Highlights and Conclusions

5th Meeting of Latin American Network on Corporate Governance of State-Owned Enterprises

30 November – 1 December, 2017

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Key Highlights and Conclusions

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The 5th meeting of the Latin American Network on Corporate Governance of SOEs provided an opportunity for ownership ministries and/or coordinating entities, SOE management and board members, as well as a range of relevant stakeholders interested in promoting corporate governance (CG) to share experience and knowledge on SOE governance policies, practices and reforms, with a particular focus on transparency, board performance and integrity of SOEs.

The approximately 120 attendees included participants from Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, Paraguay, Peru, Spain, and Uruguay, as well as representatives of the OECD, IFC, World Bank, UN Economic Commission for Latin America and the Caribbean, CAF - Latin American Development Bank, and the Swiss Economic Cooperation (SECO) in Colombia. The meeting was organised and co-ordinated by the OECD, CAF and its local host, the Ministry of Finance and Public Credit (MHCP) of Colombia, with funding support from the Government of Spain and additional support from the World Bank Group and the SECO.

Key points raised included:

- Welcoming remarks from Gabriel Cifuentes Ghidini, Secretary of Transparency of Colombia’s Presidency, highlighted the importance of corporate governance to fight corruption in Colombia and the overall Latin American region. In this regard, he invited state-owned enterprises (SOEs) to lead by example and adopt CG standards and practices in order to prevent corruption and increase transparency, while at the same time contribute to growth and competitiveness. He also wished to point out to recent achievements in this field in Colombia, including the establishment of a centralized state ownership body for SOEs and the adoption of several laws and regulations, which have contributed to Colombia’s adherence to the recommendations of the OECD Corporate Governance Committee and Working Party on State Ownership and Privatisation Practices (“Working Party”).

- These remarks were then complemented by Mr. Lars Erik Fredriksson, Chair of the OECD Working Party and Carolina España, CAF Resident Director in Colombia. After explaining why SOEs are important for the global economy, Mr. Fredriksson pointed out that the way they are run and regulated has a direct impact on economic efficiency and public service delivery. In that sense, ensuring that SOEs compete on an equal footing with private companies is crucial. As SOEs are often subject to unclear lines of accountability and underperformance, Mr. Fredriksson acknowledged that there is a need to monitor their performance against high standards of disclosure and accountability such as those provided by the OECD Guidelines on Corporate Governance of SOEs, and recalled that one of the key mission of the Working Party is to disseminate the guidelines globally through networks in Asia, Latin America, as well as the Global Network which all constitute fora that bring together many countries to share best practices. Recognizing the growing awareness and enthusiasm of Latin American countries to implement best practices, he recalled that the OECD will continue providing support for national reforms, including on corporate governance. Finally, Mrs. España recognized that good corporate governance on SOEs has an impact in how they are run and how decisions are taken. She also acknowledged the relevance of transparency, board performance and integrity for regional
development and emphasised CAF’s work to promote sustainable development and encourage CG best practices in the region – including technical and financial assistance for the production of publications, organization of regional meetings/fora, and the implementation of pilot cases to generate successful examples that could be replicated by other SOEs. In addition to the publication of CAF’s Guidelines for Good Corporate Governance of SOEs, CAF also supported governments in the elaboration of national Codes on CG of SOEs in the region.

**Session 1: Strengthening SOE performance and accountability: recent experience with government-wide reforms**

- Session 1 focused on recent experience with government-wide reforms. Several ownership ministries and/or coordinating institutions were invited to share challenges they faced when undertaking reforms to promote SOE performance and accountability. Starting with Chile, the session showed how the Public Enterprise System (*Sistema de Empresas Públicas – SEP*), the national ownership entity, has evolved and acquired increasing competences over time. Chilean SOEs pertaining to the centralized model (20 SOEs) are under SEP’s supervision and have to comply with SEP’s established corporate governance standards. Since its creation in 2001, SEP has been gradually acquiring more functions over time – including the right to appoint directors in companies established by law and to set specific goals and targets for each company (including for SOEs that are not under its supervision but that are willing to get public credit through so-called “programming agreements” (convenios de programación)). With Chile’s accession to the OECD, SEP also started to formulate soft-law regulations such as the SEP Code in 2008 which includes a set of ethics and CG rules. A recent draft legislation presented to Congress aims at strengthening and legally recognizing the structure, functions and competencies of this body, including responsibilities in terms of CG. More specifically, it will transform SEP’s committee into a decentralized public service of a technical nature that will relate to the Ministry of Economy. The Law also establishes a common CG regime for SOEs under SEP’s jurisdiction, establishes common requirements and incompatibilities for board members, and gives the possibility to the SEP to either nominate or use headhunters in an open process to select board members. Among other aspects, the Law also considers board composition, which will have to be comprised of at least 40% of women or men.

