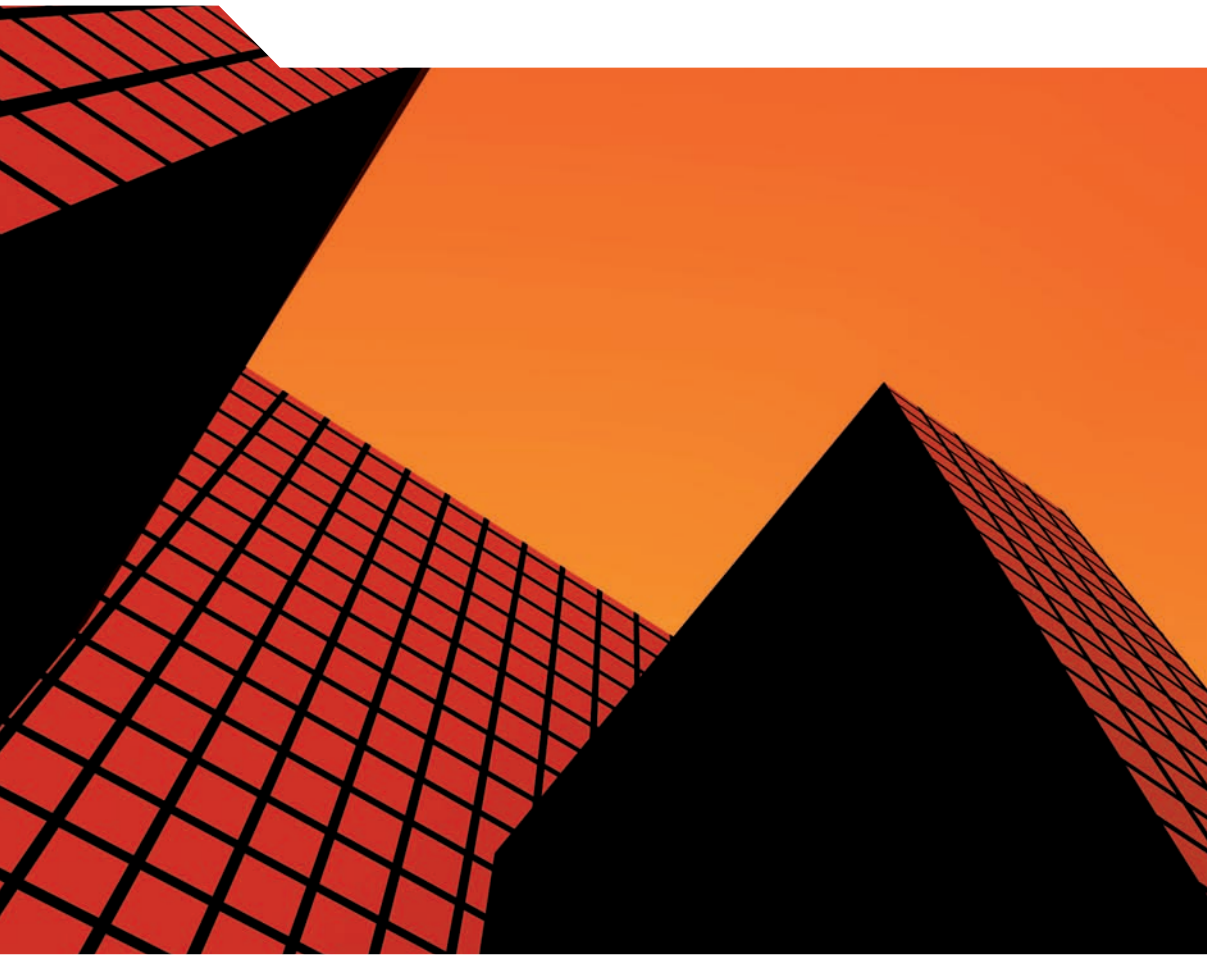
Corporate Governance of State-Owned Enterprises

CHANGE AND REFORM IN OECD COUNTRIES SINCE 2005



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Foreword

This document updates the earlier publication OECD (2005), *Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries* (henceforth "the 2005 report"). Since its publication the 2005 report has become one of the world's principal sources of cross-country information about the governance of state-owned enterprises (SOEs) and their legal and regulatory frameworks. However, the world has evolved since 2005, and the OECD Working Party on State Ownership and Privatisation Practices therefore decided to issue the current update.

The updated information has two separate parts. Four new member countries have joined OECD in 2009 and 2011 (Chile, Estonia, Israel and Slovenia). Since none of them were part of the original exercise, a full set of information on their SOE governance is provided. Secondly, the document takes stock of change in extant member countries over the last six years. The *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (the "SOE Guidelines") are used as an organising principle throughout the document.

Information in this document is provided by the national authorities in OECD countries that are responsible for the ownership function of SOEs. The materials (for long-standing members of OECD) were compiled by the OECD Secretariat in the form of, first, a questionnaire and, secondly, a series of phone and electronic interviews with individual countries. The countries informing the Secretariat that they had SOE governance changes to report were: Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Korea, Mexico, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey and United Kingdom. Information on OECD's four new member countries was obtained from questionnaire responses that they had filed as part of the accession process.

Special attention has been given to developments in Poland. The country has embarked on an ambitious programme of SOE reform, mostly through preparing the draft bill on exercising certain powers by the Treasury (the "Bill"), which in the years 2008–2010 was proceeded before the Council of Ministers and it was submitted on 10 November 2010 to the Sejm (lower house of the parliament). Legislative works were commenced in the Sejm in January 2011. The remainder of the report presents these reforms on the assumption that they will be enacted as currently presented.

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Chapter 1

Main changes in OECD member countries over the last six years

Significant changes have taken place in the organisation and corporate governance of SOEs and SOE sectors over the last six years. Based on the information from member countries reviewed in the remainder of this chapter, it appears that the change has been concentrated mainly in the areas of "the State acting as an owner", "transparency and accountability" and "the functioning of SOE Boards". Some countries have also adjusted the legal and regulatory frameworks of SOEs, most notably (Korea and Switzerland) by formally classifying groups of SOEs according to operational structure and nature of the objectives (i.e. commercial versus public service) that they are required to pursue.

Concerning ***the State acting as an owner***, a number of countries have developed, or revised, ownership policies since 2005 – whether through legislation, government approval of specific documents or the approval of codes of conduct for SOEs. Moreover, no less than eight of the countries surveyed for this report have altered the way that ownership rights are exercised within government. The trend is apparently toward a greater "centralisation" of the ownership function. This tendency, already detected by the 2005 Report would seem to reflect, first, a shrinking portfolio of SOEs and, secondly, a greater tendency to list SOEs on stock exchanges – both of which tend to make a coordinated ownership function more feasible and more useful. In addition, a long-term fiscal squeeze in many countries may have induced governments to rethink their ownership practices purely on efficiency grounds. Two countries have moved to a central ownership model, with the ownership henceforth the responsibility of a specialised unit (Finland) and the Ministry of Finance (New Zealand). Other countries have established a dual ownership model or strengthened the role of the Ministry of Finance in pre-existent models (Czech Republic; Germany; Switzerland).

Finally, two countries (Hungary and Korea) have established inter-ministerial committees to obtain a better coordination of SOE ownership.

In the area of ***transparency and disclosure***, three countries have either agreed to implement aggregate reporting (Switzerland[1] and Turkey), or have strengthened the accountability mechanisms around the annual reporting that they had in place (Germany). Six countries have altered rules for SOEs' disclosure of material information. All the changes go in the direction of greater disclosure, but the subject areas concerned differ greatly across countries – from regular annual accounts (Turkey), to sustainability reporting (Sweden), to a continuous disclosure regime for the largest SOEs (New Zealand). In other words, governments are increasingly aware of a need to enhance transparency and accountability (as also recommended by the Working Party in OECD (2010), *Accountability and Transparency: A Guide for State Ownership*) in order to enhance SOE efficiency and gain public support for their ownership practices.

