Final Summary Record: 5th Meeting of the SOE Network for Southern Africa

"Responsible State-Owned Enterprises"

26-27 November 2014, Lusaka, Zambia

Summary of Meeting Outcomes

The 5th meeting of the Network was co-hosted by the OECD, Zambian Ministry of Trade and Industry and Institute of Directors of Zambia. Deliberations were inaugurated by Minister Robert Sichinga. The meeting was well-attended with around 70 participants representing (see participation list):

- 13 high-level government delegations from: Angola, Botswana, Democratic Republic of Congo, Kenya, Lesotho, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Zambia, and Zimbabwe;
- 2 delegations from OECD economies : Sweden and Turkey;
- Executives from state-owned enterprises; and,
- Representatives from the private sector, NGOs, and other stakeholder institutions.

The purpose of the meeting was to launch regional SOE Guidelines; to discuss country practices vis-à-vis anti-corruption and business integrity measures applicable to SOEs and to propose new work in this area; as well as to convene a ½ day workshop on SOEs in infrastructure, with a focus on the energy sector. The main outcomes are summarised as follows:

- ***Regional SOE Guidelines:*** The Network launched the regional SOE Guidelines with no reserve. The Guidelines are now the property of all Network members; in this regard Network members agreed to incorporate the guidance into their national policy-making – some are already doing so. There was agreement that "top-down" political endorsement at the SADC-level would carry more weight on national reform processes. The SADC Network membership will look into putting this on the SADC agenda in 2015 (in the form of an instrument) – during which Zimbabwe holds leadership.
- ***SOE Company Guidance on Corporate Ethics and Business Integrity:*** The Network agreed to launch a work stream on SOE-specific company guidance on anti-corruption and business integrity measures, drawing on the findings of a stocktaking on this subject of national experiences practices, and challenges in SADC economies. The guidance will be developed by a regional Taskforce comprising of institutions from the Network membership. A Taskforce was formed and calls for additional candidature were made. The Taskforce will draft an early set of Guidelines to be presented at the Network meeting in 2015.
- ***Workshop on Infrastructure:*** The panel discussions highlighted that better SOE governance is key to more efficient and performant SOEs in the infrastructure sector. More should be done at a regional level to encourage regulatory harmonisation and to attract private investment in cross-border infrastructure projects.
- ***Next meeting and other business:*** Zimbabwe agreed to host the next meeting of the Network scheduled for the second half of 2015. The theme will cover "Recent SOE Reforms and Monitoring Implementation of the Guidelines." A session will be devoted for the Company Guidance Taskforce to report back on the development of guidelines for SOEs on anti-corruption and business integrity. The Network formally agreed to include Kenya among its country membership.

Day 1

Introductory Remarks

Mrs. Sherry Thole, President, Institute of Directors of Zambia (IoDZ): Mrs. Thole recalled the mission the Institute of Directors of Zambia, to promote corporate governance principles among private and public enterprises in Zambia - including their cooperation with the Government of Zambia to professionalise SOE board recruitment The IoDZ emphasised their involvement in the Network since its inception in 2007, including IoDZs most recent participation in the SOE Guidelines Taskforce. IoDZ, in partnership with the OECD and the Government of Zambia, is pleased to host the meeting.

Mr. Sangkyom Kim, Deputy Director, Directorate for Financial and Enterprises Affairs, OECD: Mr. Kim thanked the Government of Zambia and the IoDZ for hosting the Network meeting in Zambia; he also thanked the Government of Norway for financing the initiative. Mr. Kim highlighted the importance of SOE reform and the OECD's role in SOE governance standard-setting to promote more efficient and transparent SOEs – he recalled the OECD country experiences in this regard. Mr. Kim commended the Network for developing regional Guidance which can serve as an important tool to support reform. He highlighted the OECD's interest in supporting the Network and the need to work more closely with regional partners including New Partnership for African Development and the African Peer Review Mechanism. Mr. Kim concluded that the Network reflection process will feed into OECD's contributions to the G20 and in other fora.

