legally binding imposition of duties and liabilities, and business expertise. The Uruguayan government has recently begun to address this issue by supporting the appointment of SOE board members with a higher degree of technical formation. It is also extremely important to follow up on all significant issues reported by auditors, and monitor their timely resolution. Mechanisms should be introduced to ensure that observations raised by auditors (internal and external) are properly and promptly addressed by SOEs.

199. Other more general issues related to SOE ownership structure present some challenges that would also need to be addressed. SOEs' decisions are sometimes constrained by political factors; this undermines SOE governance, and may lead to sub-optimal outcomes in terms of performance and competitiveness. Additionally, the fact that several ministries or other government agencies exercise authority over SOEs may result in the issuance of conflicting objectives for these countries. As a result, SOE management may not receive a clear set of performance goals, and therefore may not be held accountable for the company's performance. Lastly, the government typically performs several roles *vis-à-vis* SOEs (owner, regulator, supplier, customer, financier, etc.). These roles need to be disentangled, and insulated from one another. Other countries have addressed this issue by creating a single government agency in which SOE oversight (and frequently the ownership function as well) is consolidated. This agency is empowered to appoint the board of directors, as well as to exercise control over the SOE's business.

Leading State Owned Enterprises: The Cases of the Panama Canal and PEMEX

9

9.1 Introduction

200. This chapter examines the models of corporate governance adopted by two large SOEs: the Panama Canal and PEMEX, the Mexican state-owned oil company. Even though these two companies operate in completely different sectors, both play leading roles in their respective economies: the Panama Canal generates revenues that amount to 8 percent of the country's GDP and represent 10 percent of government's revenue, while PEMEX's sales are nearly 9 percent of Mexico's GDP and generate one third of government revenues.

201. Given their economic significance, the performance of the companies is under permanent public scrutiny, and the assessment typically falls on the models of corporate governance chosen to organize their activities. At the same time, and due to the characteristics of the markets where they operate, these companies also face significant global exposure, which obliges them to implement corporate governance practices consistent with international standards.

202. The practices adopted by these two companies show some clear differences. Moreover, each model presents a few novel features. For instance, the Panama Canal's management is supported by the expert opinion of an Advisory Board. This Advisory Board complements the work of the Board of Directors, and is formed by highly recognized international professionals in the area of global maritime transportation. PEMEX, for its part, was legally authorized in 2008 to issue "citizen bonds," which are debt securities that grant their holders a return linked to the entity's performance. The implementation of this type of financial instrument is intended to, among other things, encourage citizens' interest in the company, and, consequently, to add another layer of oversight to the company's supervising structure.

203. Given the nature of the SOEs involved, the organization of this chapter slightly departs from the previous ones. Section 9.2 characterizes the institutional framework that supervises and regulates the activities of the Panama Canal, and briefly describes some of the corporate governance practices implemented in that company, focusing on accountability, transparency, information disclosure, and audit. Section 9.3 presents the case of PEMEX and follows a similar organization.

The Case of the Panama Canal 9.2

Background

204. The Panama Canal is approximately 80 kilometers long and connects the Atlantic and Pacific Oceans. It first opened on August 14, 1914, and provides transit service to vessels of all nations: approximately 14 thousand vessels navigate the Canal every year. Commercial transportation activities through the Canal represent approximately five percent of the world trade. Most of the traffic through the Canal moves between the east coast of the United States and the Far East. Movements between Europe and the South American coast constitute the second major trade route using the waterway. The Canal is also vital for the development and trade of neighboring countries of Central and South America.

205. The Canal makes various significant contributions to Panama's economy. Its workforce is composed of approximately 9,000 employees; traffic through the Canal generates a net income that represents 6.2 percent of Panama's GDP; a fraction of that net income is directly transferred to the National Treasury (an amount that represents 3.9 percent of the GDP or 8.0 of the central government's revenue); it also contributes to the government's finances through taxes, social security tax, and the educational insurance tax (0.84 percent of GDP or 1.75 percent of the central government's revenue); and the Canal's activities amount to 4 percent of the country's total exports. Table 9.2.1 below summarizes these indicators.

Table 9.1: Economic Contribution of the Panama Canal

Source: Canal de Panamá, 2011 Annual Report.

	As % of GDP	As % of Gov. Revenue
Net Income	6.20	
· Total Revenues	8.60	
· Total Expenses	2.40	
Direct Contribution to National Treasury	3.90	8.00
Indirect Contribution to National Treasury	0.84	1.75
· Income Tax	0.20	0.45
· Social Security	0.04	0.08
· Educational Insurance Tax	0.60	1.22
Total Exports	**4.00**	

Institutional and Organizational Framework

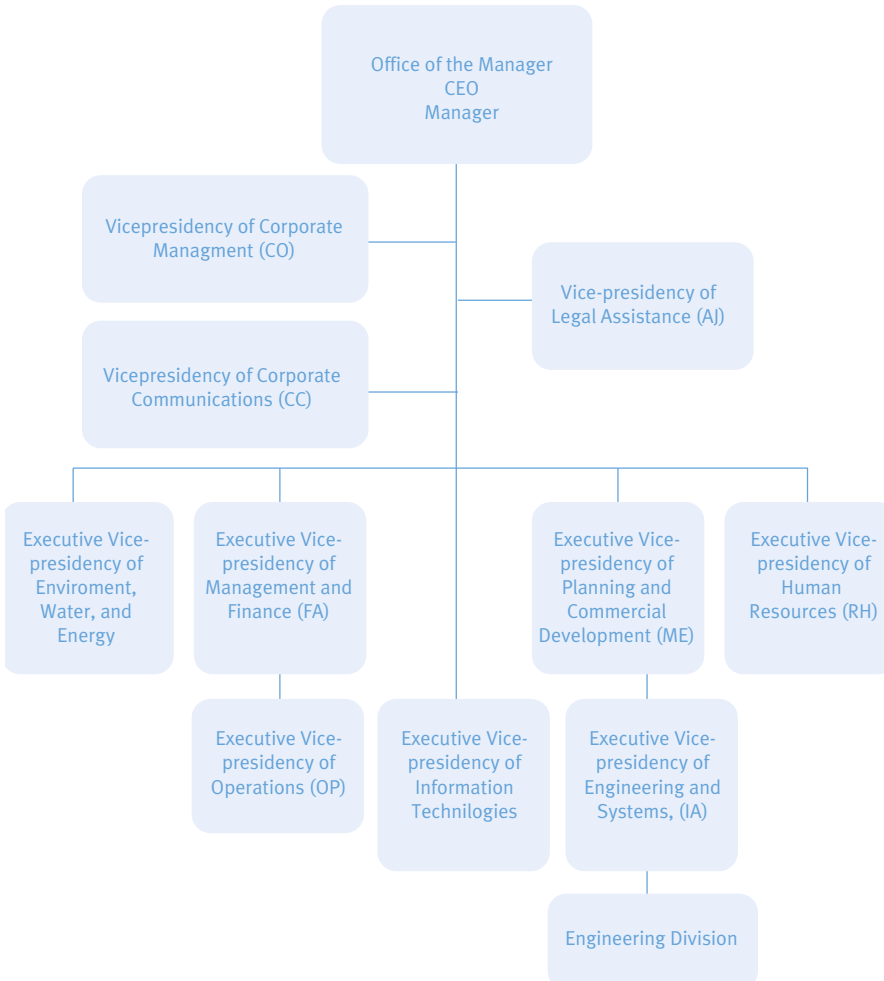
206. The Panama Canal constitutes an inalienable property of the Republic of Panama, which means that it may not be sold, mortgaged, or transferred. The model of corporate governance chosen to administer its operations includes:

- The Panama Canal Authority (*Autoridad del Canal de Panamá* - ACP) established under Title XIV of the National Constitution of Panama (the ACP's constitutional mandate serves to protect it from political interferences);
- A Board of Directors formed and appointed in accordance with internationally recommended principles and standards;
- The Director of the Canal Authority is also the President of the Board of Directors, holding the rank of Minister of State for Canal Affairs, and serving as the ACP's effective nexus with the government.
- A layer of management and administration that is independent of the board;
- An independent Advisory Board formed by Canal users, knowledgeable parties, and specialists in maritime transportation.

207. Panama Canal Authority (ACP). The ACP is the entity that exercises the ownership function on behalf of the Government of Panama. Title XIV of the National Constitution grants ACP an exclusive mandate to operate, administrate, manage, preserve, maintain, and modernize the Canal, as well as its activities and related services. The Organic Law of June 11, 1997, provided ACP with the legal tools to set up its organization and operation. ACP is financially autonomous, owns its assets, and has the right to administer them.

208. ACP is headed by an Administrator and a Deputy Administrator under the supervision of a Board of Directors. The Administrator is the highest-ranking executive officer and legal representative of the Authority, and is responsible for its administration and the implementation of the policies and decisions of the Board of Directors. The Administrator is appointed for a seven-year term, and may be re-elected for one additional term.

Figure 9.1



209. Board of Directors. The ACP Board is responsible for establishing policies for the operation, improvement, and modernization of the Canal, as well as supervising its management. The board of directors is formed by eleven members, who are appointed as follows:

- Nine directors are appointed by the President of the Republic of Panama, with the consent of the Cabinet Council, and ratified by an absolute majority of the members of the Legislative Assembly;
- One director is designated by the legislature, and may be freely appointed or removed by that branch;
- The President of the Republic designates one director, who chairs the board of directors. The director has the rank of Minister of State for Canal Affairs. The Canal Affairs Minister attends Cabinet Council meetings, having the right to voice and vote; and
- The directors serve for nine years.

210. To ensure independence from political influence, members of the first board of directors were appointed for overlapping terms.

211. Advisory Board. In December 1999, the Panama Canal Authority established the advisory board. The advisory board serves as a consultative body for the Canal enterprise. Its main responsibility is to provide guidance and recommendations to the Board of Directors and the Canal administration. The Advisory Board is formed by highly recognized professionals with broad experience in maritime transportation, trade, business, telecommunications, construction and development, academia, and the banking sector. There are no citizenship requirements for members of the advisory board: both Panamanian and non-Panamanian citizens are eligible.

212. The Panama Canal Authority Board of Directors makes the appointment of the Advisory Board members for an initial period of two years. This period can be extended at the discretion of the board of directors. The advisory board meets at least once a year, at the request of the board of directors.

Accountability, Transparency, and Disclosure of Information

213. The good economic performance of the Panama Canal is based, among other things, on the implementation of key accountability tools. Those tools include a reliable accounting system, a clearly defined financial planning and budgeting process, high reporting standards, an adequate risk management policy, and effective oversight mechanisms.

214. Accounting System. The accounting system includes the necessary internal controls to assure that assets are protected; disbursements are duly approved and supported; revenues applicable to the assets and operations of the authority are charged and accounted for properly; and financial reports are reliable and timely.

215. Financial Planning. The administration operates under a regime of planning and financial administration for a period of three years, with annual implementation and control. However, given the nature of the activities developed by the company, longer projection period are usually considered at the planning stage. The Administrator organizes and coordinates the marketing strategy and marketing of the Canal in accordance with the guidelines dictated by the board. New activities are backed by a cost-benefit analysis, then approved by the board.

216. Budgeting. The Administrator prepares a draft of the annual budget according to financial planning policies adopted by the board of directors. The Administration also issues frequent reports about ongoing activities and projects, and the implementation of other aspects of the budget. The Administrator submits a draft of the annual budget for consideration by the board at least five months before the beginning of the next fiscal year. Once approved by the board, the Administration submits the draft for consideration of the Cabinet Council at least three months prior to the beginning of the next fiscal year. The budget is executed by the Administration, with internal control exercised by the authority designated by the Board of Directors. The Comptroller General of the Republic only exercises ex-post control and audit functions.

217. Reporting. ACP requires the Canal administration to prepare (unaudited) quarterly and semi-annual interim financial statements, and an annual report. The Board of Directors reviews this information, and may require the preparation of additional reports at their discretion. The annual report includes financial information (balance

sheet, income statement, cash flow report, and complementary notes, management reports, and explanatory material describing the financial position of the company, as well as the risks that it faces), and information about the Canal's operations and projects. All of these reports, in addition to the audit results for those subject to audit, are available online at the Canal's website.[112]

218. To increase accountability and promote transparency, the ACP also discloses other types of information. For instance, the Administration reports salary and of every employee, as well as foreign trips by staff and associated expenses. Furthermore, the ACP publishes an ethics and conduct code for ACP and its staff (*Reglamento de ética y conducta de la Autoridad del Canal de Panamá*). This document provides a comprehensive framework for a code of good conduct with clear definitions; overall ethical principles, particularly regulations for top executives; a guide for conducting internal activities as well as relations with external parties; and other information such as guidelines for the availability of reports. The ACP has made all these mechanisms available for the public on its transparency section on its website.[113]

219. Risk Management. The Administration is also in charge of assessing the financial outlook of the company. The Board of Directors is responsible for establishing and monitoring risk management policies so that the Canal's profitability can be improved without significantly increasing risk. The main risks identified are:

- *Market Risk:* The Administration is authorized to sign hedging contracts to mitigate exposure to volatility in commodity prices related to the operation, maintenance, and expansion of the Canal and capital investments, interest rates, and exchange rates.
- *Credit Risk:* The company is allowed to invest its funds in short-term investment grade instruments.[114] Article 43 of the Financial Regulations sets the parameters for the investment of assets of the institution. It states that it should be done through highly negotiable short term financial instruments and can only be placed in banks and financial instruments, which have more than an international investment irrigation score of no less than a-2 by Standard & Poor's, P-2 by Moody's Bank Deposit Ratings or F-2 by Fitch Ratings.
- *Liquidity Risk:* The company funds its regular operations and investments with its own resources. As a consequence, it has to monitor on a daily basis the availability of liquid funds to meet its cash obligations with suppliers, contractors, employees, and the state.
- *Operating Risk:* The Panama Canal mitigates operating risk through internal controls, quality management systems and routine audits performed by the Office of the Auditor General, and the Comptroller General of the Republic. The internal control system provides reasonable assurance that ACP properties, assets and other financial resources are properly used and safeguarded to prevent waste, damage, destruction, and misappropriation.