Steps have been taken in numerous countries to enhance the ***functioning of SOE boards***. Three Nordic countries (Finland, Norway and Sweden) and the Czech Republic[2] have all issued guidelines for the remuneration and employment conditions of SOE managers. Portugal has adopted strategic guidance on the use of management objectives in SOEs, and Poland is in the process of defining rules for the selection of candidates for SOEs' management boards. Perhaps the most important single area of change is rules bearing on the composition of (supervisory) boards. Four countries (Germany, Italy, Spain and Switzerland) have implemented rules aimed at enhancing the integrity of SOE directors, including provisions regarding conflicts of interest and professional qualifications. Poland will implement a State nomination committee to appoint directors in certain "key" SOEs, board sizes have been reduced in France, and Korea has put in place rules to ensure that the Chair of the Board of a "commercial" SOE is always an outside director. Finally, several governments have taken steps to encourage a greater reliance on board committees to support the work of SOE boards. Taken as a whole, many of these changes continue a trend noted in the 2005 Report toward stamping out irregular practices in and around SOEs. Most of the changes concerning board composition and qualification have the effect of limiting the scope for "politicisation" and the use of boards for patronage. The guidelines on remuneration effectively limit the scope for extraction of private benefits by SOE insiders.

In addition to legal and regulatory changes *per se*, a ***changing composition of the SOE portfolios*** of governments has in many countries altered the state's role as an owner. As demonstrated in earlier reports reviewed by the Working Party, opposite forces have been at play. On the one hand, a number of countries continued their privatisation programmes in

the years after 2005, not least in the infrastructure and communication sectors. On the other hand, the financial crisis led the state in several OECD countries to nationalise or otherwise seize control of a number of financial institutions. This has had a number of implications, including with regards to the separation of the state's ownership and other functions. For example, the commercialisation of what was previously monopolies in the network sectors has induced a number of governments to tighten, and enhance the autonomy of, their regulatory frameworks. Moreover, the public control with banks and insurers in a number of countries – including some whose public authorities had scant experience with running financial institutions – has in some cases led to concerns about the separation of public functions. The temporary oversight of such institutions has in some cases been assumed by parts of the administration (e.g. the Treasury, central banks, credit insurance) that also retain regulatory responsibilities.

Box 1.1. **New Korean categorisation of public institutions**

There are 285 public institutions in Korea. The definition of public institutions has been changed by enactment of the **Public Entity Management Act (2007)**. In the main, a public institution is an institution (1) which is established by law and to which government has made a financial contribution; or (2) where more than half of the revenue comes from government assistance; or (3) of which the government holds more than 50% of the shares (or 30% and maintains de facto control).

According to the Act, public entities in Korea are classified as 3 types: (1) State owned enterprises, (2) quasi-governmental organisation and (3) other public institutions. To be classified as an SOE, a public entity needs to have more than 50 employees and generate at least 50% of its total revenues itself. With an own-revenue share of more than 85%, the SOE would be further categorised as a "commercial SOE". Otherwise it would be a "semi-commercial SOE".

Public entities in Korea

	SOEs		Quasi-government organisation	Other public institutions	Total
	Commercial	Semi-commercial			
Number of organisation	8	13	71	185	285
Number of Employees	76,697		65,564	100,549	242,810
Percentage of total employment (%)	0.33		0.28	0.43	1.04

*(As of December. 31. 2009)

1.1 The legal and regulatory framework for state-owned enterprises [3]

In **Finland**, the 2007 State Shareholding and Ownership Steering Act, (discussed in more detail below) transferring most SOEs to an ownership unit in the Prime Minister's Office, is seen as having been instrumental in enhancing the separation of the ownership function from the regulatory and sector policy responsibilities of branch ministries.

In **Korea**, the 2007 Public Entity Management Act represented major legal and regulatory changes not only to SOEs but to any other kind of autonomous body controlled by the state. Details of the broader direction of change are provided in Box 1.1. The main gist of the reform has been to create a more unified institutional framework in which all types of public institutions can be addressed. Among the consequences of the reform, any public institution regardless of legal form is considered as an SOE if it has more than 50 employees and generates at least 50% of its total revenues through its own earnings.

Mexico, which was not comprehensively covered by the 2005 report, has provided OECD with in-depth information on its SOE sector. An overview of the different corporate forms of SOEs, as well as their priorities and objectives, is provided in Box 1.2.

In **Poland**, the draft bill before parliament (first tabled in 2008) aims to collect in one legal act all regulations on the treasury ownership function that are currently contained in various laws. (These include, in particular, the "Commercialisation and Privatisation Act" and the "Act on Rules for the Exercise of Treasury Rights".) The draft law proposes significant change in the SOE sector, for example by proposing corporatisation of all non-commercialised "state-owned enterprises" under the general Commercial Code (as well as the State Enterprises Act) or alternatively liquidate them. It also introduces incentives for greater involvement of local authorities in publicly owned commercial entities. The draft Bill further includes measures to ensure a more flexible, entirely professional management; an economically efficient utilisation of assets; and a strengthening of ownership oversight with SOEs. As a consequence of the Bill, the ownership function – currently fractured but with the Ministry of Treasury overseeing by far the largest number of SOEs – would become more centralised, with the Ministry of Treasury exercising a measure of oversight over all state-owned entities.

Table 1.1. **Changes related to the legal and regulatory frameworks**

	Countries	Nature of change
Separation between ownership and other state functions	Finland	In 2007, the Ownership of SOEs was transferred from sector ministries with policy and regulatory capacities to a Steering Department under the Prime Minister's Office.
	Poland	The Bill that is currently before parliament will, when enacted, help keep the ownership and regulatory roles of the state separate, inter alia by clarifying the role of the Treasury vis-à-vis the sector ministries.
	Switzerland	A report by the Federal Council on outsourcing and management of Confederation tasks in 2006 (corporate governance report) aims to establish clear limitations between three types of SOE tasks: (1) inherently monopoly-type services; (2) economic and safety tasks of a regulatory or supervisory nature; and (3) market-based services. Entities fulfilling these types of tasks should be (or already have been) outsourced in order to gain more independence of central government performing ministerial tasks.
Operational practices and legal forms	Korea	A new framework for public institutions introduced in 2008 did not simplify the legal forms under which SOEs operate, but it clarified their operational practices by creating taxonomy for determining what entities shall be considered as SOEs and whether or not SOEs are considered as "commercial".
	Poland	The Bill that is currently before parliament will, when enacted, serve as the one law defining the status and nature of SOEs. It will bring the SOEs activity closer to that of private companies and entirely eliminate non-commercialised SOEs
	France	According to a government decision in March 2010, the objectives of SOEs shall be directed toward making an active contribution to the government's industrial and social policies. In August 2010 a Commissioner for SOE, reporting to the Ministry of Economics and Finance, was appointed to oversee this policy.

Box 1.2. **The main types of SOEs in Mexico according to objectives, priorities and organisational form**

1) According to the economic nature of their activities:

- Non-profit-making: These provide services free of charge or fulfil regulatory functions in relation to consumer protection, social security, or scientific research and technological development (CONACYT).
- Profit-making: SOEs in this category participate in the economy and/or compete with the private sector (e.g. PEMEX, Servicio Postal Mexicano, Fondo de Cultura Económica), along with development banks.

2) According to strategic or priority areas:

- Operating in strategic areas: These enterprises act as monopolies in economic activities reserved for the public sector. Only decentralised bodies can undertake these activities, and the private sector cannot participate, even through partners.
- Operating in priority areas: SOEs of this type undertake activities which in principle correspond to the public sector, but which can be transferred in concession to private entities.