Keynote Speech by the Honourable Bob Sichinga, Minister of Commerce, Trade and Industry, Zambia

The Honourable Minister recalled ties between Zambia and neighbouring economies in the freedom struggle and the common history and challenges that face the SADC countries, and which he addresses as Minister of Commerce, Trade and Industry. The Minister provided an overview of Zambia's development path, from the late 1960s through today, underlining the key milestones in SOE reforms that emanated from both nationalisations in the 1970s and privatisations that were part of structural reform programmes of the 1990s. In the 1990s, the Zambian State mass-privatised, with both positive and negative outcomes. The Minister also drew from his personal experience working as an accountant for copper mine companies. The Minister highlighted that since the early 2000s there has been a push to structurally separate sectors in which SOEs operate (such as telecoms or banking) and to introduce private competition – this is part of the Ministry's mandate (through specialised agencies such as the Zambian and Industrial Development Agencies) to promote investment and partnerships with the private sector; these activities are also part of broader development goals (inc. promoting SMEs, and other downstream economic activities).

The Minister recalled the main corporate forms for SOEs in Zambia, including statutory corporations and those incorporated under the Companies Act, and the governance challenges linked to both. Among the challenges, one was related to cross-directorateships which he considered to constitute a serious problem of corporate governance in terms of boards of directors, even for SOEs incorporated under the Companies Act; another was related to performance targets for SOEs which is linked to political leadership and processes. Today, the main challenge is to bring a "corporate mentality" to SOEs. This will include further work to improve SOE target-setting and performance; improving executive and board remuneration practices; and promoting independent boards with a strategic focus. By working on these areas, the Minister highlighted that more can be done to attract private investment and reduce risks for public-private partnerships; and eventually make SOEs attractive for eventual privatisation. In this vein, the Government is currently reviewing the 1994 Companies Act – which will draw from international best practice and the lessons emanated from the 2008-9 financial and economic crisis. The Minister concluded by thanking the organising institutions and encouraged participants to have an open discussion and debate on these pertinent topics.

Official Launch of the Guidelines on the Governance of State-Owned Enterprises in Southern Africa

Mr. Kgotla Ramaphane, CEO, Public Enterprises Evaluation and Privatisation Agency (PEEPA), Botswana and Chair of the SOE Guidelines Taskforce: Mr. Ramaphane recalled the process leading up to the specific mandate received in 2012 to embark on developing a set of regional SOE Guidelines – starting from initial discussions in 2007, to the development of the SOE Guidelines Taskforce in 2012, to the presentation of the draft Guidelines in 2013, and ending with the public consultation carried out over the course of 2014 to finalise the Guidelines. The Chair recognised the participation of those institutions who took part to the Taskforce, the OECD serving Secretariat, and recalled the Taskforce's Terms of Reference. Mr. Ramaphane then presented the final Guidelines which are high-level recommendations covering six main areas with detailed annotations that draw on regional and international best practices. He reminded participants that the Guidelines are mainly focused on commercial SOEs, and that they are outcomes-based to ensure flexibility in the way they are applied. He also emphasised that they are purposefully drafted at a high level of aspiration, in order to set the bar high and to ensure that SADC governments are not operating on a "business as usual" approach. He emphasised that the Guidance should serve to inform national reform processes; and that the Network can be used for monitoring and evaluating country performance and progress relating to the implementation of these Guidelines.

Ms. Sara Sultan Balbuena, Network Manager, OECD: The OECD highlighted that the Guidelines are drafted to allow a degree of flexibility in how they can be implemented, based on the diverse legal and regulatory frameworks and stages of reform across countries in the region. Mrs. Sultan drew on the experience of the OECD economies and their own Guidelines which have "stood the test of time" (even as they are currently undergoing review). She emphasised that the Southern Africa Guidelines, too, can serve the SADC region in a similar way. Mrs. Sultan outlined a number of ways the Guidelines can serve the Network going forward, this includes reporting back on progress with implementation on a regular basis, conducing country-reviews, and using the document as an awareness-raising tool both nationally and regionally. She mentioned that the Guidelines are now the property of the Network, but also invited participants to reflect upon how they could be formally endorsed through a SADC or other regional or pan-African process, such as the APRM. She invited countries new to the Network (like Kenya) to see how the Guidelines could be applicable in their national contexts. The OECD thanked the Taskforce and Network for their involvement in drafting and finalising the Guidelines.