112 The reports can be found at http://www.pancanal.com/eng/fn/index.html

113 For more information refer to http://www.pancanal.com/esp/rend-ctas/index.html. The published list of salary and representation allowances offers a full overview for each of the permanent and temporary workers at the ACP. It includes their position, salary scale, and basic wage as well as representation costs. This information is supported by a list that tracks official foreign trips and their costs on an annual basis (it contains information about destination, purpose of the trip, duration, and cost of each trip). In addition to improving transparency, this list allows the ACP administration to make a more accurate estimate of the money spent in traveling.

114 However, these funds may not be used to buy financial investment instruments from other public or private entities, Panamanian or foreign, or to grant loans to such entities or the national government.

Audit Mechanisms

220. The internal monitoring and control system of the Canal is assigned to the Auditor General. The board of directors also hires external independent auditors. The Office of the Comptroller General is in charge of reviewing all acts (ex-post).

221. Every year, the Administrator submits to the Board the company's financial statements for their approval after review by an external auditor, within three months after the end of the respective fiscal year. Nonetheless, the financial statements (even if they have not been audited) are required to be made available to the Board upon request. The Board evaluates the accounting principles and estimates that have been employed by the Administrator in preparing the budget.

222. The procedures for external audit follow international standards and the report includes an opinion about the accuracy of the financial statements. This provides a reasonable assurance that financial statements are free of significant errors, and are presented in accordance with international accounting standards. The Auditor General is responsible for evaluating the quality of the external audit.

9.3 The Case of PEMEX

Background

223. PEMEX holds exclusive rights to exploit and manage Mexico's oil and gas reserves since the nationalization of these resources in 1938.[115] From an institutional standpoint, PEMEX is a decentralized public body of the Mexican Government. It is a vertically integrated company, whose legal mandate is to commercialize oil and oil by-products, and to satisfy the national demand for oil.

224. Since its creation, PEMEX has been one of the major pillars of the Mexican economy. For instance, PEMEX's total sales amount to almost 9 percent of Mexico's GDP; its exports represent 4 percent of the GDP; and it contributes to the government's finances by generating 30 percent of the government's total revenue. Moreover, PEMEX is the only producer of crude oil, petroleum and natural gas in the country; and the sole company responsible for the exploration and development of coal reserves. Furthermore, it is the only supplier of refined petroleum products (imports 40 percent of domestic consumption of gasoline); the main company in charge of hydrocarbon storage and transportation; and the sole provider of first-hand gas sales (regulated market); and

225. PEMEX is one of the most important oil companies in terms of its level of production, exports, and crude oil reserves. Relative to other international companies, PEMEX ranks as follows:

- 11th producer of oil and gas;
- 3rd in crude oil production;
- 12th in oil reserves; 16th in gas production;
- 13th in refining capacity; and
- 35th gas reserves.

115 PEMEX's structure consists of a Corporate Office and four subsidiary entities: PEMEX *Exploración y Producción* (Exploration and Production), PEMEX *Refinación* (Refining), PEMEX *Gas y Petroquímica Básica* (Gas and Basic Petrochemicals), and PEMEX *Petroquímica* (Petrochemical).

Institutional and Organizational Framework

226. The 2008 Energy Reform. The year 2008 marks the beginning of a new era for corporate governance at PEMEX. In October of 2008, the Mexican House of Representatives approved seven initiatives, which together made up what is commonly known as the Energy Reform. These initiatives defined new guidelines for the institutional framework in which PEMEX should operate. One of the fundamental objectives of the reform was to strengthen and modernize the company's management by establishing a new corporate governance structure consistent with international practices. Some of the most salient features of the reform are:

- Strengthening corporate governance by granting the Board of Directors (*Consejo de Administración* - CA) greater autonomy and decision power.
- Professionalization of the board by bringing in four independent directors (*consejeros profesionales*).
- Creation of seven executive committees to support the board.
- Creation of an audit and performance evaluation committee (*Comité de Auditoría y Evaluación del Desempeño* - CAED) that is responsible to the board.
- Issuance of "citizen bonds." Citizen bonds are debt securities that grant their holders a return based on the issuers performance. This tool served two functions: it provided a new source of funding for PEMEX, while also introducing a new mechanism of social oversight.
- The overhaul of regulation to grant PEMEX greater autonomy for taking on external financing, and issuance of debt in international markets.
- Establishment of a special procurement system, lease, public works, and services, which is more flexible, considers the complexities of the activities developed by PEMEX.

227. Regulatory and institutional context. The Energy Reform also overhauled the regulatory framework for PEMEX, and established more clear definition of responsibilities for all actors involved in the sector. Under the new regulatory framework the Energy Secretariat (*Secretaría de Energía* - SENER) is the chief authority for the sector and is in charge of setting sectoral policy. The Secretary of Energy is the President of Board and the Undersecretary of Hydrocarbons serves as a member of the Board. The Finance and Public Credit Secretariat (*Secretaría de Hacienda y Crédito Público* - SHCP) determines the macroeconomic framework used in the company's budget process, and sets the goal for primary and financial balance that must be met each year. The SHCP is represented on the board of the company by the Finance Minister.

228. The reform created the National Commission of Hydrocarbons (*Comisión Nacional de Hidrocarburos* -CNH). The CNH is a technical, decentralized body of the SENER, in charge of establishing technical guidelines for the exploration and production of hydrocarbons.The Energy Regulatory Commission (*Comisión Reguladora de Energía* - CRE) is responsible for the economic regulation of the "industrial processing" of hydrocarbons. The CRE is a decentralized body of the SENER, with full technical, operational, management, and decision-making autonomy. It is also a decentralized body of the SENER. The Secretariat of Public Administration (*Secretaría de la Función Pública* - SFP) sets the external auditor's annual audit program and monitors its implementation. The SFP reports to the Committee on Auditing and Performance Evaluation (CAED).

229. Board of Directors. The board of directors and a CEO lead and manage the company. The Board of Directors of PEMEX is composed of 15 members: six representatives designated by the Federal Government, including the President of the Board of Directors; five representatives of the National Oil Workers' Union and four "professional" board members.[116]

230. Professional board members must meet certain requirements. Members are expected to have a deep knowledge of the oil and gas industry; relevant experience as public servants; proven technical skills; and strong academic credentials. The appointment lasts for six years and can be renewed once. Professional board members have also been granted a differentiated "vote": at least two professional board members should vote favorable on certain issues considered by the board. The appointment of professional board members does not coincide with the presidential term. The board meets every two months, with additional meetings taking place in extraordinary sessions if necessary to discuss special topics.