- Paraguay has a more recent history of supervising and monitoring SOEs; before 2015, the SOE Council (*Consejo Nacional de Empresas Públicas – CNEP*) was already managing and supervising SOEs but the level of CG-related knowledge was low in both the ownership entity and SOEs. Starting 2015, and in collaboration with CAF, CNEP started working on corporate governance of SOEs. They are in the initial stage of the process and compliance is still low (23%) but they have already made adjustments in the structure and governance of SOEs; in particular, through the adjustment of board functions and the establishment of advisory councils in SOEs integrated by specialists in strategic management and control of SOEs. Other adjustments were made with regards to board remunerations, evaluations and meetings. Furthermore, in 2017, the Directorate-General for SOEs (*Dirección General de Empresas Públicas – DGEP*), with the cooperation of CAF and the World Bank, issued the Arandú Code which provides best CG practices for Paraguayan SOEs. Challenges ahead include the establishment of new SOE boards, the definition of directors’ profiles and remunerations to generate incentives for qualified candidates, and the implementation of evaluation processes.

- Brazil is also currently in the process of improving SOE governance through laws and regulations. The State Responsibility Law (No. 13,303/2016) is particularly relevant as it has requirements on transparency, accountability and sustainability and involves a strategic repositioning of the role of the state. The law applies to all companies under the supervision of the Secretariat of Coordination and Governance of State-owned Enterprises (SEST) attached to the Ministry of Planning, Development
and Management, as well to SOEs held at the provincial or municipal level. SEST supervises all 150 federal SOEs under direct or indirect control of the state – with important financial and economic results. For SOEs, the State Responsibility Law involves, amongst other aspects: 1) the segregation of statutory bodies’ functions, 2) requirements for qualification and professionalization of management, 3) auditing committee and external auditing, 4) publication of the audited quarterly statements, 5) performance goals and strategic planning, 6) disclosure of remuneration of directors and advisors. Furthermore, in order to measure compliance with the requirements of the law and of decree No. 8.945, a corporate governance rating system was established, called the IG SEST to monitor the quality of the performance of the corporate governance of federal SOEs. The indicator is based on three dimensions: 1) Transparency, 2) Councils, Committees and Board of Directors and 3) Management, Control and Auditing. Each dimension is formed by blocks, and each block by evaluation criteria of different weights, depending on their importance or relevance. The evaluation is made based on evidence by the SEST Committee, and the whole process leads to the preparation of public and internal reports that show where priorities lie. Based on this evaluation, SEST was able to recognize that while some SOEs had a high level of governance, many are still getting adapted. Finally, SEST also publishes an annual document called “profiles of federal SOES” in order to provide greater transparency for federal SOEs - as well as a quarterly newsletter (the Federal SOE Newsletter) which is prepared by the Secretariat of Coordination and Governance of SOEs.

- Finally, Argentinian SOEs have also been going through important reforms since the change in government in 2015. Lessons learned from the reform process include: 1) the importance of political will to lead the reform; 2) the relevance of professional management units for SOE supervision; 3) the significant impact of consensus and civil society for building change; 4) the importance to identify and promote “champions” of the reform, and 5) the relevance of linking activities with international agendas, as Argentina is currently being reviewed by the OECD. Prior to these reforms, the context in Argentina was complicated with many companies in deficit and receiving financial transfers without conditions of reforms and/or reduction plans. Furthermore, SOEs were managed by their sectorial ministry without strategic plans in place, as well as no evaluation of company performance and/or management. Most of all, there was no framework for CG and transparency, except for listed companies, as well as no commercial and/or sectorial objectives. Hence, on this basis, the Chief of the Ministerial Cabinet (Jefatura de Gabinete de Ministros – JGM) started working on the Carta de Jefatura de Gabinete – a document meant to communicate public policies to the public, and established a centralized authority for supervision to which companies are accountable. The President also defined eight strategic lines of action, including on the structuring of the SOE portfolio, the improvement of their performance and adherence to international practices. The Argentinian government also started the OECD review on corporate governance of SOEs and adopted an improvement plan based on three axes to train companies. First results have already proven positive (2016/2017), with a reduction of the operational deficit by 46% and the adoption of a series of relevant laws and regulations on corporate responsibility, rights of information, and upcoming guidelines on corporate governance for SOEs.