Presentation of the Preliminary results of a Regional stocktaking report of Anti-Corruption and Business Integrity Measures for Southern African SOEs[1]

Ms. Mary Crane-Charef, Policy Analyst, OECD: The OECD provided a summary of the findings of the preliminary stocktaking of anti-corruption and business integrity measures for Southern African SOEs. Ms. Crane-Charef recalled that the Network agreed at its 4th meeting in Swakopmund, Namibia, to develop a stocktaking study of business integrity and anti-bribery legislation, policies and practices applicable to Southern African SOEs, which could form the basis of an anti-corruption and business integrity guidance for SOEs in the region. The stocktaking report represents country responses from Botswana, the Democratic Republic of Congo, Malawi, Mozambique, Seychelles, and Zimbabwe, to a questionnaire circulated by the OECD Secretariat, which were supplemented by desktop research. Ms. Crane-Charef reported that, in general, the national anti-corruption legal and regulatory framework applies equally to SOEs. This framework is often complemented by a corporate governance regime for state-owned enterprises or, more broadly, for private companies. It is also strengthened in some cases by voluntary measures implemented by individual SOEs, including, for example, establishing ethics and codes of conduct and whistleblower policies and protections. Responses to the stocktaking indicated that the biggest challenge is bridging the gap between the rules

[1] This agenda item was moved after the Panel 1 discussion to accommodate participant's travel schedules.

and laws applicable to SOEs and their enforcement by national governments. Finally, Ms. Crane-Charef summarized the recommendations made in the report to address challenges identified in the country responses. These include: (1) capitalizing on the Network's convening power and organizing regional discussions to share good practices for combating corruption and promoting business integrity in the SOE sector; and/or (2) encouraging the adoption of internal controls, ethics, and compliance measures by, for example, developing an anti-corruption and business integrity guidance specifically for SOEs.

Panel 1: Combatting corruption in SOEs: An overview of the legal and regulatory framework in Southern African economies

Moderator's introduction, Mr. Canaan F. Dube, Senior Partner & Head, Trade & Investment Unit, DMH Commercial Law Chambers, Zimbabwe: Mr. Dube highlighted the importance of combatting corruption in SOEs. He asked panellists to consider a number of points, including whether corruption is about corporate or personal governance.

Mr. Steven Powell, Director, Forensics, ENS Africa: Mr. Powell shared some practices to address anti-corruption compliance that have been adopted in the private sector and which can be emulated in SOEs; he also urged participants to read the OECD's Good Practice Guidance on Internal Controls, Ethics, and Compliance[2]. Mr. Powell's main recommendation to the Network was to consider placing anti-corruption compliance function prominently within the structure of the SOE (i.e. as a dedicated unit and separate from the legal department); and that SOE management "set the tone from the top". The compliance officer and unit would be tasked with : a)ensuring compliance with the relevant laws and regulations; and, b) conducting due diligence and objectively evaluating the potential for corruption risks in various transactions (including, for example, gifts, hospitality, travel, donations, sponsorships, government engagements, corporate social responsibility, third party risks, country specific risks, geo-political risks). He posited that a dedicated unit can move the focus away from financial and legal perspectives (which are often the main motivating factors), to a veritable anti-corruption due-diligence approach. Mr. Powell concluded that companies should apply the "Newspaper and smell tests" (If the newspaper reported on what we did tomorrow, would we be embarrassed? And, if something stinks, don't go near it).

Mr. Callixte Tuzolana Bimuala, Senior Lawyer, COPIREP (Steering Committee for Reform of the State Portfolio), DR Congo: Mr. Bimuala presented the anti-corruption legal framework in the DR Congo, and broader development challenges related to corruption. The government is working towards streamlining the regulatory and legal environment for SOEs in order to ensure greater accountability. He noted general constraints which include: a delay in the enactment of the national anti-corruption law; a lack of judicial action in cases involving SOE executives; a lack of capacity to detect or prevent fraud; and ineffective whistle-blower mechanisms. Some areas which he proposed can help to mitigate corruption include a stronger government willingness to engage on the issue; clear and accountable measures for nominating directors and management; awareness-raising in SOE; and strong and effective sanctions in cases of non-compliance.