231. The board's activities are supported by seven committees: auditing and performance evaluation (CAED); strategy and investment (CEI); procurement, leasing and works and services (CAAOS); transparency and accountability (CTRC); remuneration (CR); development and technological research (CDIT); environment and sustainable development. State and professional board members participate in the committees, with their representation set at the proportions shown in Table 9.3.

Table 9.3: Board Committees

Source: PEMEX

Committee	Board Members	
	State	Professional
Auditing and performance evaluation	4	3
Strategy and investments	4	1
Lease, procurement, and works and services	4	1
Transparency and accountability	3	1
Remuneration	3	1
Technological research and development	4	1
Environment and sustainable development	3	3

232. The representation in the committees is important for the decision-making of the board or Administrative Council. The government representatives have the power

116 In 2013, the six government representatives designated by the executive branch are: the Secretary of Energy, who chairs the board, the Sub-Secretary of fossil fuels (*hidocarburos*), the Secretary of Finance, the Sub-Secretary of Revenues, the Secretary of Communications and Transport, and the Coordinator of Cabinets and Special Projects of the Office of the President's Office.

to influence decision-making as the resolutions are approved with a simple majority of the members present.

233. The board is responsible for a number of key functions, including:

- Approving the budget, business plan, and operating and financial programs of the company;
- Reviewing and approving the annual report prepared by the CEO, which is then submitted to Congress; and
- Reviewing and approving the quarterly and annual financial statements, which are later made publicly available.

234. The law grants the board an important role in the operation of PEMEX, which the board executes through its committees. However, the latter has complicated even further the operations of the company: by allowing the board to be involved in daily decision-making processes, it has significantly hindered the company's operations. In many cases, the lack of business experience of some board members has caused unnecessary delays in important and urgent decisions.

235. General Director or CEO. The President of Mexico appoints the Director General or CEO of PEMEX, who, by law, must not be a member of the board. The board cannot dismiss the CEO; it is limited to recommending removal, but the President of Mexico or the board has the final say in whether to follow the board's recommendation. The CEO is by law[117] charged with the duties to "implement the strategic plan" and "providing to the Ministry of Finance and Credit" budgetary and financial information required". The CEO is also in charge of PEMEX's subsidiaries. In practice, however, there is no clear separation of responsibilities between the CEO and the board. The rest of the management team consists of four general directors (one for each of the four business lines), and five corporate directors.

Accountability, Transparency, and Disclosure of Information

236. Budgeting process. The company initiates its budget cycle by presenting a business plan and a budget draft to the board. The figures in the final draft are calculated employing estimates of domestic prices and levels of production supplied by the company, while the government is supplies the macroeconomic framework and financial and primary balance which inform the budget. Once approved by the board, the budget draft is submitted for consideration by the SHCP. By this time, the SHCP sets the level of domestic prices for the oil sector and current expenditures and investment ceilings. The financing of investment projects which have been registered with and authorized by the government are included in the budget at this stage. The final budget of the company is approved by Congress jointly with the approval of the central government's budget. The drafting of the budget does not consider the use of performance indicators.

237. The final approval of the budget involves the following stages:

117 Law of *Petróleos Mexicanos*, 2008.

Business Plan →	Draft budget prepared →	Preliminary draft sent to Congress →	Project Final →	Internal project
The company formulates the budget tied to the Business Plan. The CA approves.	Proposed by the company. Sent for approval to SENER and SHCP	SHCP defines expenditure and investment ceilings, and reviews and integrates the company's budget into the federal budget.	Congress approves the budget (Revenue Law and the Federal Expenditure Budget)	Company reallocates resources as needed.

238. The Energy Reform granted the board more budgetary flexibility. It can now approve its own annual budget, subject to only two requirements: (i) the deficit cannot exceed certain limits specified by the federal fiscal budget; and (ii) it cannot increase spending on staff and pensions.

239. The new legal framework lays out a transition period of five years, to give a greater budget and financial autonomy throughout the year. The company's flexibility in managing its finances is subject to previously established rules on the maintenance of financial and primary balance.

240. Reporting. The company must prepare and submit the following reports:

- Quarterly financial statements: The reports should include total sales, tax payments, rights and land use, cost of sales and operating expenses, oil and natural gas production, international trade, assets and liabilities, and short- and long- term debt;
- Annual "Consolidated Financial Statements", information about the external auditor's reports;
- Bi-monthly and annual reports on the company's performance, prepared by the CEO and submitted to the board;
- Quarterly and annual reports on the company's performance, elaborated by the CEO and submitted to the Congress; and
- Annual report on short- and long-term debt submitted to the Congress.

241. In addition, PEMEX annually publishes the following reports: Annual Report, Statistical Yearbook, sustainable development report; hydrocarbon reserves, minutes (*Memoria de Trabajo*), statistical report, collective labor agreement (every two years), and financial reports pertinent to its issue of bonds in the national and international markets.

Audit Mechanisms

242. Internal audit. Internal auditors constantly monitor the company and support the external evaluations. The internal audit function is performed by two committees of the Board of Directors: the Transparency and Accountability Committee (*Comité sobre Transparencia y Rendición de Cuentas* - CTRC), and the Audit and Performance Evaluation Committee (*Comité de Auditoría y Evaluación del Desempeño* - CAED). These committees are joined by the Commissioner in addition to the Internal Control Agencies (*Órganos de Control Interno* - OIC).

243. The CTRC determines what information should be published, ensures that reports are prepared to standard, and presents accountability mechanisms to the board. The CAED assesses the financial and operative performance of the company, verifies the sufficiency of the information, and, when it deems necessary, orders specialized internal

audits, among others. However, this committee does not define the work programs or the type of risks that should be monitored. The CAED is formed by three professional board members and is also responsible for choosing, monitoring, and evaluating a firm to perform the external audit.

244. By law, the commissioner, who is directly appointed by the President of the Republic, is responsibility for representing the interests of citizen bondholders. It oversees and formulates an annual report on the accuracy, completeness, and rationality of the information submitted by the Board. The commissioner is also in charge of anti-corruption efforts and compliance with legal guidelines.

245. As an entity within the public sector, PEMEX is subject to the control of the Federal Public Administration structure through the Internal Control Agencies (OIC) of the SFP. There are five OICs whose members are appointed by the executive through the SFP. As part of their responsibilities, the OICs receive general complaints and complaints from breach obligations in the provision of public services, and are empowered to impose sanctions upon individuals that do not comply with laws and regulations.

246. Internal audits have focused mostly on combating corruption. While focusing on the company's compliance with laws and regulations, they do not assess the company's performance.