**Session 2: Disclosure and performance: developments in aggregate reporting and tracking of performance**

- The second session was devoted to discussing relevant initiatives in the region and in OECD countries to address OECD Guidelines on Corporate Governance of SOEs which provide recommendations on disclosure and performance. This is particularly important for accountability, not only of companies towards their owners, but also of SOE owners towards the general public. On this issue, Colombia has made some important progress since the beginning of its accession process to the OECD in 2013, in particular with the adoption of a comprehensive ownership policy for SOEs (CONPES 3851) in
December 2015, which sets outs an ambitious programme for enhancing co-ordination and CG practices for all Colombian SOEs. In addition, a new General Directorate (Dirección General de las Participaciones Estatales) was created by the Ministry of Treasury and Public Credit (MHCP) in 2016 and the government committed to remove Ministers from all boards of directors where they were serving – which ultimately led the OECD Working Party to provide a positive opinion on Colombia’s willingness and ability to address the OECD’s corporate governance recommendations as part of their accession process to the OECD, in 2016. Reporting plays a key role in all three pillars of SOE management, namely institutionality, governance and transparency. This includes the implementation of the state ownership policy, and the issuance of annual reports of SOEs (including financial and non-financial information), and the establishment of a framework for action on how to best manage the SOE portfolio. Additionally, the Directorate has also made a lot of improvement in terms of technological developments for the consolidation of information. More specifically two tools were designed for this purpose: SIREC and SIGUEME. SIREC is a database for reports relative to Shareholder’s General Assemblies and boards of directors, which gives traceability and accountability to decisions that are being taken, and allows maintaining permanent contact with SOEs’ boards of directors, while SIGUEME is a business intelligence tool that collects financial, operational and strategic information that SOEs linked to the Ministry of Finance report quarterly. Colombia also plans on implementing more advanced practices in relation to the Global Reporting Initiative (with the support of the Swiss State Secretariat for Economic Affairs (SECO)).

- Peru is taking a similar path. In its effort to “bridge the gap between public service and quality of service”, the Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado (FONAFE), which exercises ownership over 35 companies operating in various sectors decided to adopt six strategic objectives for 2021 aimed at promoting modern and sustainable SOEs, and eventually joining the OECD. These objectives are 1) creation of economic value; 2) quality of goods and services; 3) creation of social and environmental value; 4) corporate governance and boards; 5) project portfolio management; and 6) development of human and organizational talent. To meet these objectives, FONAFE has established a management model which includes several aspects of corporate governance such as the development of a culture of reporting, investment in human capital, and the establishment of a transparency portal to provide information on SOEs. Other aspects include the definition of evaluation models and establishment of so-called “management agreements” (convenios de gestión) with SOEs. FONAFE also stressed the important role of information technologies and digitalization for the achievement of these objectives, and is currently working on the basis of scorecards to identify potential areas for improvement.

- Uruguay’s Public Enterprises Division (División de las Empresas Públicas) also recently started working on strengthening the efficiency of Uruguay’s 15 SOEs, all of which are under its supervision. Since 2015, SOEs are required to incorporate in their budgetary efforts management commitments which consist of a group of indicators attached to annual and medium-term goals to quantify the improvement of management. These indicators and goals have to be aligned with macroeconomic and sectorial policies as well as the strategic goals of the company. The objective of defining “management commitments” is to meet the demand, rationalize investments and improve operational costs for an overall improvement in efficiency of SOEs. In general the indicators contained in management commitments include several dimensions – however they lack homogeneity, as some indicators might be different depending on the specificities of the company. One-third of these objectives are defined by the state via macro and sectorial policies, and the rest are defined by companies themselves on the basis of their own strategic plans. Most indicators refer to internal processes and economic and financial results and are subject to trimestral follow-ups (with also half of companies performing monthly follow-ups). In terms of compliance, although there is currently no weighing of the indicators, data show that compliance was better in 2015 than in 2016, probably due to the fact that indicators became more challenging in 2016. The next step for Uruguay will be to 1) harmonize indicators – as
they are mostly annual which limits the measurement of medium-term goals; 2) establish criteria for goal-setting; 3) provide clear communication of performance to the public through comprehensive reports; and 4) improve performance monitoring via technological tools.

• Finally, Sweden - as a long-standing OECD member country – shared its experience in setting national targets for SOEs. The Swedish experience shows that following the OECD recommendations on corporate governance of SOEs has helped make state ownership much more transparent, improved dialogue between the government and parliament, and contributed to the depolitisation of SOEs. Professionalizing state ownership also created large fiscal benefits and reduced risks of trust issues in government. The state ownership policy established by the Swedish government contains six tools of active ownership, one of which is related to targets and evaluation. In Sweden, the Parliament defines the overall mission of each company. Based on the Parliament’s decision, the owner, for the government, determines the financial and public policy targets, while company boards are responsible for setting strategic targets for sustainable business for SOEs. Finally, the owner – in dialogue with board management – follows-up on how different targets are met. More specifically, the method for setting financial targets starts with the establishment of cost of equity for each SOE, followed by the establishment of capital structure, profitability targets, and dividend policies. This is done through consistent assessments and results in target proposals for each SOE. In the Swedish context, about half of the companies have public policy objectives. The methodology for setting public policy targets is the following: the owner has to first define the aim of performing the assignment (“why?”); then the assignment and what the company must do (“what?”) and finally define public policy targets that reflect the aim and how the assignment is to be performed (“how?”). The aim of public policy targets is to clarify the cost of performing specifically adopted public policy objectives, to enable the tracking and reporting to parliament and other stakeholders under public policy objectives, and to clarify the requirements for financial targets.