3) According to their degree of autonomy with respect to the state:

- Co-ordinated entities: Their governance body is chaired by the sector Minister, who is responsible for control, supervision, programming, budgeting, knows its operations and evaluate the results.
- Non co-ordinated entities: In general these are governed by special laws; their board consists of officials other than ministers; the Ministry of Finance supervises their programming and budgeting.

4) Classification used in the OECD questionnaire:

- Quoted companies: These are SOEs with shares quoted on a stock market or otherwise offered for sale to the general public. In Mexico, SOEs only issue debt securities, so this category includes issuers of debt securities that are offered to the general public through stock markets, whether national or international.
- Unquoted companies: These are SOEs whose shares are not publicly traded, but are nonetheless constituted under general corporate law. They include all other SOEs.
- Statutory corporations: These are legal entities operating under their own legal framework. For the purposes of this study, this category includes civil and commercial companies and associations, as well as public trust funds, which are governed by their own social statutes and founding contracts, although Mexican public and private laws apply to them on a subsidiary basis.
- Quasi-corporations: These entities undertake autonomous commercial activities within the federal government sector without a specific legal framework. They use economically relevant prices and are separate from other parts of the public sector, since they have their own assets and liabilities.

The **Swiss** Federal Council took steps, in 2006, to clarify the difference between regulatory responsibilities, otherwise essential functions and purely commercial services rendered by SOEs. A "corporate governance report" on Outsourcing and Management of Confederation Tasks (13 September 2006) aimed, among other things, at identifying tasks and/or entities that could be outsourced from central government to the SOE sector. Equally the report set guidelines on the governance of each type of tasks, thus serving as directives for legal implementation on a "comply or explain" basis.

The Government of **France** made a formal decision in early 2010 to redirect the objectives of its SOEs towards supporting the government's industrial and social policy objectives. (An official Decree to this effect is forthcoming.) A Commissioner for SOE, responsible to the Ministry of Economics and Finance, was later appointed to oversee the government's SOEs policies. The head of the state ownership agency, APE, continues to report to the Treasury.

1.2 The State acting as an owner

The **Belgian** authorities have notified a small inaccuracy in previous reporting concerning their ownership architecture. (Belgium was described as having a wholly centralised structure.) The responsibility for SOEs is mostly with the Minister for State Owned Assets, but some government participations are owned by a separate holding company.

The **Czech Republic**, in January 2006, disbanded the National Property Fund (NPF), which had been established as a central privatisation and state ownership agency at the beginning of the transition period. The role of the NPF was, in all essentials, taken over by the Ministry of Finance. The Czech ownership model remains dual, with sector ministries nominating SOE directors and voting the State's shares and the Ministry of Finance in charge of SOEs' operational performance.

In **Finland,** the 2007 legal reform (mentioned above) created a comparatively centralised ownership structure for SOEs. The Ownership Steering Department, serving as the ownership agency, is administratively located in the Prime Minister's Office and is politically accountable to the Minister of Defence – who was chosen for this role because his ministry is not involved in the oversight of any individual SOEs. (The reform is described in detail in Box 1.3). Subsequently, in 2008 a state holding company, overseen by the Steering Department, in 2008, was established to which government shareholdings in a number of listed companies was transferred. This was seen as an attempt to further safeguard the commercial orientation of the listed companies concerned by "insulating" them through

another layer of corporate board responsibility. At the time of the first reform, the Finnish government further approved State Ownership Policy, outlining the key principles and operating practices of the State's ownership function.

Box 1.3. **Centralised ownership steering in Finland**

The State ownership function has been carried out on a centralised basis since May 2007. The State's actions as an owner are regulated by the State Shareholdings and Ownership Steering Act (1368/2007) ratified at the beginning of 2008. The new law replaced the act of 1991 concerning the State's exercise of powers as a shareholder in certain limited companies engaged in economic activities (740/1991, 'State Company Act'). The primary differences between the two lie in the provisions concerning decision-making powers and the legal norms governing the arrangements made in respect of the State's holdings in corporate entities.

Duties relating to state ownership steering are carried out in the Ownership Steering Department within the Prime Minister's Office. The department is responsible for state ownership steering in companies operating on market terms. For daily ownership steering activities, the key document is the Resolution on State Ownership Policy passed by the Government in June 2007, which outlines the main principles and operating practices of the State's ownership steering. At the beginning of 2009, the State Ownership Steering Department was responsible for 30 companies of which four were listed and twowith special assignments. Additionally, the State owns 15 special assignment companies where responsibility for ownership steering rests with the ministries responsible for the fields of activity that the companies are engaged in.

The restructuring of ownership was further developed in October 2008 when the Government decided to establish a holding company "Solidium Oy" and transferred all state-owned shares in nine listed companies in which State owns less than 50 % of the shares and which were classified as "non-strategic". Solidium is considered as a company with special tasks under the administration of the Ownership Steering Department but has its own independent Board, management and organisation.

In the view of the Finnish authorities, the key achievements of this centralised reorganisation have been the separation of ownership function from that of regulation, implementation of the State's ownership policy through one single decision making line, independence from other State's organisations and a harmonized approach for daily routine work.

Box 1.4. **The Hungarian State Holding Company (MNV Zrt.)**

To adopt an integrated approach for the management of state assets, the Hungarian Government established the Hungarian State Holding Company (MNV Zrt.) on January 1st, 2008 by merging its three organisations – the Hungarian Privatisation and Holding Company (ÁPV Zrt.), the Treasury Property Directorate (KVI) and the National Land Fund Management Organisation (NFA). The State Assets Act (no. CVI of 2007) which regulates the rights of ownership and the ways state assets are to be utilized and managed, provides the structure and set of conditions for the integrated asset-management organisation. The rights and obligations held by the State of Hungary as the owner of public assets are exercised by the minister responsible for supervising state assets (under current regulations, the Minister of National Development). The Minister carries out these duties largely via MNV Zrt.

MNV Zrt. has a Board of Directors which could have a maximum of seven members. The Minister appoints and recalls the chairman and members of the Board of Directors. The chairman and members of the Board are appointed for terms of five years and may be recalled at any time. The management of MNV Zrt. is led by the chief executive officer (CEO), subject to the nomination of the minister exercising shareholder's rights and of the Board. According to the State Assets Act, the responsibilities of MNV Zrt. are to:

- prepare and execute the Government's and the Minister's decisions with respect to state assets;
- keep records on state assets;
- provide data on the basis of records on state assets;
- make direct use of, or to grant civil-law leases on, the state assets over which it exercises the rights of owner;
- inspect regularly the management of state assets by its contractual users;
- represent the State of Hungary in civil law affairs related to state assets;
- inspect the performance of obligations undertaken by buyers in contracts of sale;
- take part in preparation of the National Asset Management Guidelines and the Annual National Asset Management Programme;
- provide the services (operation, procurement) regarding the use of state assets necessary for the operational activities of government organisations.

In **Germany**, the Ministry of Finance has developed, and in 2009 obtained government approval, for a Public Corporate Governance Code[4]. This code applies to SOEs with federal ownership or participation regardless of corporate form – although certain provisions are in practice applicable only to joint stock companies[5]. The Code concerns most aspects of government ownership and SOE governance, including the role of shareholders, shareholder meetings, the responsibilities of supervisory and management boards, remuneration, transparency and financial reporting. It provides a synthesis of practices to be observed by SOEs and their owners, ranging from aspects of applicable law, to "recommendations", to pure "suggestions". Parts of the individual elements were already implicit or explicit in a pre-existent multitude of Ministry of Finance guidelines for SOEs that were mentioned in the 2005 Report. A main novel aspect of the Code is that the "recommendations" are implemented on a comply-and-explain basis with the SOEs' annual corporate governance reports being the main vehicle for reporting, which is seen as giving the Code considerably more "teeth" than the previous arrangements. In this sense, Germany has moved toward central coordination of SOE-related practices and, arguably, taken a step from a sectoral toward a dual ownership model for SOEs.