Mrs. Jane Mugambi, Secretary, State Corporations Advisory Committee, Kenya: Mrs. Mugambi highlighted that SOE play an important role in Kenya's development agenda (they carry out 80 percent of the government's strategic development projects). Mrs. Mugambi cited the policy challenges facing SOEs (including a lack of clarity around SOE objectives; blurring lines of responsibility and oversight; poor governance; weak or ineffective boards; inhibitive laws and regulations relating to procurement and disposal of assets; weak human resources and other challenges...). According to Mrs. Mugambi, one of the main ways to address corruption in Kenya is to address SOE governance, through accountable and professional boards; and effective board chairs and CEOs. She discussed some of the recent reforms made in the context of the 2013 Presidential Review

[2] See: http://www.oecd.org/daf/anti-bribery/oecdantibriberyrecommendation2009.htm

of the SOE sector –some of the recommendations and laws to be enacted as a result of the review will serve to address corruption challenges in SOEs.

Ms. Orcilla Ruthnam, Chief Director: Governance, Department for Public Enterprise, South Africa: Mrs. Ruthnam highlighted that public corruption continues to impact the government's ability to deliver services. Although it is not limited to the public sector, SOEs are regularly exposed in the media due to corruption. The Department of Public Enterprises (DPE) – keeps an arm's length distance with SOEs (it relies on the board and management to uncover corruption). However, DPE does intervene as the government's shareholder department when it deems necessary (even if perceived as political involvement). Some of the governance tools it uses include: a) requiring each board to sign a performance contract which outlines both commercial and non-commercial objectives (these include in annex a "significance and materiality framework" which guide the boards when the SOE needs shareholder approval for signing contracts over a certain threshold (over 20% of total assets); b) requiring each board to have a social and ethics committee; c) introducing a Protocol on Corporate Governance and board induction "toolkit". She concluded that despite the challenges faced to improve SOE governance and curb corruption, individuals in ownership entities can make a difference if the issue is taken seriously.

The panel presentations were followed by a question and answer session. Some of the main points of contention were on the role of boards and executive management – the question was raised "who watches the watchers?" The panellists highlighted that indeed corruption cannot be curbed if board and executive appointments continue to be based on political and not professional considerations. A lot depends on the integrity of individual board members indicating conflicts of interest, etc. The role of the media in exposing corruption and the independent judiciary were also considered to be integral in this regard (i.e. as whistle-blowers and to hold board members accountable based on their fiduciary duties). Participants also consider the recommendation on the establishment of a dedicated anti-corruption compliance unit. It was highlighted, that in some jurisdictions (like the U.S.), the amount companies spend on anti-corruption compliance is considered in enforcement decisions –the main message being: "don't take shortcuts with compliance".

The moderator concluded the panel by emphasising that corruption is a structural issue, with the concentration of ownership and control in one "person." SOEs governance should not be used for the benefit of politicians but for the benefit of taxpayers relying on the state as the custodian. Therefore the debate should unpack ownership and control issues. He concluded that civic activism and engagement should be encouraged, including through discussions in the Network and through better implementation of the regional SOE Guidelines.

Panel 2: Business Integrity Measures in SOEs: Roundtable with business representatives

Moderator: Mr. Dalmar Jama, Corporate Governance Coordinator, Africa Peer Review Mechanism: The moderator introduced the work of the African Peer Review Mechanism and coverage of SOE governance issues under the corporate governance pillar of the reviews. Mr. Jama mentioned that in the context of country reviews, a common question comes up as to the use of codes of ethics in SOEs and whether these should be voluntary or mandatory. Mr. Jama posited that more should be done to share best practices in this area.

Mr. Nuno de Oliveira, CEO, Petromoc: Mr. Oliveira introduced Petromoc, which is a state-owned majority-owned oil company operating in Mozambique, and the corporate governance framework to which it adheres, under the supervision of the State Assets Management Agency (IGEPE). Mr. Oliveira provided an overview of the company's corporate ethics practices, including a corporate governance code, and code of business conduct - which has established guiding principles in terms of transparency, accountability and corporate social responsibility. The code also covers ethics and compliance with the law – which touches upon a range of issues including corruption; conflicts of interest; contracts and other legal transactions; sexual harassment; confidentiality and privacy, and, social and environmental sustainability. The company has investment in various tools to improve monitoring of these and other areas, in view to increase legal compliance, improve the company's reputation, and meet the requirements of stakeholders more efficiently. Some challenges include difficulty in changing mentalities and habits, and raising funds for needed investments in implementing the codes.