Session 3: Building Effective Boards in Latin American SOEs: Benchmarking Progress

• Session 3 was devoted to “building effective boards in Latin American SOEs” – and included a presentation of CAF’s review of practices at SOE level published in 2017, as well as more specific board reform initiatives. CAF’s study on the structure and effectiveness of SOEs boards [http://scioteca.caf.com/handle/123456789/1018], is one amongst many other instruments CAF has produced for the evaluation of CG in Latin American SOEs, which include also CG Guidelines and a Transparency Index. For this particular study, CAF received 50 responses from individual SOEs from 13 different countries to a voluntary questionnaire that was sent to companies operating in many different sectors. Ninety percent of these companies are held at the national level, while the rest is held at the municipal level. SOEs report having on average seven directors. The participation of independent directors is found in 50% of SOEs but this information is to be taken with caution as most companies and/or countries do not share a common definition for independent directors. The presence of independent directors is especially valued given the fact that their terms of office (compared to other types of directors) usually last longer than the average four years so their presence gives more continuity to the administration of the company. Furthermore, out of these 50 companies, 72% report not having alternate directors, while 44% report being chaired by a public official. Finally, with regards to the role of the board, most SOE boards report complying with certain functions such as defining company strategy or the supervision of the ordinary course of business. The internal control environment (risk and audit) account for lower levels of involvement from the board. About 63% report being involved in the appointment of the CEO (which is an important aspect for accountability) while 55% appoint the internal auditor. Furthermore, the board should have certain tools to comply with its functions, including adequate human capital – this is why induction and training programmes
are important. Sixty-two percent of SOEs report implementing induction programs, while 44% report offering training programmes. Finally, the study finds that remuneration of SOE board members is in principle not in line with the market, and therefore not considered competitive. CAF concludes that for building effective boards, it is important for companies to work together with the state to provide SOE boards with a clear framework for action, as the incorporation of good CG practices in SOE boards requires good will and commitment from the state as an owner.

- As an example, Costa Rica shared its recent experience reforming the SOE board appointment process. Reforms are focused on 13 SOEs, the majority of which were born as institutions and not as incorporated companies. Key challenges include 1) the complexity of interinstitutional coordination in a country where the ownership function is dispersed, which blurs the lines of functions and responsibilities 2) the issue of selecting ideal board members due to the small size of the country. With such a reduced environment, it becomes difficult to find directors with the right competencies and take other diversity measures (such as gender balance for example) into account. Furthermore, appointments have been closely linked to the existing political class. Within this context, the Costa Rican government decided to define a strategy based on three axes in order to improve SOE boards’ efficiency and eventually lead to the centralization of the ownership function: 1) Exercise of ownership: which includes the clarification of the owner’s expectations regarding the role and responsibility of the board and the chairman, the definition of an ownership policy with clear objectives and expectations, and the inclusion of CG practices in the internal control framework. This allows the government to require SOEs’ compliance with CG standards, although there is no specific law requiring it, 2) Transparency and accountability: includes the creation of a new advisory unit that will act as an ownership entity responsible for the monitoring of SOEs, and the production of a transparency policy and annual aggregate reports, and 3) Best practices: includes offering induction and training programmes to board members, the improvement of the selection process to make it more formal, transparent and based on suitability, and the introduction of performance assessment of SOEs and their boards. Finally, SOE boards meetings are also to be revised, as they are held weekly mostly because remuneration is granted on a meeting basis, which contributes to inefficiencies and irrelevant reasons to meet.

- More specific cases were presented by the Colombian Ministry of Defence’s GSED (Grupo Social y Empresarial del Sector Defensa) which is one of the five biggest business groups of Colombia. The Group is highly committed to implement good CG practices and regularly attends CG events and forums. It integrates many companies working in different sectors, all with different structures. In particular, their different dates of establishment (and therefore different legal nature) introduce rigidities which makes it very difficult to implement CG practices in all the companies. Nevertheless the group has managed to reach important advancements in many areas. Remaining challenges include the lack of economic incentives and insurance coverage for board members, which for many companies implies a change of law. The composition of board members is also often established by law (especially for the oldest SOEs). The group has worked a lot on defining board member profiles to avoid over-participation of people with military backgrounds in the board or deference to hierarchy of rank, and has successfully managed to include independent board members in half of their companies, amongst other aspects.

- Finally, Chile’s National Petroleum Company (Empresa Nacional del Petróleo – ENAP) also presented key features of its recently implemented corporate governance policy. They first recognised that the governance structure for SOEs is very complex; they are usually subject to multiple objectives that can at times be conflicting or inconsistent – there are economic and public policy objectives as well as restrictions imposed by the economic and political climate of the moment. Furthermore, society’s increasing concern with ensuring an appropriate use of public resources, transparency etc. also calls for solutions oriented towards improvements in the corporate governance of SOEs. Within
In this framework, ENAP’s new corporate governance law establishes that the company will only be able to perform public policy objectives to the extent that their costs are covered or subsidized through the budget law. The new law also includes changes in the composition and structure of the board of directors: with a clear separation between the roles of the owner and the board of directors, the establishment of mandatory professional and experience requirements, incompatibilities and inabilitys and staggered terms for board members (to avoid changes in the board according to political cycles). The board size is reduced from eight to seven members, which includes two members designated by the President, one elected democratically by workers, and four appointed by the “system of high public management” which is a public body established for the selection (through public competition) of high-ranking officials.