247. External audit. The *Auditoria Superior de la Federación* (ASF) is the Congressional oversight body. It is a highly professionalized body, with technical autonomy and management. The ASF monitors resources used by all federal public entities and audits their performance. The ASF audits the completed results for the full fiscal year, and is only empowered to make nonbinding recommendations. Since PEMEX is under the authority of the executive, it is also subject to congressional oversight. Finally, the CAED is in charge of appointing the external auditor of PEMEX, which must be approved by the board. The external auditor audits the financial statements of the company, and its consolidated accounts.

Challenges Ahead

248. Even though there have been important improvements in transparency and accountability, public opinion still associates PEMEX with a distinct lack of opacity. To change this perception, it is essential that the company continues to press forward with the implementation of good corporate governance practices.

249. Some of the specific challenges that the company still needs to tackle are listed below:

- Ensure that the board does not become excessively entangled in the administration of the company. The role of the board is essentially to provide a strategic guide, which enables it to exercise a more effective oversight function. The proliferation of board activities not focused on core functions results in a high number of lengthy board meetings, and a plethora of board committees.
- Even though the board has been professionalized, the executive, by law, still concentrates a significant amount of power in the decision-making process of the company.
- Reconfiguration of lines of authority, to ensure that the internal auditor is responsible to the CAED, ensuring that internal control of operations and performance audits are performed in accordance with best practices.
- Commit to publishing more information in areas where disclosure remains deficient (for example, bidding and contracting processe

Annexes

Annex A List of Brazilian SOEs under DEST Federal Oversight

Name	Acronym	Sector Ministry Oversight
Companhia das Docas do Estado da Bahia	CODEBA	Presidency
Companhia Docas do Ceará	CDC	Presidency
Companhia Docas do Espírito Santo	CODESA	Presidency
Companhia Docas do Estado de São Paulo	CODESP	Presidency
Companhia Docas do Pará	CDP	Presidency
Companhia Docas do Rio de Janeiro	CDRJ	Presidency
Companhia Docas do Rio Grande do Norte	CODERN	Presidency
Empresa Brasil de Comunicação S.A	EBC	Presidency
Empresa Brasileira de Comunicação S.A.	RADIOBRÁS	Presidency
Centrais de Abastecimento de Minas Gerais S.A.	CEASAMINAS	MAPA
Companhia de Armazéns e Silos do Estado de Minas Gerais	CASEMG	MAPA
Companhia Nacional de Abastecimento	CONAB	MAPA
Companhia de Entrepostos e Armazéns Gerais de São Paulo	CEAGESP	MAPA
Empresa Brasileira de Pesquisa Agropecuária	EMBRAPA	MAPA
Alcantara Cyclone Space- Binacional Brasil/Ucrania	ACS	MCT
Centro de Excelência em Tecnologia Eletrônica Avançada	CEITEC S.A.	MCT
Financiadora de Estudos e Projetos	FINEP	MCT
Indústrias Nucleares do Brasil S.A.	INB	MCT
Nuclebrás Equipamentos Pesados S.A.	NUCLEP	MCT
ATIVOS S.A. - Securitizadora de Créditos Financeiros	ATIVOS S.A.	MF
Banco da Amazônia S.A.	BASA	MF
Banco do Brasil S.A.	BB	MF
Banco do Estado de Santa Catarina S.A.	BESC	MF
Banco do Estado do Piauí S.A.	BEP	MF
Banco do Nordeste do Brasil S.A.	BNB	MF
Brasilian American Merchant Bank	BAMB	MF

BB Administração de Ativos - Distribuidora de Títulos e Valores Mobiliários S.A.	BB DTVM	MF
BB Administradora de Cartões de Crédito S.A.	BB CARTÕES	MF
BB Administradora de Consórcios S.A.	BB CONSÓRCIOS	MF
BB Banco de Investimento S.A.	BB INVESTIMENTOS	MF
BB Banco Popular do Brasil S.A.	BPB	MF
BB Corretora de Seguros e Administradora de Bens S.A.	BB CORRETORA	MF
BB Leasing Company Limited	BB LEASING	MF
BB - Leasing S.A. - Arrendamento Mercantil	BB LAM	MF
BBTUR - Viagens e Turismo Ltda.	BB TURISMO	MF
BESC Distribuidora de Títulos e Valores Mobiliários S.A.	BESCVAL	MF
BESC Financeira S.A. - Crédito, Financiamento e Investimentos	BESCREDI	MF
BESC S.A. Arrendamento Mercantil	BESC LEASING	MF
Caixa Econômica Federal	CAIXA or CEF	MF
Casa da Moeda do Brasil	CMB	MF
COBRA Tecnologia S.A.	COBRA	MF
Empresa Gestora de Ativos	EMGEA	MF
IRB - Brasil Resseguros S.A.	IRB	MF
Serviço Federal de Processamento de Dados	SERPRO	MF
Hospital de Clínicas de Porto Alegre	HCPA	MEC
Agência Especial de Financiamento Industrial	FINAME	MDIC
Banco Nacional de Desenvolvimento Econômico e Social	BNDES	MDIC
BNDES Participações S.A.	BNDESPAR	MDIC
Alberto Pasqualini - REFAP S.A.	REFAP	MME
Baixada Santista Energia Ltda.	BSE	MME
Boa Vista Energia S.A.	BVENERGIA	MME
Braspetro Oil Company	BOC	MME
Braspetro Oil Services Company	BRASOIL	MME
Centrais Elétricas de Rondônia S.A.	CERON	MME
Centrais Elétricas do Norte do Brasil S.A.	ELETRONORTE	MME
Centrais Elétricas Brasileiras S.A.	ELETROBRÁS	MME
Centro de Pesquisas de Energia Elétrica	CEPEL	MME
Companhia de Eletricidade do Acre	ELETROACRE	MME
Companhia de Geração Térmica de Energia Elétrica	CGTEE	MME
Companhia de Pesquisa de Recursos Minerais	CPRM	MME
Companhia Energética de Alagoas	CEAL	MME
Companhia Energética do Piauí	CEPISA	MME
Companhia Hidro Elétrica do São Francisco	CHESF	MME
Downstream Participações Ltda.	DOWNSTREAM	MME
Eletrobrás Participações S.A.	ELETROPAR	MME