Mr. Yusuf Abramjee, Co-Founder, Crime Line, South Africa: Mr. Abramjee presented his work in the area of anti-corruption prevention and reporting. The main message was that more needs to be done to get law enforcement to act on corruption. He posited that creating greater awareness of corruption issues via the media, and establishing anonymous whistleblowing facilities (as in the case of Crimeline in South Africa) can help to curb corruption. He added that additional focus is needed on eliminating corruption in boards and company management – for this he agreed with earlier discussions that board appointments should be based on professional factors, he added that candidates should also be judged on integrity; and that each SOEs should have an ethics officer. Mr. Abramjee concluded that the role of the media is key to create awareness and to expose corrupt practices.

Mr. Yusuf Dodia, President, Private Sector Development Association, Zambia: Mr. Dodia underlined the important role SOEs play in public service delivery – for this reason he reminded participants that SOEs should be held accountable to citizens and tax payers as the ultimate shareholders. He discussed challenges around transparency of SOE operations, and the need to ensure that public resources are not wasted. Mr. Dodia opined that institutions representing the State shareholding and those appointed to the board or executive positions often overlook their duties to be held accountable to the ultimate shareholders – due to this oversight SOEs are often shielded from disclosing their accounts, financial status, and to be held accountability to the public. He highlighted that corruption goes beyond the "usual" actors, and should also be considered in transactions with foreign business partners. He highlighted the cost of corruption on national/regional development and that more should be done to combat these issues at the level of SOEs.

A question and answer session followed. Some participants highlighted the common challenges that are faced across the region – and therefore underlined that regional approaches to address such challenges are needed. A discussion about the cost of whistleblowing mechanisms ensued, it was concluded that the benefits outweigh the costs (experience with Crimeline suggest that costs are comparatively low). The use of such mechanisms is important in raising awareness of the corruption issues, and changing perceptions in terms of the culture and norm of corruption.

The moderator summarised the discussion highlighting that the main problem areas seem to be in public procurement, accountability and governance structures. More should be done to incorporate codes of ethics into SOE practices. Furthermore, more work is needed to change the perception that SOEs are tools for politicians, or an "extension of government," in this vein they should be held to higher standards of accountability and transparent and should be profitable.

Wrap-up and Future work

The Network launched the regional SOE Guidelines with no reserve. There was agreement that "top-down" political endorsement at the SADC-level would carry more weight on national reform processes. SADC Network membership will look into putting this on the SADC agenda in 2015 (in the form of an instrument) – during which Zimbabwe holds leadership. Additionally, the Network suggested giving some thought as to how the guidelines could be followed up in a similar manner at the East Africa level (via COMESA or other body). In the meantime, Network members agreed to integrate the guidelines in to their national policy making and reform processes.

The Network agreed to launch a work stream on SOE-specific company guidance on anti-corruption and business integrity measures. The guidance will be developed by a regional Taskforce comprising of institutions from the Network membership, and with up to nine members. The Taskforce will draft an early set of Guidelines to be presented at the Network meeting in 2015. The OECD Secretariat agreed to follow-up with meeting participants with terms of reference[3] for the Taskforce, and to gather any additional candidatures. The institutions which volunteered at the meeting included: [4]

- Botswana (Public Enterprises Evaluation and Privatisation Agency).
- DR Congo (Steering Committee for Reform of the State Portfolio);
- Kenya (State Corporations Advisory Committee);
- Mozambique (State Shares Management Agency);
- South Africa (Department of Public Enterprise and Development Bank for Southern Africa);
- Zambia (Institute of Directors); and
- Zimbabwe (STC International Chartered Accountants).

It was encouraged that participating countries to the Taskforce consult with anti-corruption commissions and potentially invite them to attend an eventual meeting of the Taskforce. It was agreed to base the work of the Taskforce on the draft Stocktaking document (which was re-opened for additional country inputs until early 2015, when it will be published by the OECD on the Network's behalf), existing regional and international best practices, and the deliberations of this meeting. The work would also take into consideration possible parallel regional initiatives to work with companies and SOEs to prevent corruption and promote business integrity.[5] The Taskforce will appoint a chair and is likely to convene a meeting with the aim of agreeing on a first draft company guidance sometime in mid-2015, which could then be presented to the Network at its next meeting.