Additional remarks

- Mauricio Cardenas, Colombia’s Minister of Finance and Public Credit said a few words about Colombia’s recent CG advancements – in the wake of the country’s accession process to the OECD. The dialogue with the OECD and other international institutions such as the World Bank prompted several important reforms in the SOE management in the country such as the removal of ministers from SOE boards of directors and the establishment of a coordination entity – the Dirección de Participaciones Estatales (within the Ministry of Finance) with the long-term objective of making it an independent agency (a type of holding) in charge of SOE supervision. These reforms have already led to better results in the SOE portfolio which currently includes some 40 companies, operating in various sectors. Minister Cardenas also gave a brief overview of Colombia’s current economic situation. The country experienced an economic shock a couple of years ago, when oil prices and related exports dropped abruptly. As a consequence, Colombia lost one of its most important sources of fiscal revenue and saw its economic growth slow down. Despite this, employment continued increasing and the country managed to maintain positive social indicators, including a significant reduction in the poverty rate and informal employment, without mentioning the reduction in criminality rate, which has strongly benefitted from the peace process.

Session 4 and 5: Breakout group discussions on strengthening boards

- Individual breakout sessions were organized during this session to allow for more in-depth and informal discussion on good practices for development of effective boards. The first group focused on government policy and the challenges ownership ministries and/or coordinating institutions face when undertaking government-wide reforms on SOE performance and accountability. After a first introduction of key recommendations from the OECD SOE Guidelines on boards, participants to this session discussed the issue of remuneration, where for some countries such as Chile, the concept of variable remuneration (depending on the fulfillment of goals and targets) was producing successful results. Others participants mentioned the importance of defining clear objectives and goals right from the beginning as the definition of macro objectives might collide with sectorial objectives or more economic short-term objectives. Similarly, it is important for companies fulfilling public policy objectives to have them clearly defined including how they are being financed. Another important issue was the selection process of SOE board members. In some countries, there is political interference whereby the President of the country appoints directly board members. In the end, the consensus reached was that it was important to have independent board members and a centralized agency in which the selection process would be based on previously established professional criteria. Some countries however, expressed their difficulties to find independent directors through regular selection processes or even headhunters. As a result, Peru established a unique concept of “school for independent directors” to offer candidates proper
training. Other countries such as Sweden use headhunters for finding appropriate profiles of directors, but their use has not necessarily been positive in other countries.

- The second breakout group focused on good practices at SOE level and more particularly, on what management and boards can do themselves, independent of government ownership institutions to strengthen the effectiveness of boards. Conclusions revolved around five key issues: 1) the desirability of having an independent director chairing the board of directors. Despite Colombia’s recent decision to reduce the number of public officials on SOE boards, and similar measures taken in Brazil and Peru, the situation is far from homogeneous at the regional level; 2) the lack of a common definition for “independent directors”; 3) the role of board secretaries (secretarios corporativos) which changes in the context of a corporate group. This is directly linked to the importance of administrating certain elements associated with conflict of interest, due diligence, good practices which eventually help boards get more effective; 4) the role of board-level committees which can act both as advisors and decision-makers; 5) CG as a cultural change is a discussion that needs consistency – boards need to find mechanisms to keep this cultural change going despite changes in government, ministries etc. The conclusion and recommendation of this breakout session was that board-level committees can help keep this conversation alive as well as other good practices throughout a company’s development.

- The third breakout group offered a bottom-up perspective of management and board member policy advice to owners on several issues. This exercise was based on a study-case of Bancoldex, a Colombian development bank which, in 2015, decided to undertake a strategic shift to become a first-tier bank, which in turn required implementing corporate governance measures. In this process, management faced initial resistance from the board of directors. Participants to this session were then asked to think how management could have acted to help secure this change. In its own experience, Bancoldex decided to work jointly with the World Bank/IFC which in turn provided the entity with 45 recommendations, three of which implied legal reforms. A first conclusion was that SOEs do not need to wait for a regulation to change their corporate governance and can undertake certain changes such as the establishment of executive meetings without the presence of board members. The group also concluded that higher disclosure levels empower interest groups as they are the ones who can generate pressure for political change.