Name	Acronym	Sector Ministry Oversight
Eletrobrás Termonuclear S.A.	ELETRONUCLEAR	MME
Empresa de Pesquisa Energética	EPE	MME
ELETROSUL Centrais Elétricas S.A.	ELETROSUL	MME
Fafen Energia S.A.	FAFEN ENERGIA	MME
Fronape International Company	FIC	MME
FURNAS - Centrais Elétricas S.A.	FURNAS	MME
Indústria Carboquímica Catarinense S.A.	ICC	MME
Ipiranga Asfaltos S.A.	IASA	MME
Liquigás Distribuidora S.A.	LIQUIGÁS	MME
Manaus Energia S.A.	MANAUS ENERGIA	MME
Biocombustível S.A.	PETROBIO	MME
Petrobras Comercializadora de Energia Ltda.	PCEL	MME
Petrobras Distribuidora S.A.	BR	MME
Petrobras Gás S.A.	GASPETRO	MME
Petrobras International Braspetro B.V.	PIB BV	MME
Petrobras International Finance Company	PIFCo	MME
Petrobras Negócios Eletrônicos S.A.	e-PETRO	MME
Petrobras Netherlands B.V.	PNBV	MME
Petrobras Química S.A.	PETROQUISA	MME
Petrobras Transporte S.A.	TRANSPETRO	MME
Petroquímica Triunfo S.A.	TRIUNFO	MME
Petróleo Brasileiro S.A.	PETROBRAS	MME
Refinaria Abreu e Lima S.A.	RNEST	MME
SFE - Sociedade Fluminense de Energia Ltda.	SFE	MME
Termobahia S.A.	TERMOBAHIA	MME
Termoceará Ltda.	TERMOCEARÁ	MME
Termomacaé Ltda.	TERMOMACAÉ	MME
Termorio S.A.	TERMORIO	MME
Transportadora Associada de Gás S.A.	TAG	MME
Transportadora Brasileira Gasoduto Bolívia-Brasil S.A.	TBG	MME
5283 Participações Ltda.	5283 PARTICIPAÇÕES	MME
Empresa de Tecnologia e Informações da Previdência Social	DATAPREV	MPS
Empresa Brasileira de Hemoderivados e Biotecnologia	HEMOBRÁS	MS
Hospital Cristo Redentor S.A.	REDENTOR	MS
Hospital Fêmina S.A.	FÊMINA	MS
Hospital Nossa Senhora da Conceição S.A.	CONCEIÇÃO	MS
Companhia de Navegação do São Francisco	FRANAVE	MT

Companhia Docas do Maranhão	CODOMAR	MT
VALEC - Engenharia, Construções e Ferrovias S.A.	VALEC	MT
Empresa Brasileira de Correios e Telégrafos	ECT	MC
Telecomunicações Brasileiras S.A.	TELEBRÁS	MC
Companhia de Desenvolvimento de Barcarena	CODEBAR	MMA
Empresa Brasileira de Infra-Estrutura Aeroportuária	INFRAERO	MD
Empresa Gerencial de Projetos Navais	EMGEPRON	MD
Indústria de Material Bélico do Brasil	IMBEL	MD
Companhia de Desenvolvimento dos Vales do São Francisco e do Parnaíba	CODEVASF	MI
Companhia Brasileira de Trens Urbanos	CBTU	MCidades
Empresa de Trens Urbanos de Porto Alegre S.A.	TRENSURB	MCidades
Itaipu Binacional-Binacional Brasil/Paraguai	Itaipu	MME/MRE

Note: MAPA (Ministry of Primary Sectors), MC (Ministry of Communications), MC (Ministry of Communications), MCidades (Ministry of Cities), MCT (Ministry of Science and Technology), MD (Ministry of Defense), MDIC (Ministry of Development, Industry and Trade), MEC (Ministry of Education), MF (Ministry of Finance), MI (Ministry of National Integration), MMA (Ministry of Environment), MMA (Ministry of Environment), MME (Ministry of Mines & Energy), MPS (Ministry of Social Security), MRE (Foreign Affairs) MS (Ministry of Health), MT (Ministry of Transport).

Annex

B List of SOEs in Chile

Sector	Company	Full Name	State-owned %	
Transportation	METRO S.A.	Empresa de Transportes de Pasajeros	100	X
	EFE	Empresa de los Ferrocarriles del Estado	100	X
	EPA	Empresa Portuaria Estatal Arica	100	X
	EPI	Empresa Portuaria Estatal Iquique	100	X
	EPA	Empresa Portuaria Estatal Antofagasta	100	X
	EPCO	Empresa Portuaria Estatal Coquimbo	100	X
	EPV	Empresa Portuaria Estatal Valparaíso	100	X
	EPTHNO	Empresa Portuaria Estatal Tahno-San Vicente	100	X
	EMPORMOTT	Empresa Portuaria Estatal Puerto Montt	100	X
	EPCHA	Empresa Portuaria Estatal Chacabuco	100	X
	EPA	Empresa Portuaria Estatal Austral	100	X
	EPSA	Empresa Portuaria San Antonio	100	X
Mining and Oil	ENACAR S.A.	Empresa Nacional del Carbon S.A.	100	X
	CODELCO	State Copper Mining Company	100	
	ENAMI	Empresa Nacional de Minería	100	X
	ENAP	Empresa Nacional del Petróleo	100	
Service	ZOFRI S.A	Zona Franca de Iquique S.A.	72.7	X
	CASAMONEDA S.A.	Casa de la Moneda de Chile S.A.	100	
	CORREOSCHILE	Empresa de Correos de Chile	100	X
	POLLA S.A.	Polla Chilena de Beneficencia S.A.	100	X
	COTRISA S.A.	Empresa Comercializadora de Trigo S.A.	97.2	X
	SASIPA LTDA.	Sociedad Agrícola y Serv. Isla de Pascua Ltda.	100	X
	SACOR LTDA.	Sociedad Agrícola Ltda.	100	X
	EMAZA	Empresa de Abastecimiento de Zonas Aisladas	100	X
Finance	BECH	Banco Estado de Chile	100	
Water and Sewage	ECONSSA Chile S.A.	Empresa Concesionaria de Serv. Sanitarios S.A.	100	X
	PEÑUELAS S.A.	Empresa de Serv.Sanitarios Lago Peñuelas S.A.	98.7	X
Communications	TVN	Televisión Nacional de Chile	100	
	LA NACION	Empresa Periodística La Nación S.A.	69.3	
	GPM	Puerto Madero Impresores S.A.	69.3	
Defense Companies	ASMAR	Astilleros y Maestranzas de la Armada	100	
	ENAER	Empresa Nacional de Aeronáutica	100	
	FAMAE	Fábrica y Maestranzas del Ejército	100	