In **Greece**, the Ministry of Finance established in 2010 a central registry for all enterprises in which the Greek State is a shareholder. The Special Secretariat for Public Enterprises and Entities has been assigned as the operator of the registry, which is perceived as a strengthening of the Secretariat's coordinating role vis-à-vis SOEs.

In **Hungary**, Act CVI of 2007 on state-owned assets enabled the reorganization of ownership function through the establishment of both the Hungarian State Holding Company and the National Asset Management Council (NAMC), which has 7 council members nominated by the Prime Minister and appointed by the President of Hungary. The Hungarian State Holding Company functions as the executive agency of NAMC. Various objectives have been stated with respect to this reform endeavour such as focusing on the long-term management of assets and value creation, benefiting from autonomous decision making, centralising ownership function by decreasing the number of public ownership entities and improving the transparency and register of state owned assets. (Further details are provided in Box 1.4 above).

In **Korea** the ownership function of SOEs, well as other public entities, has since 2007 been overseen by an inter-ministerial Steering Committee (replacing similar oversight bodies mentioned in the 2005 Report). The Committee consist of up to 20 members, nominated by the President of the Republic and chaired by the Minister of Strategy and Finance. Some vice ministers of the Ministries sponsoring SOEs are appointed of members to

the Committee, but more than half of its members are private sector experts. The Ministry of Strategy and Finance acts as secretariat to the Committee. The sponsoring ministries retain the right to nominate CEOs and executive directors (except for the "large SOEs with economic importance" whose CEOs are nominated by the President), whereas the external directors are appointed by the Steering Committee.

New Zealand moved from a dual to a centralised ownership model in 2009. Previously, the ownership function had been split between an advisory unit in the treasury and the Crown Company Monitoring Advisory Unit (CCMAU) acting as a coordinating unit for the line ministries. The old structure was replaced through the Crown Ownership Management Unit (COMU), which is an integral part of the Treasury, bringing together the ownership monitoring, appointments and governance functions of SOEs and certain other forms of public entities.

In **Norway**, a White Paper (No. 13) issued in 2006 made clear that the government will remain an active and long-term owner of major Norwegian SOEs. This paper, which was submitted to parliament, essentially set out the Norwegian ownership policy, by making clear the Norwegian government's stance on various matters related to the SOE sector including the objectives and organization of state ownership, board's responsibilities and composition, executive salaries and incentive schemes. A set of principles for good ownership were also indicated in accordance with the generally accepted principles for corporate governance.

The Bill before the **Polish** parliament (passed through the Council of Ministers in 2008-2010 and presented to parliament in 2010) aims to implement proposals put forward in a document entitled "The National Owners' Supervision Scheme – New Corporate Governance in the State-owned Companies" developed by the Prime Minister's Economic Council. The document outlines the selection of a relatively small number of entities that are deemed critically important for the economic interests of the State Treasury. It introduces specific regulations aimed at allowing the use market-based mechanisms for managing these entities. The purpose is to enhance their value creation through the introduction of a degree of competition, while maintaining such state control as appears necessary for strategic reasons.

Portugal has been one of the most active jurisdictions in terms of introducing new SOE legislation and guidelines. Among the various measures and amendments introduced were the Principles of Good Governance for companies belonging to the state-owned corporate sector as set out in Cabinet Resolution (RCM) no. 49/2007 of 28 March 2008. According to the Principles, SOEs are required to have a governance model

that ensures the effective segregation of executive management and supervisory roles, have their accounts audited annually by independent entities, observe the same standards as those for companies listed on stock markets and have or sign up to an ethics code with serious ethical and deontological requirements and circulate this code among its employees, customers, suppliers and the public in general.

In **Spain,** General Rules on the Assets of the Central Government were passed by Royal Decree in 2009. The General Rules are essentially a hybrid between an ownership policy, guidance for company-specific objectives, and elements of a broader good-practice code for the conduct of state-owned enterprises. The main motivations for the change included (1) a desire to raise the efficiency of SOEs and related public entities; and (2) establishing transparent frameworks for SOEs' public service obligations, including with a view to avoid generating market distortions. Reference was moreover made to a desire to adopt the OECD Guidelines on Corporate Governance of State-Owned Enterprises into national practices.

In **Switzerland**, the 2006 Corporate Governance Report confirmed the dual ownership model. The Federal Finance Administration (FFA), alongside with the line ministries involved in each SOE, is co-responsible for the ownership function in financially important SOEs. In the case of smaller SOEs, the FFA is to be consulted in financial matters and may play an advisory role in other issues. The Corporate Governance Report also defines guidelines on how the SOEs should be governed.

The **United Kingdom**, in the absence of major legal changes in the area of general SOE ownership, has nevertheless seen the ownership function become somewhat more co-ordinated. This is the result of a growing number of SOEs that are overseen directly by the Shareholder Executive subject to memoranda of understanding with the ownership ministries. Currently there are 27 such companies. In addition, the Executive continues its advisory function concerning the ownership and/or privatisation of other SOEs as and when requested by the ownership ministries. Another change in the ownership architecture occurred during the financial crisis in 2008 when the UK government set up a specialised agency, the UK Financial Investment under control of the Treasury, to oversee its temporary control over four financial institutions.

Table 1.2. **Changes in the State's role as an owner**

	Countries	Nature of change
Developing and issuing an ownership policy	Finland	Government Resolution on State Ownership Policy (May 2007) outlining the key principles and operating practices of the State's ownership function.
	Norway	An official Government Ownership Policy for state-owned enterprises was published in 2007, following previous parliamentary debate of a White Paper in 2006/2007. (The Policy is currently being revised by the Norwegian authorities.)
	Poland	Draft legislation currently before parliament identifies companies of "key importance" to the Treasury.
	Portugal	The Council of Ministers established best practices for public companies in 2007, with the main purpose of increasing transparency and encouraging improved corporate governance practices.
	Spain	In 2009, General Rules on the Assets of the Central Government were passed by Royal Decree. The General Rules enunciate an ownership policy for SOEs, establish guidelines for commercial and non-commercial objectives, outline the role of shareholder meetings and put in place good practices for SOEs in a number of areas including transparency.
	Switzerland	An ownership policy was set out through the "Corporate Governance Report 2006" by the Federal Council. The document also establishes criteria for outsourcing tasks to the SOE sector and sets guidelines on the governance of SOEs.
Clearly identify the exercise of ownership rights	Czech Republic	In 2006 the National Property Fund was disbanded. Its functions were in essentials taken over by the Ministry of Finance. The ownership model remains dual.
	Denmark	The Danish authorities have notified an inaccuracy in the 2005 Report: Denmark's ownership model is a hybrid between central and sectoral, with some SOEs held by a special unit of the Ministry of Finance and others controlled by sector ministries.
	Finland	As mentioned, state ownership steering is central since May 2007 through the establishment of the Ownership Steering Department. Further restructuring took place in October 2008

Countries	Nature of change
	when the Government decided to establish a holding company "Solidium Oy" and transferred all state-owned shares in nine listed companies to this company[6].
Greece	A central registry for all government-invested enterprises was established in 2010 under the auspices of the ownership coordination unit (EGDEKO).
Germany	The 2009 Public Corporate Governance Code (PCGC) of the Federation makes the German ownership structure more "dual", by setting out recommendations by the Ministry of Finance (some of them pre-existing) in a separate document, the implementation of which is subject to a comply-or-explain requirement to individual SOEs[7].
Hungary	In 2007, an inter-ministerial oversight body, National Asset Management Council, was established. The Council has oversight over the Hungarian State Holding Company which, with a few exceptions, exercises the ownership rights in all SOEs.
Korea	In 2007, two previous oversight bodies were replaced by a Steering Committee, chaired by the Minister of Strategy and Finance whose Ministry also provides secretarial functions to the Committee.
New Zealand	In 2009, New Zealand moved from a dual to a centralised ownership model. The Crown Ownership Management Unit (COMU) was established as part of the Treasury, bringing together the ownership monitoring, appointments and governance functions of the Treasury and the former Crown Company Monitoring Advisory Unit (CCMAU).
Switzerland	The Federal Finance Administration, alongside with the line ministries involved in each individual SOE, is co-responsible for the ownership function. The role of FFA has in certain respects been strengthened.
United Kingdom	The UK Financial Investment was established in 2008 to oversee state ownership shares in financial institutions. The Shareholder Executive has gradually increased the portfolio of companies it oversees on behalf of the ownership ministries to 27.