Session 6: Case Studies on SOE reform

- In Session 6, three different cases were presented on SOE reforms – and how they have built up effective boards or achieved a focus on better performance. Starting with the case of Grupo de Energía de Bogotá (GEB), an energy group comprised of three companies and owned by the District of Bogotá that has recently undergone an important CG reform. In 2016, the group formulated its first long-term strategic plan with a focus on corporate governance, which in turn has positively impacted the market valuation of its shares (the group started issuing in 2011). More concretely, the Group has implemented a series of reforms and expects to comply with 94% of all OECD recommendations by 2018. The reforms include, among other aspects, gender diversity (with 33% female participation in boards), training programmes on CG, equitable treatment of all shareholders, and establishment of four board-level committees (all chaired by independent directors). It is particularly important to mention that EEB – as a group - has adopted a Corporate Governance Code, a disclosure policy, an equity trading policy and an audit nomination policy. It has also adopted a document called “Group Agreement” on how the group deals with its assets (that the group has to share with some of its partners). The group has also announced a process of “democratization” whereby the District of Bogotá (main shareholder of GEB) which currently holds 76.28% of shares will sell 20% of its stock options to strengthen corporate governance. With this process, the board will also include one
The second case was CORSAN, a public water utility company whose main shareholder is the state of Rio Grande do Sul in the southern region of Brazil, with minority shareholdings from eight local municipalities. The company serves six million users across 317 municipalities. Several factors drove the company to adopt CG practices including the ethical crisis linked to recent corruption scandals, the historical “patrimonialism and corporatism in Brazil”, and a desire for efficiency and equity. The company adopted CG measures following the adoption of Law 13,303/2016 which establishes, amongst other things, clear corporate governance and transparency rules, practices of risk management and internal control, composition of the board and protection mechanisms for shareholders, as well as rules for tender and contracts. Transparency requirements include the issuance of an annual CG report, disclosure of operational, financial data and other relevant information on distribution of dividends, third-party transactions, and the issuance of a sustainability report. For boards of directors, the law establishes that it should be composed of at least seven and maximum 11 members. Twenty-five per cent must be independent members, with mandates no longer than two years and allowed for renewal up to three times. There should be at least one representative of minority shareholders, one representative elected by employees, and a clear separation between the chairman and the CEO. Furthermore board members have to go through a training program on CG, an insertion process and will undergo an evaluation of performance. The law also establishes rules on the structure and practices of risk management and internal control, as well as requirements and incompatibilities for board members. Ministers, secretaries, individuals with mandates or leaders of political parties are prohibited from serving on the board.

Finally, Subterráneos de Buenos Aires - SBASE (the oldest metro in Latin America) which is owned by the Government of the City of Buenos Aires presented its recent corporate governance advancements. With the recent political shift, the company acquired the possibility to access various international credits for improvements and network expansion, and hence decided to start an internal rearrangement process to establish better CG practices and mitigate risks of political changes. This rearrangement stems from the due diligence executed by the Inter-American Development Bank (IDB), the objective of which was to generate a model of SOE that has a healthy, balanced and ordered relationship with its owner. IDB’s due diligence in 2016 observed that there was a healthy but informal relationship with the owner; little independence within the board; the President was also the CEO; low levels of sophistication in terms of internal and external control; and that transparency was informal. Based on this diagnostic, SBASE developed a strategy plan that would take into account all the main points of the due diligence within an 18-months period. The plan is based on three lines of actions: 1) government bodies, 2) control environment, and 3) transparency and information disclosure. The company has been delayed in its initial program but has advanced on certain issues, such as the separation of roles and functions between the Chairman and CEO, the establishment of an internal regulation for the board, establishment of two board-level committees (auditing and governance), design of a self-evaluation model, development of a corporate governance code, and the elaboration of a training program for board directors, amongst other things.

Session 7: OECD and Latin America: Frameworks for Anti-Corruption and Integrity

Finally, session 7 provided the opportunity to present the results of the OECD Latin American survey on Integrity and Anti-corruption, and to obtain input from the Latin American region on the survey and OECD guidelines initiative. Anti-corruption is currently the subject of quite ambitious projects at the OECD and the Working Party on State Ownership and Privatisation Practices, including the development of anti-corruption and integrity guidelines for the state as an owner. There has been recently a growing awareness of corruption scandals that have demonstrated that
SOEs often have big reputational and political costs. SOEs have certain characteristics such as weak governance which makes them more prone to passive bribery (as demonstrated by the OECD Foreign Bribery Report) for example. In the Latin American specific supplement to the OECD Survey on Integrity and anti-corruption, the scope has been broadened to include more than just bribery or acts of corruption – that is, all cases of rule-breaking - in order to understand corporate irregular practices in a subtler way.