Annex

C List of Colombian National SOEs

Sector	Company	Characteristics				
		GDP	Gov. Budget	Mar-ket	Type	
Oil	Ecopetrol	6.81%	19.70%	M	MCC (b)	
Postal	Servicios Postales Nacionales S.A.	0.01%	0.04%	M	SOICE	
Transp.	Centro de Diagnóstico automotor de Cúcuta LTDA		0.00%	M	SOICE	
	Centro de Diagnóstico automotor de Caldas LTDA	0.00%	0.00%	M	SOICE	
	Centro de Diagnóstico automotor de Tolima LTDA		0.00%	M	SOICE	
Telecom.	Sociedad Canal Regional de Televisión	0.00%	0.01%	O	SOICE	
	Sociedad Canal Regional Limitada		0.00%	O	SOICE	
	Canal Regional de Televisión del Caribe	0.00%	0.01%	O	SOICE	
	Radio Televisión Nacional de Colombia		0.00%	O	SOICE	
Energy / Elect.	Empresa Multiproposito de Urra S.A.	0.05%	0.19%	O	MCC, PDU	
	Centrales Eléctricas de Nariño S.A.	0.04%	0.15%	O	MCC, PDU	
	Gestión Energética S.A. E.S.P.	0.09%	0.34%	O	MCC, PDU	
	Empresa de Energía del Amazonas	0.00%	0.02%	O	MCC, PDU	
	Empresa Distribuidora del Pacífico	0.01%	0.04%	O	MCC, PDU	
	Generadora y Comercializadora de Energia del Caribe	0.20%	0.60%	O	MCC, PDU	
	Empresa de Energia de Boyaca S.A.	0.05%	0.19%	O	MCC, PDU	
Financial	Almagrario S.A.	0.01%	0.04%	C	MCC	
	Banco Agrario S.A.	0.31%	1.11%	C	MCC	
	Fondo Financiamiento Sector Agropecuario	0.07%	0.25%	M	MCC	
	Central de Inversiones	0.01%	0.04%	M	SOICE	
	Fiduagraria	0.01%	0.03%	C	MCC, EICE	
	Fiduciaria La Previsora		0.02%	C	MCC, EICE	
	Fiducoldex	0.00%	0.02%	C	MCC	
	Bancoldex S.A.	0.20%	0.74%	C	MCC	

	Ownership Function			
	State Particip. (c)	Shareholders	Type of Partic. (d)	Sector Ministry
	89%	MF	D	MME
	93%	Postal management (in liq.)	I	MITC
	82.50%	MT	D	MT
	57%	MT	D	MT
	20%	Local gov.	I	
	13.20%	MT	D	MT
	48.45%	Gobernación del Tolima		
	98%	Reg. gov. Risaralda, Quindioy Caldas	D/I	MITC
	90,4%	MITC	D	NTC
	21%	MITC	D/I	MITC
	79%	Regional gov.		
	70%	Teveandina Ltda.	I	MITC
	30%	Par Adpostal		
	77%	MF	D	MME
	22%	MME		
	64.90%	IPPES	D/I	MME
	35%	MF		
	95.21%	MF	D	MME
	90.70%	IPPES	D/I	MME
	0.93%	Local gov.		
	75%	MME	D	MME
	25%	MF		
	100%	MF	D	MME
	99.40%	MF	D	MME
	64,6%	Banco Agrario	I	MARD
	99,99%	MF	D/I	MARD
	65.30%	MARD	D/I	MARD
	12.90%	MF		
	21,8%	Private banks		
	99.90%	MF	D	MF
	93.70%	Banco Agrario	I	MARD
	99.90%	La Previsora S.A Co. de Seguros	I	MF
	89.10%	Bancoldex	I	MIC
	91.90%	MIC	D	MIC
	7.80%	MF		

Sector	Company	Characteristics				
		GDP	Gov. Budget	Market	Type	
Financial	La Previsora S.A. Compañía de Seguros	0.12%	0.43%	C	MCC, EICE	
	Findeter	0.07%	0.26%	O	SOICE	
	Fondo Nacional de Garantías	0.03%	0.11%	M	MCC, EICE	
	Financiera Energética Nacional S.A.	0.03%	0.11%	M	MCC, EICE	
	Fondo Ganadero de Córdoba S.A.	0.00%	0.00%	M	MCC, PSHC	
	Positiva Compañia de Seguros S.A.	0.00%	0.00%	O	MCC	
	Bolsa Nacional Agropecuaria S.A.	0.01%	0.02%	M	MCC	
Others	Sociedad Hotelera Tequendama		0.00%	C	MCC, EICE	
	Artesanías de Colombia S.A	0.00%	0.01%	M	MCC, EICE	
	Vecol S.A.	0.01%	0.04%	C	MCC, PSHC	
	Corporación de la Ind. Aeronáutica Colombiana	0.01%	0.03%	M	MCC, EICE	
	Central de Abastos de Cucuta S.A.	0.00%	0.00%	C	MCC	
	Central de Abastos del Caribe	0.00%	0.00%	C	MCC	

References:
IPPES: Institute for Planning and Promotion of Energy Solutions
MARD: Ministry of Agriculture and Rural Development
MF: Ministry of Finance
MIC: Ministry of Industry and Commerce
MITC: Ministry of IT and Communications
MME: Ministry of Mining and Energy
MND: Ministry of National Defense
MSD: Ministry of Social Development
MT: Ministry of Transportation
NTC: National Television Commission
PDU: Public Domiciliary Utilities
PSHC: Public stock-holding corporation
SOICE: State-owned industrial, commercial enterprise.

Notes:
(a) C: competitive; O: oligopolistic; M: monopolistic.
(b) Ecopetrol S.A. is a MCC organized as a Public stock-holding corporation. See www.ecopetrol.com.co.
(c) MCC in which the State owns ninety percent (90%) or more of its share capital are subject to the regulations for State Industrial and Commercial Enterprises.
(d) Direct participation means that the government institution exercises the ownership rights directly. Indirect participation implies that the government institution exercises its ownership rights through an enterprise which is the shareholder.

Ownership Function			
State Particip. (c)	Shareholders	Type of Partic. (d)	Sector Ministry
99.50%	MF	D	MF
0.17%	MSD		
92.50%	MF	D	MF
61,6%	MF	D/I	MIC
17.30%	MIC		
95.36%	MME	D/I	MME
15%	MARD	D	MARD
90.50%	MF	D/I	MF
11.80%	MARD	D	MARD
97.97%	Armed Forces, Retirement Funds	I	MND
57%	Proexport	D	MIC
23,5%	MF	I	
4.30%	MIC		
61.70%	MARD	D/I	MARD
99.96%	MND	D	MND
75,15%	MARD	D	MARD
24,85%	Other companies, subnat. gov.		
31,09%	Ministry of Finance	D	MARD
17,17%	MARD		
51,74%	Public institutions/companies, local gov.		