1.3 Equitable treatment of shareholders

None of the OECD countries surveyed in this report has materially changed its practices concerning equitable treatment of SOE shareholders. However, the Danish authorities have notified an inaccuracy in the 2005 report: minority shareholders are treated at par with other owners. Contrary to what was asserted by the previous report, there is no preferential treatment of minority shareholders through SOEs' bylaws.

1.4 Relations with stakeholders

None of the OECD countries surveyed in this report has materially changed its practices concerning relations with SOE stakeholders. However, the implementation of a charter of obligations toward SOEs' clients in 2005 by the Greek government involves elements of an enhanced stakeholder engagement.

1.5 Transparency and disclosure

In **Germany,** changes to the Federal Budget Code enacted in 2009 imply that, in addition to the annual report on federal government holdings, not only members of the federal holding administration but also SOE managers (members of the managerial board) may be invited to appear before a specific parliamentary committee. All members of the committee as well as other participants of the session are obliged to strict confidentiality by law. So far this facility has been used to ask questions with reference to the budget e.g. dividend or investment policies of the individual enterprises.

In **Greece**, legislative change in 2005 introduced internal audit practices to SOEs. According to the law, at least one internal auditor is appointed by the shareholder (i.e. the State). The ownership unit has created a registry of certified internal auditors that are appointed by the State (via the AGM) to set up and apply internal audit procedures. The internal auditors report both to the board audit committee and the ownership unit.

Most recently, within the framework of financial assistance to Greece from the European Union and international financial institution, the Ministry of Finance has taken measures to enhance transparency concerning the financial conditions of SOEs. Audited 2009 financial statements for 52 SOEs have been published on the Ministry's website.

In **Italy,** a number of changes bear on the transparency of SOEs. In 2005, a requirement to appoint a Senior Officer in charge of companies'

accounting procedures and financial statements that had previously applied to listed companies was extended to unlisted SOEs. The Officer is assigned from among the executive directors of the SOEs and in practice is usually the company financial officer. Secondly, a law enacted in 2008 provides that companies in which the State has 100% or controlling shareholding must follow specific "transparent, public and impartial procedures" when recruiting personnel or purchasing external advice. Thirdly, in 2009 a law was put in place extending an provision previously applying to listed companies, that in all SOEs (directly or indirectly owned by the State) the internal audit function must report either to the board of directors or to a board audit committee.

The government of **Korea** established in 2005 an internet-based "open information system for public entities" (Korean acronym ALIO). The system works as an integrated service provider for the information of public entities in Korea. SOEs (and other public entities) and mandated to disclose operational data according to 27 standardised categories of financial and non-financial information on a web-site, which is accessible to the general public. Examples of such information are number of staff, number of corporate units, major performance indicators, results of consumer satisfaction surveys, average amount of salaries for employees, executive remuneration, and long and short-term debts. The disclosure requirements will be expanded to cover 33 categories of information by 2012. The additional information will include information about subsidiaries and newly recruited staff.

In **New Zealand**, there has been a focus on increasing transparency of SOEs. Shareholding ministers, starting in January 2010, have initiated a continuous disclosure regime for the 7 largest SOEs - New Zealand Railways Corporation, Transpower New Zealand Ltd, Meridian Energy Ltd, Mighty River Power Ltd, Landcorp Farming Ltd, Genesis Power Ltd, New Zealand Post Ltd, Solid Energy New Zealand Ltd and Kordia Group Ltd. The aim is to keep the public constantly informed on matters that may have a material effect on each of the 7 companies' commercial value.

In **Sweden**, the Government adopted Guidelines for external reporting by state-owned companies in November 2007. The Guidelines basically dictate that the external reporting of the SOEs, which includes the annual report, interim reports, the corporate government report, the statement on internal control and the sustainability report, should be as transparent as in listed companies. These guidelines are based on the principle of "comply or explain". The board should describe in the annual report the ways the guidelines have been applied during the past financial year and comment on any deviations. According to the guidelines, the Board is responsible for submitting a sustainability report in accordance with the Global Reporting

Initiative (GRI) starting from the 2008 financial year. It should be published on the respective company's website along with the publication of the company's annual report. The sustainability report can either be a separate report or an integrated part of the annual report.

In **Switzerland**, at present aggregate reporting covers only the biggest SOEs organised as joint stock companies plus the Swiss postal service. A comprehensive report on all SOEs, aimed at parliament and the general public is planned from calendar year 2011.The Parliament passed the respective legal amendments in December 2010.

In **Turkey**, the Undersecretariat of Treasury's role has been strengthened in terms of both collecting information from SOEs and preparing a yearly aggregate SOE sector report through both the Decree by the Council of Ministers in 2007 and a Communiqué in 2009. The Treasury has been drafting aggregate reports for the last couple of years, however, thanks to these amendments, the scope of reporting has been extended to cover both companies owned and run by municipalities and SOEs subject to special legal frameworks. (Further details are provided in Box 1.5).

Box 1.5. **Aggregate reporting in Turkey**

The Undersecretary of Treasury, by Decree by the Council of Ministers in 2007, was authorised to prepare consolidated Public Enterprise Reports. The enactment of a Communiqué on Monitoring and Reporting the Activities of Public Enterprises in 2009 further gave the Undersecretariat responsibility for collecting and publishing information from all the public enterprises including the ones owned by the local governments.

Before the enactment of the above mentioned communiqué, only companies subject to SOE Decree Law no.233 and companies that were part of the privatisation portfolio with higher than 50% state ownership share were being monitored. The communiqué enabled the monitoring of companies owned by local governments, statutory companies whose ownership functions are executed by public institutions other than Treasury, and state banks which were not regularly monitored by Treasury.

The first Public Enterprises Report was prepared in 2007 which covered the activities and performances of SOEs in year 2006. Its scope was limited to companies whose ownership rights are executed only by the Undersecretariat of Treasury. Later in 2007 and 2008 reports, its scope was extended to include companies that are regarded as public undertakings according to the relevant EU legislation. By a separate Council of Ministers Decree, SOEs are required to publish their annual reports on their regularly updated web sites since 2006.

1.6 The responsibilities of the boards of state-owned enterprises

In 2010, the **Czech** government issued "Principles for Remuneration to Management and Board Members of Corporations with State Shareholding above 33% Including State-Owned Enterprises and Other State Institutions Established by Law or Ministry". The aim of the Principles is to prevent inappropriate remuneration practices and increase transparency. The Principles establishes standard structures of remuneration, as well as accountability mechanisms to ensure their implementation. Annually, ministries and single ministers are mandated to inform the government about the remuneration practices enterprises or other state organisations that are subject to the Principles.