- The OECD has prepared its surveys on anti-corruption and integrity practices of SOEs, in order to build up an evidence base for potential new recommendations, as well as to offer a basis for discussion and consideration of best practices on corruption and integrity issues. The Latin American survey included participation from eight countries and 69 individual SOE responses. The research indicates that there are no substantial differences between Latin American and OECD countries in terms of how often corruption and other irregular practices materialized in SOEs – with 43% of SOE respondents having reported seeing risks of corruption and other irregular practices materialize in the last three years. However, there are differences in the types of risks that are perceived as having medium or high likelihood of occurring, and in their perceived impact if the risk was to materialize in the company. Out of 23 risks, Latin American countries ranked the most likely to occur: 1) non-declaration of conflict of interest, 2) receiving bribes, and 3) influence peddling, while OECD countries ranked 1) violations of data protection and privacy, 2) stealing or theft of goods from your company, and 3) violations of regulations, as being the most likely to occur. This shows that corruption might take different forms between regions and groups. These risks are most commonly found in commercial companies subject to legislative or regulatory requirements, and active in the oil and gas, transportation and energy sectors. This is commonly attributed to high cash flows, large public procurement and in some cases lack of competition in these sectors. In terms of reported obstacles to integrity, the report finds that in OECD countries, the greatest obstacles are reputational or behavioral, whereas in Latin America, it seems that these obstacles have more to do with their proximity to government. The survey also found that laws and regulations regarding integrity are spreading in the region, but more needs to be done. Many SOE respondents expressed their discontent with the actual implementation of these laws and regulations in their respective companies and have reported a general lack of awareness or understanding of them. Similarly challenges reported by state ownership entities also referred to the difficulty of implementing reforms and SOE-specific laws without a change in company culture, and the need for SOEs to internalize them. Finally, the role of state audit institutions was found as particularly relevant in Latin America, as they often have the mandate to perform external audits of SOEs or the ownership entity itself.

- Mexico shared its recent experience in implementing a new anti-corruption and integrity system at the national level. The topic is of great importance in the country and the region – because as evidenced by the OECD survey on anti-corruption and integrity in Latin American countries, presence of weak integrity mechanisms in SOEs leads to a lack of integrity culture and a lack of resources to promote them. To counter that, Mexico has recently implemented a constitutional reform and several other laws to create the National Anticorruption System (Sistema Nacional Anticorrupción – SNA). It consists of a new institutional coordination design between all authorities responsible for prevention, investigation and sanction of corruption via a coordinating committee, which integrates all the most important institutions of the three branches of the state such as the Federal Superior Auditors (Auditoría Superior de la Federación), which reports to the legislative branch and the Federal Institute of Access to Public Information, which is an independent body. The system also includes subnational governments (including SOEs held at the sub-national level), a steering committee which is a national control system, as well as a citizen’s participation committee. Importantly, the President of the Citizen’s Participation Committee also heads the coordinating committee of the SNA. After this brief introduction to the Mexican anti-
corruption system, the Mexican representative proposed to review the first six building blocks proposed for the new ACI Guidelines – contrasting them with the situation in Mexico. Regarding the first block on “integrity and accountability at the state level”, Mexico has expressed its commitment through the constitutional reform of 2016 and the implementation of the national anticorruption policy. Mexico suggested also including an additional concept in the first building block related to the active and institutionalized participation of civil society, which is an important component of the Mexican SNA. For the second block on “the State’s role as an owner”, the new system has helped clarify state expectations around ACI, as well as the status of SOE employees subject to applicable legislation. Indeed, the new reform introduced specific regulations for independent directors (and their selection process), made monitoring of ACI policies mandatory, and launched a new procurement platform open to citizens for consultation. For block three “translating state expectations to company practices”, a few Mexican SOEs and government entities have already adopted CG practices and compliance systems. The country has also put in place a register of suppliers and contractors open to citizen for consultation. Regarding block four on “well-functioning boards and other governing bodies of SOEs”, the new system established requirements for independent directors and provided for adequate remuneration. Regarding block five on “objective external control”, in Mexico all SOEs are required to have external audits of their financial statements and are subject to audits by the Federal Superior Auditors. In addition, there will also be performance audits, as well as external audits for insights into the effectiveness of ACI mechanisms and programs. Finally, regarding block six on “the responsibilities of the State in cases of suspected and real corruption in SOEs”, Mexico established a national catalogue comprising conducts considered acts of corruption and the related sanctions, as well as an unique procedure before specialized administrative courts, that will make it easier to investigate and punish cases of corruption in the three levels of government, including public servants of their respective SOEs, and private companies or persons that may have participated in such cases as well.