Annex

D List of Peruvian SOEs under FONAFE's Oversight

Sector	Name	Line of business	State Participation
Electricity	ADINELSA	Management of electrical infrastructure developed by state agencies.	100%
	EGASA	Generation and commercialization	100%
	EGEMSA	Generation and commercialization	100%
	EGESUR S.A.	Generation and commercialization	100%
	ELECTRO ORIENTE S.A.	Generation, transmission distribution and commercialization	100%
	ELECTRO PUNO S.A.A.	Distribution and commercialization	99.59%
	ELECTRO SUR ESTE S.A.A.	Distribution and commercialization	99.61%
	ELECTRO UCAYALI S.A.	Generation, transmission distribution and commercialization	99.90%
	ELECTROCENTRO S.A.	Distribution and commercialization	100%
	ELECTRONOROESTE S.A.	Distribution and commercialization	100%
	ELECTRONORTE S.A.	Distribution and commercialization	99.99%
	ELECTROPERU S.A.	Generation and commercialization	100%
	ELECTROSUR S.A.	Distribution and commercialization	100%
	HIDRANDINA S.A.	Distribution and commercialization	95.11%
	SAN GABAN S.A.	Generation and commercialization	100%
	SEAL S.A.	Distribution and commercialization	87.33%

Financial and Real Estate	AGROBANCO	Financial services to agricultural producers	100%
	BANCO DE LA NACION	Financial services	100%
	BANMAT S.A.C.	Construction. Housing development	100%
	COFIDE S.A.	Financial services to the export sector and micro and small enterprises.	98.70%
	FONDO MIVIVIENDA	Financial services to develop housing projects and housing acquisitions.	100%
Transportation and Communications	CORPAC S.A.	Operate, equip and maintain airports and air navigation systems	100%
	EDITORA PERU S.A	Printing, publishing and distribution of the official newspaper and news, graphic	100%
	ENAPU S.A.	Manage and provide port services in publicly owned ports.	100%
	SERPOST S.A.	Postal services	100%
Water and Sanitation	SEDAPAL	Provision of water and sewage services	100%
Oil and Mining	ACTIVOS MINEROS	Mining, industrial and complementary activities.	100%
	PERUPETRO S.A.	Promote investment in exploration and exploitation of hydrocarbons.	100%
Other Sectors	ENACO S.A.	Domestic trade: Production and commercialization of coca leaf products and	100%
	FAME SAC	Defense.	100%
	SIMA IQUITOS S.R.L.	Shipbuilding and metalwork: Construction, maintenance and repair of ships for Peruvian Navy in the Amazon region.	100%
	SIMA PERU S.A.	Shipbuilding and metalwork: Construction, maintenance and repair of ships for Peruvian	100%

Annex

E SOE Portfolio Managed by SEPI

SOE	SECTOR	OWNERSHIP %	STAFF
FULLY-OWNED OR MAJORITY SHAREHOLDER SOES			
1. Agencia EFE	Media	100.00%	1,253
2. Alimentos y Aceites	Portolio Mgmt.	91,96%	90
3. CETARSA	Tobacco	79.00%	573
4. Corporacion RTVE	Media	52,19%	6,397
6. Grupo Cofivacasa	Portfolio Management	100.00%	In Liquidation.
7. Grupo Defex	Defense	51.00%	19
8. Grupo Ensa	Manufacture	100.00%	689
9. Grupo Enusa	Energy	60.00%	939
10. Grupo Hunosa	Mining	100.00%	2,347
11. Grupo Izar	Civil Shipbuilding	100.00%	In Liquidation
12. Grupo Mercasa	Food Distribution	51.00%	161
13. Grupo Navantia	Navy Shipbuilding	100.00%	5,665
14. Grupo Sepides	Investment Fund	100.00%	56
15. Grupo Tragsa	Agro-industry	51.00%	21,520
16. Hipodromo Zarzuela	Entertainment	96.00%	145
17. Mayasa	Mining	100.00%	In Liquidation
18. Saeca	Finance	80.00%	32
MINORITY SHAREHOLDER			
1. Enagas	Energy	5.00%	--
2. Enresa	Radioactive Waste Management	20.00%	--
3. CASA-EADS	Aerospatial	5.48%	--
4. Hispasat	Telecommunications	7.41%	--
5. Red Electrica Corp.	Energy	20.00%	--
6. IAG	Air Transportaion	2,71%	--
7. P4R	External Trade	11,87%	--

SOE	SECTOR	OWNERSHIP %	STAFF
ADSCRIBED			
1. Ente RTVE	Media	100%	In Liquidation
PUBLIC FOUNDATIONS			
1. Fundacion Laboral	Foundation	100%	51
2. Fundacion SEPI	Foundation	100%	18

Annex

F Six Largest SOEs in Uruguay

Name		Sector Ministry	Description	Type of Market
Oil State Company (Administración Nacional de Combustibles, Alcohol y Pórtland)	ANCAP	MIEM	Autonomous entity	Fuels = M Rest = C
Power State Company (Administración Nacional de Usinas y Transmisiones Eléctricas)	UTE	MIEM	Autonomous entity	Generation = C Rest = M
Telecom State Company (Administración Nacional de Telecomunicaciones)	ANTEL	MIEM	Decentralized service	Land phone lines = M Rest = C
Bank of the Republic (Banco República)	BROU	MF	Autonomous entity	C
Water & Sewage State Company (Obras Sanitarias del Estado)	OSE	MUPEP	Decentralized service	M
National Administration of Ports (Administración Nacional de Puertos)	ANP	MTPW	Decentralized service	M

References: MIEM: Ministry of Industry, Energy and Mining; MUPEP: Ministry of Urban Planning and Environment Protection; MTPW: Ministry of Transportation and Public Works; MF: Ministry of Economy and Finance; M: monopoly; C: competitive.

Bibliographical References

Franco, B., Muñoz, I., Sánchez, P., & Zavala, V. (2000). Las privatizaciones y concesiones. En R. Abusada, F. Du Bois, E. Morón, & J. Valderrama, *La Reforma Incompleta: rescatando los noventa* (págs. 13-105). Lima: Instituto Peruano de Economía y Universidad del Pacífico.

Gobierno de Chile, Ministerio Secretaría General de la Presidencia (2001). Institucionalidad y Criterios de Gestión para las Empresas Públicas.

OECD (2005a). "Corporate Governance of State-Owned Enterprises: a survey of OECD countries". OECD Publishing.

OECD (2005b). "OECD Guidelines on Corporate Governance of State-owned Enterprises". OECD Publishing.

Oliva, C., & Ugarte, M. (2006). *Uso y efectividad de los convenios de gestión*. Lima: Consultoría para la Unidad Ejecutora Programa de Modernización y Descentralización del Estado - Presidencia del Consejo de Ministros.

Organization for Economic Cooperation and Development (OECD). (2004) "OECD Principles of Corporate Governance". OECD Publishing.

The World Bank (2006a). "Held by the Visible Hand: The Challenge of SOE Corporate Governance for Emerging Markets". The World Bank Corporate Governance. Washington.

The World Bank (2006b). "SOE Corporate Governance Country Assessment Peru". Corporate Governance Policy Practice. Private Sector Vice Presidency. Washington.
Torero, M. (2002). La privatización peruana: impactos sobre el desempeño de las empresas. *Benefits and costs of privatization: What should we do next?* Lima: Banco Interamericano de Desarrollo.

Corporate Governance of State-Owned Enterprises in Latin America

The World Bank

GOBIERNO DE ESPAÑA
MINISTERIO DE ECONOMÍA Y COMPETITIVIDAD