Zimbabwe offered to host the 6th meeting of the Network scheduled for the second half of 2015. The agenda is likely to be one and a half days long. The theme will cover "Recent SOE Reforms and Monitoring Implementation of the Guidelines." The main agenda items will cover countries' recent experience with reform (overarching reforms made in the last year or two), and remainder of the agenda will be used for countries to report back on monitoring implementation of the Guidelines. A session will be devoted for the Company Guidelines Taskforce to report back on the development of guidelines for SOEs on anti-corruption and business integrity.

The Network also formally agreed to include Kenya among its country membership.

Day 2: Workshop on Improving the Governance of SOEs in Infrastructure Provision in the Energy Sector

Panel 3: Improving the functioning and efficiency of SOEs in infrastructure

Mr. Kelvin Chitumbo, National Water & Sanitation Council (NWASCO), Zambia (also serving as moderator): Mr. Chitumbo's presentation focused on the water regulation in Zambia, and the role of his institution (as a regulatory body) in ensuring efficiency in water service provision. His presentation focused on three main areas that he considered key to role of a regulator. These included: *consumer satisfaction* (accessibility and minimum service level for all); *providers' efficiency* (can the provider finance functions, avoid unjustified costs to customer, respecting standards); and *sector development* (avoid capital drain, fighting corruption and cartels, curbing price transfers, promote

[3] It was also agreed to recirculate the proposal that was tabled in Swakopmund, proposing options on how to develop this thematic work stream (this would serve as a reminder to participants).
[4] Following the meeting, two additional institutions contacted the OECD secretariat and indicated their interest to become observer to the Taskforce. These include: Africa Peer Review Mechanism Secretariat (acting as observer); and, New Partnership for African Development Secretariat (acting as observer).
[5] This includes, for example, the possible development of an anti-bribery guidance for southern African companies developed jointly by the OECD and the African Development Bank, which may include a special chapter targeting SOEs.

investment and competition). Mr. Chitumbo described problems to attract international investment in infrastructure which include corruption, poor management of resources, efficiency of service providers, and political intervention/interference. To address these challenges, he emphasised the role of the independent regulator and the need to ring fence SOEs from political interference. He suggested SOEs should be incentivised to perform well and deliver services based on “cost-recovery”. He added that infrastructure SOEs should also be incentivised to invest in maintenance and improvement of existing infrastructure assets, while investing in projects with a “long term view”. One way to incentivise SOEs is to promote competition, and to reward well-performing companies (through awards and recognition). The regulatory body must also use punitive measures in the case of non-compliance (i.e. suspending licenses). He also recommended that boards should be selected on a professional basis, and should be evaluated and held accountable (even beyond their tenure). He underlined the importance of well-managed SOEs, run by professional who understand asset management; and coordination with stakeholders.

Mr. Kenan Karakülah, Senior Treasury Specialist, Undersecretariat of Treasury, Directorate General of State-Owned Enterprises, Turkey: Mr. Karakülah provided an overview of SOE reforms in Turkey’s energy sector, focusing on the electricity sector. He introduced the historical and political context which motivated SOE reform in Turkey and the liberalisation of the electricity sector – these included inefficiencies in the operations of SOE monopolies, a growing electricity demand, and financing of the necessary capacity expansions to meet future energy demand. Mr. Karakülah described the main reform steps (enacting market laws and regulations; establishing an independent regulatory authority; and, additional laws in the sub-segments of the energy market which enabled eventual liberalisation through the granting of licences). He also described the outcome of these reforms: today 100 percent of electricity distribution is done by private companies; while SOEs are still own over half of the market share in electricity generation and wholesale trading. Turkey is still undergoing SOE reforms, including by requiring internal and external audits, and requiring establishment of internal control mechanism. Some of lessons learnt from the Turkish experience include: ensuring strong ownership by politicians and bureaucrats; having well-defined strategy and policy documents to underpin reforms; establishing corporate governance frameworks founded in appropriate legal and institutional frameworks; restructuring SOEs in the case of inefficiencies; and establishing a truly independent regulatory authority.

A question and answer session followed, which covered a number of themes including the rationale behind sectoral reform; ensuring policy coherence; the role of boards and executive management; eliminating subsidies to state-owned energy providers; and, tools available to regulatory bodies to incentivise better SOE performance.