- Subsequently, the Argentinian Anti-Corruption Office (ACO) introduced its work promoting integrity in SOEs. ACO’s recent work was carried out in a difficult context, marked by an important gap with international standards, the identification of SOEs as a risk actor for corruption, and the increasing demand from SOEs themselves for more action in this regard. To begin with, the new government made the fight against corruption one of its priorities and included anti-corruption initiatives among its 100 objectives. The ACO itself made some internal changes and incorporated integrity experts with a more corporate background in their team, while also working more closely and in synergy with the central government. More specifically, the ACO started working jointly with the Chief of the Ministerial Cabinet (JGM) and the National Internal Audit Agency (SIGEN) on integrity issues and implemented the SOE Integrity Network, the objective of which are to 1) raise awareness in terms of integrity and transparency; 2) promote the elaboration and implementation of integrity programs within SOEs; 3) create a community of practice to share experiences, best practices and recommendations; 4) train participants to lead the change and become internal trainers; and 5) promote the implementation of national rules and regulations. The Integrity Network which currently includes some 80 representatives scheduled its 4th meeting for December 2017 and constitutes a more transversal approach to anti-corruption and integrity rather than the current ministerial and sectorial approach that is in use. Another positive result of these initiatives include the institutionalization of anti-corruption rules and the adoption of several important new laws including the right of access to information, Decree 202/LAIP/CL to prevent conflicts of interest in procurement and contracting, and a Corporate Liability Law. Other positive results include the implementation of integrity programmes by several SOEs within their internal organizational structures, the preparation of CG guidelines (in collaboration with JGM) and a toolkit on anticorruption. Finally, Argentina will also take opportunity of its G20 leadership (and
leadership of the anti-corruption group) in February 2018 to define and agree ACI standards within
G20 member countries.

- The World Bank (WB) made an intervention – welcoming first the OECD recent work on ACI and
initiative to develop specific ACI Guidelines for SOEs. Recalling important high profile cases of
corruption, and the very tangible impact SOE corruption can have on the economy (as evidenced
by the case of Petrobras in Brazil or 1MBD in Malaysia), the WB representative acknowledged
that now is the right time to address these issues at the global level – especially given recent
initiatives such as that of the OECD or Transparency International to address these issues in a more
specific way. The OECD survey showed and highlighted a few important risks involving
corruption in SOEs – and the WB has also found that at the global level, the major risk is the
proximity to government and politicians. In many cases, SOEs operate in high-value sectors and
have a monopoly over critical resources, while also being protected in a vacuum from anti-
corruption efforts. This has been also evidenced by WB individual SOE assessments which have
shown that in some cases, board members or CEOs are quite open about using SOEs as tools for
political financing or personal gain. A second key risk is the policy environment in which SOEs
operate, as they often operate as monopolies, have access to large contracts and are often exempted
from procurement regulations. Within this policy environment, there is a lot of scope for illegal
and unethical practices. A third risk is related to the structure and composition of SOE boards of
directors. In many cases, they are composed primarily of political appointees which, again, brings
the issue of proximity to government and access to resources by politicians. In addition, there are
also issues of internal compliance, internal controls, and lack of adequate risk management
systems, lack of transparency and issues related to external audits. On the latter, the issue is that
many external auditors fail to account for what is really going on in the SOE either because they
are not able to get the right information or because sometimes they turn a blind eye. Finally, a last
risk is related to gaps in the legal framework of SOEs. Often there are deliberate loopholes,
vagueness or complexity in laws and regulations, which creates room for corrupt practices. Hence,
making sure that the legal and regulatory framework is solid is critical. To address these risks, it is
important to work both on the policy environment (to open up sectors to competition, develop
proper and solid laws and regulations etc.), and at the SOE-level by changing the structure and
composition of the board, professionalizing the board, etc. This means that there are a lot of
actions that SOEs can take themselves. However, there is a significant role for the State ownership
entities to play in terms of monitoring risks and even integrating anticorruption into the
performance evaluation system, amongst other things.
Conclusions and Next Steps

- As a conclusion, some of the most important and recurring messages from the discussions mentioned that CG can be an important tool for SOEs to strengthen their efficiency and help generate value. For this, political will from the state and SOE shareholders is key. Other frequent topics included the presence of a centralized ownership entity (and the many forms it can take) to manage SOEs professionally, the enforcement of CG principles through laws and regulations such as in Brazil or Paraguay, the importance of efficient boards of directors, adequate election processes, and strong committees, as well as the importance to train directors, evaluate them, and remunerate them adequately. Hence the relevance of CG is clear, and this meeting has described several different examples and experiences for implementing it.

- It was also mentioned that CG issues, in particular within SOEs, have gained traction in the last few years, within countries and on international agendas alike. This year’s SOE Network Meeting has helped outline one of the main issues affecting SOE management - namely political interference within the functioning of SOEs. Some inevitable forms of political direction may be inevitable, however the collateral effects of such interventions can be reduced via greater transparency and stronger corporate governance, and different ways to mitigate their impacts can certainly constitute an area for investigation in future sessions. This meeting also highlighted the necessity to improve continuity in the board and to learn how to manage contradictory objectives, and more specifically how SOEs’ own objectives can be linked to the general policy led by the state. It was also suggested that treatment of many of the issues that have been mentioned should be preventive rather than reactive, and should be guided by risk management just like in the financial sector.

- Finally, the Colombia host issued a last statement sharing its positive surprise regarding the evolution of SOE corporate governance in the region. When starting its accession process to the OECD, Colombia was leading the region for some initiatives which now appear to be widely implemented in many countries. There are however new challenges ahead and the SOE Network meeting provides an important space to work jointly on new initiatives to eradicate corruption and improve instruments to bring more transparency and eventually more profound institutional transformations to SOEs.