Table 1.3. **Changes in transparency and disclosure arrangements**

	Countries	Nature of change
Aggregate annual reporting on SOEs	Germany	In addition to annual reporting, by a change to the Federal budget code in 2009, a specific parliamentary committee was established. Not only members of the federal holding administration will be invited to appear before this committee but in some cases also members of the SOEs management boards.
	Switzerland	A comprehensive report on all SOEs is planned from calendar year 2011. The Parliament passed the respective legal amendments in December 2010.
	Turkey	The General Directorate of State-Owned Enterprises began publishing Annual Ownership Reports in 2006. A 2009 government directive further enables the Treasury to collect and public information from all public enterprises, including the ones held at the sub-national level.
Internal audit procedures	Greece	Legislative change in 2005 introduced internal audit practices to SOEs.
	Italy	A 2009 law stipulates that the internal audit function in all unlisted SOEs, whether directly or indirectly owned by the state, must report to the board – or, if such exists, to a board audit committee.
Disclosure of material information	Italy	From 2006, all SOEs are required to assign a Senior Officer in charge of accounting procedures and financial statements.

Countries	Nature of change
	A law enacted in 2008 establishes "public, transparent and impartial procedures" for state-controlled companies' hiring of staff and purchasing of external advice.
Korea	The online ALIO information system was introduced in 2005 to provide information in real time about the financial and non-financial performance of SOEs (and other public entities).
New Zealand	Shareholding ministers, starting in January 2010, have initiated a continuous disclosure regime for the 7 largest SOEs. The aim is to keep the public constantly informed on matters that may have a material effect on each of the 7 companies' commercial value.
Poland	Draft legislation will increase transparency around the operations of state-owned entities as well as around the disposal of assets by the state.
Sweden	The government revised its guidelines for external reporting by state-owned companies in November 2007. The new guidelines have, among other things, a greater emphasis on sustainability reporting.
Turkey	By a 2006 Council of Ministers Decree, state owned enterprises are required to publish annual accounts, including on regularly updated websites.

In **Finland,** according to the Guidelines on management remuneration and pension benefits which were issued in September 2009, it is the board of directors who makes decisions concerning management remuneration. Shareholders are involved only if the decisions necessitate, under the Companies Act, the approval of the shareholders' meeting. Drafting of any remuneration scheme must be charged with the chairman of the board of directors and possibly a remuneration committee. Only board members who could be considered independent from the company can participate in formulating remuneration decisions. The boards of directors of the SOEs are responsible for the fulfilment and compliance of these guidelines before the State as an owner. The guidelines do not impose any authority on the statutory obligations of the board of directors or its responsibilities towards other shareholders, investors and the contractors working for the SOE.

In **France**, SOEs still have large boards compared with other OECD countries, but since 2005 the normal size has come down from 30 to 18. The composition of the boards remains the same – one third employee representatives, on third state representatives and one third independent directors.

Germany's new PCGC has introduced, in one of the main departures from previous practices introduced specifically by the Code, tightened rules on conflicts of interest by members of supervisory boards. Previously such rules applied only the eligibility for nomination to board duties, but under the new rules board members are subject to a continued duty to report on any conflicts of interest that may arise during their tenure.

In **Greece**, the 2005 legislative change imposed an obligation on SOE boards to submit annual and medium-term business plans, as well as long-term strategic plans, to the Ministry of Finance. These plans are from 2010 subject to the coordinated dissemination of SOE information that was established under the auspices of the ownership unit.

In **Italy**, the company bylaws of unlisted SOEs were modified to introduce respectability and professional requirements among the criteria for nominating board members. A limit was also introduced to the number of board positions (executive as well as non-executive) that any individual may hold at the same time.

In **Korea**, the system that was put in place following the 2007 establishment of a governmental Steering Committee has implied a certain strengthening of the position of corporate boards in SOEs, positioning them better to act as proper decision making bodies. For example, the fact that a majority of directors have to be external represents a break with the practices described in the 2005 Report, as does the fact that the Chair is appointed from within this group. A mandatory establishment of audit committees (in commercial SOEs) points in the same direction.

In **Norway**, the government put forward new guidelines on management remuneration in state-owned companies, with regards to the introduction of its white paper on state ownership in December 2006. The guidelines require that state-owned companies shouldn't make use of stock options in their management remuneration programmes. According to the guidelines, severance pay packages should not exceed 12 months' salary, excluding the salary received during the period of termination of the employment contract.

In **Poland**, the aforementioned draft Bill aims to implement recommendations put forward by a document entitled "The National Owners Supervision Scheme – New Corporate Governance in the State-owned Companies". The document provides for the appointment of a Nomination

Committee, whose task will be to make recommendations to the Treasury regarding nominees to the supervisory boards of certain "key" state-owned entities, as well as to recommend on dismissing the members of the supervisory boards when such a situation arises. The Committee will consist of 10 members appointed by the Prime Minister, on the basis of their knowledge and experience. Candidates for the members of the Committee will be recommended by e.g. ministries of the Treasury, economy, public finance, financial institutions, transport, communications, and the President of the Polish Financial Supervisory Authority.

The same draft Bill defines rules regarding the selection of candidates for SOEs' management boards. In companies with more than 50% state ownership which are considered of key importance to the Treasury, managers shall be appointed by the supervisory boards. This represents in some case a strengthening of the supervisory board, since in the previous legal framework the state could appoint managers in single-owner companies directly. (The one exception remains limited liability companies in which no supervisory board is appointed, where the Bill stipulates that individual members of the management can be appointed, recalled or suspended by a shareholder meeting.)

In **Sweden**, the Government introduced new guidelines for terms of employment for senior executives in state-owned companies in April 2009 replacing the previous guidelines which were adopted in July 2008. According to the guidelines, the remuneration of the CEO is the responsibility of the board as a whole. The board should also ensure that the remuneration of both the CEO and other senior executives remain within the guidelines decided upon by the annual general meeting. In case of any deviation from the government's guidelines, the board is expected to report on the special reasons with respect to any particular case. (For further information, see Box 1.6).

In **Spain**, legal change was enacted in 2006 aimed at preventing conflicts of interest for directors and managers. The new law first defines conflicts of interest, including the proximity of such individuals as shall be considered as sharing the personal "interest" of SOE officials. It establishes rules on full (or full-time) commitment to the duties of managing or overseeing an SOE, restrictions on shareholdings in the SOE and companies related to the SOE, as well as compatibility with non-remunerated public activities. The law also establishes rules for the disclosure of financial and corporate assets by high-ranking officials in the SOE sector. Further change in 2010 reduced the number of SOE directors (and managers), with the intention of making boards smaller and more efficient.

Box 1.6. **Swedish guidelines for terms of employment for senior executives**

On 20 April 2009, the Swedish Government adopted new guidelines for terms of employment for senior executives in state-owned companies. These guidelines replaced the previous guidelines which were adopted on 3 July 2008. According to the guidelines, reasonable and well considered remuneration to the senior executives is a key part of corporate governance in state-owned companies. It is considered crucial that boards address issues relating to remuneration to senior executives in a deliberate, responsible and transparent way and that the boards ensure that the total remuneration is reasonable.

In the same manner as in the listed companies, the boards of the state-owned companies in Sweden should propose guidelines for compensation to senior executives for the consideration and approval of the shareholders at the annual general meeting. The Guidelines indicates that the total remuneration to senior executives shall be reasonable and well considered. It shall also be competitive, with a cap, reasonable and appropriate for its purpose as well as contributing to sound business ethics and corporate culture. According to the Guidelines:

It is the responsibility of the entire board to decide on the remuneration of the CEO. The board shall also ensure that the remuneration paid to the CEO and other senior officers is within the guidelines decided upon by the annual general meeting. The board shall ensure that the CEO ensures that the company's remuneration to other employees is based on the principles of remuneration in the government guidelines. The board shall report on special reasons that justify deviating from the government guidelines in any particular case.