Panel 4: Boosting private sector participation in energy service provision

Hon. Felix Mutati, MP, Zambia (serving also as moderator): Mr. Mutati addressed the main challenges in encouraging private sector participation in the energy sector. He first discussed challenges in the legal and regulatory framework - regulatory authorities often are the recipient of instructions from government, which undermines their independence and credibility. Secondly, he discussed the main challenges in the energy market structure– he opined that although most regulatory bodies aim for cost-reflective tariffs it is a challenge to implement, and that pricing ultimately affects the ability to attract private investment in energy. He touch upon issues related to market access – highlighting that efficiency and pricing are impacted especially where power producers can only sell power to a state-owned monopoly transmission and distributor. To address these challenge, he recommended that power generation, transmission, and distribution are unbundled. A third challenge is to attract investment – although there are few examples of private investment and partnership in Zambia in power generation, he emphasized that projects can only be successful if there is collaboration and risk-sharing with government. Moreover, the government must be consistent in the application of its policies (for example, how can investors be incentivized with a tax regime that changes every year?). He concluded that policy makers must have a willingness to take important decisions, not based on nationalistic perspectives, but also with a broader regional perspective in order to realise cross-border projects.

Mr. Nuno de Oliveira, CEO, Petromoc: Mr. Oliveira's presentation covered Petromoc's market position and strategy in Mozambique. He highlighted some of the main challenges faced by Petromoc as the state-owned monopoly. These included: possible clashes between non-commercial objectives and profitability; exposure to currency risks and price volatility in the international market, but still being required to maintain domestic energy prices; lack of access funds to support massive investments (infrastructure like pipelines, storage, strategic reserves); dependence on importation of refined products and an overall energy insecurity; and acquiring the necessary skills, technology and knowledge to transform the energy sector and intensify industrialisation. Mr. Oliveira said that private sector partnerships have been a key resource for Petromoc in gaining access to resources, technology transfer, skills upgrading and an overall sharing of risk. The main lesson learnt to ensure fruitful partnerships with the private sector, include: having a written mandate from the government on expectations and the role SOEs should play in the economy; allowing SOEs autonomy to carry-out activities and make strategic decisions; and requiring the government to provide guarantees as required by private entities. Mr. Oliveira concluded that private sector actors also need to understand the long-term aspirations of the government and SOEs, and should understand government decision-making process. For SOEs themselves, he recommended that they emulate private sector governance practices.

Mr. Kogan Pillay, PPP Expert and Head of SADC PPP Network, SADC-DFRC: Mr. Pillay underlined that the main SADC challenge is for energy policy to be coordinated at a regional level. He recommended that more be done to encourage private sector participation, and drew on the example of a public-private partnership (PPP) in renewable energy that is considered to be good practice in South Africa. He promoted PPPs as a means to bring capital into projects that require a massive investment. He also recommended solutions to introduce competition at a more scaled-down approach by creating a market for smaller suppliers. In parallel, he suggested that unbundling electricity monopolies would help to introduce competition – but that the appropriate regulatory frameworks should be in place, including harmonisation of regulation across borders. To this end, he drew attention to the recently adopted regional framework for public-private partnership which aims to harmonise PPP legislation across SADC economies. The framework was endorsed at the level of SADC finance ministers and is being rolled out across SADC countries.

Mr. Terrence Chimanya, Divisional Head - Governance & Compliance Customer Relations Management, Ekurhuleni Metropolitan Municipality, South Africa: Mr. Chimanya's presentation highlighted the drawbacks and upsides of different types of PPP arrangements and how they are financed. Regardless of the type of contract used, Mr. Chimanya emphasised that much focus is needed on the conceptualisation stage to ensure that projects are properly rationalised and represent value-for-money. He said that more work needs to be done to create awareness around the long-term and tangible benefits of private-private partnership, to attract private sector interest in projects, to curb corruption and to ensure political will from politicians. At the technical level, the affordability of projects is difficult for governments to ascertain and should be addressed by building capacities of those who evaluate PPP projects (i.e. low estimates of the costs, and then see costs balloon during implementation phase).

A question and answer session followed panel discussions. The main issues that were discussed included: the issue of risk transfer and the potential costs for development; the rationale for SOE ownership and the role of SOEs in service provision; the benefits of different types of contractual arrangements with private sector contractors; addressing challenges for SOEs burdened with public service obligations and balancing service needs with private capital/capacities; general impressions with the impact and outcome of PPPs; and the benefits and drawbacks of foreign government investments.