No senior executive shall have a variable salary. Taking into account the other principles in the government guidelines, it is possible to pay a variable salary to other employees. Pension benefits shall be defined contribution, unless they comply with the group pension scheme, and the fee should not exceed 30 per cent of the fixed salary. In cases where the company enters into agreement on a defined benefit pension benefit, it shall accordingly comply with the group pension scheme. Any expansion of the group pension scheme on parts of salary exceeding the income levels covered by the scheme shall be defined contribution. The company's costs for pensions shall be borne during the employee's active period.

The state-owned companies shall report remuneration paid to senior executives in the corresponding way to listed companies. This means that the state-owned companies shall comply with the special rules on reporting of remuneration to senior executives applicable to stock market companies and public listed companies. These rules are mainly contained in the Swedish Companies Act (2005:551) and in the Annual Accounts Act (1995:1554). Furthermore, remuneration to senior executives shall be reported separately with respect to fixed salary, benefits and severance pay. The board shall report to the annual general meeting on whether previously decided guidelines have been complied with or not and the reasons for any non-compliance. Furthermore, the company auditors shall submit a written signed statement to the board before every annual general meeting as to whether the auditor considers that the guidelines applicable since the previous annual general meeting have been complied with or not.

Table 1.4. **Changes to the responsibilities of boards of state-owned enterprises**

	Countries	Nature of change
Mandate and ultimate responsibility for the SOEs' performance	Korea	The 2007 reform gives the governmental Steering Committee wide-ranging powers to appoint top managers, evaluate management performance, setting guidelines on institutional operation and disclosing management information.
Monitoring SOE management and providing strategic guidance	Czech Republic	In February 2010 the government issued Principles for Remuneration to Management and Board Members of Corporations with State Shareholding above 33%. The Principles establish standard structures of remuneration, as well as transparency and accountability mechanisms to ensure their implementation.
	Finland	Introduction of guidelines on management remuneration and pension benefits in 2009.
	Greece	The 2005 legislative change imposed an obligation on SOE boards to submit annual and medium-term business plans, as well as long-term strategic plans, to the Ministry of Finance.
	Norway	Introduction of guidelines on remuneration of senior managers in 2006.
	Poland	Draft legislation defines rules regarding the selection of candidates for SOEs' management boards. In SOEs, managers will be appointed by the supervisory board.
	Portugal	Adoption, in 2008, of strategic guidelines applicable to the SOEs, which promote the usage of management objectives and quantified evaluation for the managers' performance.
	Sweden	Adoption, in 2009, of guidelines for the terms of employment for senior executives in state-owned enterprises.
Composing boards so that they can exercise objective and independent judgment	France	Since 2005, the normal size of SOE boards has been reduced from 30 to 18. The relative weight of employees, State directors and independent directors is unaltered.
	Germany	The PCGC has strengthened the requirements to avoid conflicts of influence for members of supervisory boards. From previously applying to board appointments only, they now imply a continued monitoring of board members.

	Countries	Nature of change
	Italy	In 2005 the bylaws of unlisted SOEs were changed to introduce "respectability and professional requirements" to the board nomination criteria. The number of board on which an individual may serve was also limited.
	Korea	The 2007 reform mandates that the Chair of the board in a commercial SOE must be designated from among the external directors. (In semi-commercial SOEs, the CEO serves as Chair.)
	Poland	According to draft legislation, a Nomination Committee will be appointed, whose task will be to make recommendations to the Treasury regarding nominees to the supervisory boards of key state-owned entities. The Committee will consist of 10 members appointed by the Prime Minister.
	Spain	Legal change in 2006 aimed at preventing conflicts of interest for directors and managers. The rules address compatibility of activities (commercial as well as political), restrictions on public officials' shareholdings in government-linked companies and disclosure of commercial and financial assets. Further change in 2010 reduced the number of SOE directors (and managers), with the intention of making boards smaller and more efficient.
SOE board committees	Finland	From 2007 on the State has encouraged the establishment of remuneration committees, with the purpose of ensuring competitive and incentive-consistent remunerations in SOEs.
	France	Though not prescribed by concrete reform measures, the ownership agency has actively encouraged government-invested companies to establish audit, strategy and remuneration committees.
	Korea	The 2007 reform implies that commercial SOEs (but not semi-commercial ones) are required to establish audit committees.

Notes

1. The first aggregate report from Switzerland will be issued in 2011.
2. The Czech guidelines also concern the remuneration of board members.
3. Relevant to this topic, but not strictly SOE-related, in 2008 Italy repealed an article in the Civil Code according to which the State could, by laws or bylaws, acquire the power to appoint board members in companies where it lacked ownership rights.
4. The Public Sector Governance Cote is available (in German) on the Ministry of Finance's website: *http://www.bundesfinanzministerium.de/nn_39010/DE/Wirtschaft__und__Verwaltung/Bundesliegenschaften__und__Bundesbeteiligungen/Public__corporate__governance__Kodex/010709__publGov__anl,templateId=raw,property=publicationFile.pdf*
5. It should be noted that most companies in which the federal government has stakes are limited companies with a supervisory board, and therefore have the same structure as a joint stock company.
6. These nine companies are the ones which State owns less than 50% of the shares and which thus were classified "non-strategic".
7. Most individual States ("Länder") already have corporate governance codes for the companies they control. The PCGC contains provisions to address the situation where the federal and sub-national levels of State jointly own an enterprise.

Chapter 2

State-owned enterprise governance practices in new member countries

This chapter provides an overview of the environment and corporate governance of SOEs in the four countries that were not members of OECD at the time of the 2005 Report, but which are now members of the Organisation: Chile, Estonia, Israel and Slovenia. It is based on the accession reviews and SOE questionnaire responses of the four new member countries. It therefore conveys a picture of the SOE landscape 12 to 18 months ago, which may since have changed. An exception is made for Slovenia, which is in the process of implementing far-ranging reforms of its SOE ownership and governance frameworks. For this country, the information in this section is a mixture of new and old.

2.1 The legal and regulatory framework for state-owned enterprises

The legal and regulatory frameworks for SOEs in the new member countries do not differ much from the practices described in the 2005 Report. As a general rule, the countries have SOEs in the form of joint stock companies, limited liability companies and statutory corporations, some of which may or may not be subject to specific framework legislation for state-owned institutions. A few "non-standard" corporate forms exist, but they are generally limited to a few, specialised institutions. The new member countries have generally not achieved a full separation of ownership and regulatory functions, but, like many other OECD countries, continue to take steps in that direction including the establishment of independent sectoral regulators. Measures to safeguard a "level playing field" between SOEs and private companies (e.g. equal access to finance; non-commercial objectives) are generally in place – and reinforced by the fact that two of the four countries are subject to EU state aids rules.

Information on individual countries is provided in Table 2.1. The main elements of their legal and regulatory frameworks for SOEs, in the areas covered by the SOE Guidelines, are summarised as follows:

- *Separation between ownership and other state functions.* The main remaining policy issue related to separation of state functions is in most cases one of regulatory independence, especially as regards sectoral regulation. Other state functions such as public procurement and enforcement of completion law are in the new member countries adequately covered by rules and overseen by independent entities. As for sector regulation, the continued existence of self-regulatory, statutory corporations in some countries and sectors makes a full regulatory independence hard to achieve. Furthermore, a continued reliance on SOEs to carry out public policy in a number of areas may tend to blur the distinction between ownership policy and regulation. However, the trend is clearly toward greater autonomy in regulation. Where regulation continues to reside within ownership ministries, efforts have been made to ring-fence to units that have regulatory responsibilities, and there is further a trend toward transferring such functions to extra-ministerial, autonomous entities.

- *Simplified operational practices and legal forms.* A multitude of different legal forms coexist – including within individual countries. The two most straightforward examples of SOEs found in all new member countries are, first, exchange-traded stock companies with majority state ownership and, second, statutory corporations subject to tailored legal and regulatory frameworks. SOEs in the first category operate (except for the rare case where legal provisions say otherwise) exactly like any other listed company. SOEs organised as joint stock companies are also found in all new member countries, albeit with varying degree of options for state-owned such companies to depart from normal commercial practices. In some countries special "SOE laws" supplement, and may in some cases override, general company law. Other countries (e.g. Slovenia's Public Utilities Act) have general framework laws under which special categories of SOEs may operate, and yet others (e.g. Estonia's "profit-making state agency") have institutionalised, in a legal sense, what might in most other countries be simply informal commercial activities by the state.

A. *Transparency around non-commercial requirements.* The SOEs of all new member countries are faced with a certain amount of non-commercial requirements. The transparency around the requirements

themselves is apparently strong, with the actual mechanism for handing down such requirements varying from decisions by the Ministry of Finance (Estonia), to company bylaws (Estonia), to specific laws and corporate agreements (Israel and, on a more ad-hoc basis, Slovenia). Insofar as such requirements are funded by budget transfers (which is not always the case) then those countries that are members of the EU is required by state-aids rules to maintain a high degree of transparency around the payments. Chile also covers the cost of such requirements through budget transfers. Conversely, none of the four counties has mechanisms for disclosing such costs to the general public.

B. *Applicability of general laws and regulations.* In all new member countries SOEs are, as a rule, subject to the same laws and regulations as other enterprises. Creditors and other claimants have the same access to the same legal recourse as if the company in question had been privately owned. In the case of SOEs incorporated under general corporate law, this is a rule without exceptions. Where SOEs take specific legal forms placing them somewhat "closer" to the general public sector, some differences in bankruptcy rules may occur.

C. *Flexibility for adjustments to the capital structure.* The SOEs in all new member countries need government approval to change their capital structure as well as, where minority investors co-own the SOEs, approval by a shareholder meeting. Other options for varying the capital structure include the SOEs dividend policy, which normally involves an element of negotiation with SOE managers, but which may be ultimately decided by the government.

D. *Competitive conditions regarding the access to finance.* Commercially operating SOEs do normally not have access to concessionary finance – and in several new member countries are barred from borrowing from state-controlled institutions. (In the EU this is further discouraged by Community Law.) However, where non-commercial SOEs are concerned, or regarding enterprises with important public service obligations (e.g. in infrastructure), soft loans and guarantees from the public budget are not unheard of.

Table 2.1. **Changes in legal and regulatory frameworks**

	Chile	Estonia	Israel	Slovenia
Separation between ownership and other state functions	Most SOEs are overseen by an ownership agency and their reporting monitored by securities regulators. However, some important statutory corporations remain self-regulating[1].	SOEs are overseen by sector ministries, some of which retain regulatory functions. Staff involved in regulation has no direct involvement in the SOE ownership function. Competition and public procurement is subject to EU law.	Each SOE is overseen by the Ministry of finance and a line ministry, subject to the advice of an ownership unit. Utilities regulation is sometimes done by ministries involved in the ownership function. Ongoing process of establishing extra-ministerial regulators.	SOEs are overseen by sector ministries (or have been until now) and state investment funds. Regulation is entrusted with autonomous bodies, but some SOEs operate in connection with industrial policy objectives.
Simplified operational practices and legal forms	The legal forms include statutory corporations, stock companies and limited liability companies (equivalent to partnerships limited by shares).	The main legal forms include public and private limited companies, and foundations, subject to general law. One "profit-making state agency" is operated as part of the sovereign state.	The legal forms include statutory corporations and limited liability companies. The limited liability companies conform with general companies law.	The main legal forms include listed and private limited companies, subject to company law, and "public enterprises" subject to the Public Utilities Act.
Transparency around non-commercial requirements	Ministry of Finance needs to approve projects not motivated by profit	Specific societal obligations are imposed through laws and bylaws. Their costs are	Such requirements are established by laws, regulation or publicly disclosed	Such requirements are established by law, agreements or operating licences. Some on-budget

	Chile	Estonia	Israel	Slovenia
	maximisation. These are funded through budget transfers.	covered by direct subsidies, subject to EC rules.	agreements. Their cost is normally not disclosed.	funding takes place, but there are no general mechanisms for disclosing costs.
Applicability of general laws and regulations	General laws and regulations apply to SOEs. Options for legal resource are the same.	General laws and regulations apply to SOEs. Options for legal recourse are the same.	General laws and regulations apply to SOEs. Options for legal recourse are the same.	General laws and regulations apply to SOEs, with minor exceptions for bankruptcy.
Flexibility for adjustments in the capital structure	Stock companies operate subject to AGM approval. The government may only decide alone in the case of 100% state-owned enterprises.	Adjusting the capital structure necessitates government approval. The State uses dividend policies to optimise capital structure.	Adjusting the capital structure necessitates government as well as AGM approval. Dividend policy is set by the ownership unit.	Adjusting the capital structure may be done pursuant to the Public Finance Act. Dividend policies may be influenced only through AGMs.
Competitive conditions regarding the access to finance	Commercially operating SOEs raise capital on market terms[2].	Ministry of Finance has provided loans to SOEs in a few cases, but on market terms and subject to EC rules.	Commercially operating SOEs raise capital on market terms[3].	SOEs depend on loans from banks, many of which are state-owned, but the terms are generally not concessionary. State guarantees to a few infrastructure providers.

2.2 The State acting as an owner

Reflecting different ownership structures (dual in Chile and Israel, fragmented in Estonia and, until recently Slovenia), the State's role as an owner is organised somewhat differently across the new member countries. Similarly, the mechanisms for ensuring political accountability differ, with aggregate reporting more well developed in the countries with relatively "centralised" models. The trend in new member countries is apparently toward greater autonomy for SOE boards, with recent measures taken in some countries to shield enterprises from receiving "instructions" from governments. The practice of issuing a consolidated ownership policy for SOEs has not been implemented by any of the four countries, which generally rely on SOE-related or generic company law to provide such directions.

The organisation of the ownership function has, in some of the new member countries, been revisited in connection with the OECD membership discussions and review processes. This was particularly the case in Slovenia, where a new Law on Corporate Governance of State Capital Investments (Slovenian acronym ZUKN) was passed in the first half of 2010. The main directions of recent and ongoing changes are reproduced in Box 2.1. Essentially, Slovenia is moving from a particularly fragmented ownership structure to a centralised model, and is in the process of developing a number of transparency and accountability instruments to go with the new structure. The changes, which will take full effect only at the end of 2010, are alluded to in the following sections, which are however mostly based on the SOE governance that has been in place until now.

Box 2.1. **Changes in Slovenia's ownership architecture**

In connection with Slovenia's accession to the OECD in 2010, the regime of corporate governance of state capital investments was reformed. The new laws and regulations change the methods of management, governance and disposal of state property:

- A new Agency for the Governance of Capital Investments of the Republic of Slovenia (the Agency) is being established as an autonomous and independent state authority pursuant to the Act on the Corporate Governance of State Capital Investments;
- The Pension Fund Management (KAD) is being transformed through the spinning off of an insurance company that will assume governance of the pension funds which have so far been governed by the KAD, specifically, the First Pension Fund (PPS), the Guarantee Fund of the First Pension Fund, the Closed Mutual Pension Fund for Civil Servants and the Capital Mutual Pension Fund;

- The Slovenian Restitution Fund (SOD) and the D.S.U. Management and Consultancy Company are also being transformed. So far, they have been wholly owned by the state which, until recently, acted as the acquirer of all powers, rights and obligations under the privatisation procedures based on the Act Concluding the Ownership Transformation and Privatisation of Legal Entities Owned by the Development Corporation of Slovenia. All the rights and powers of D.S.U. are being transferred to the SOD, which means that the latter shall also assume all of the company's assets belonging to it based on the ownership transformation, privatisation and denationalisation.

From now on, the ownership function of the Slovenian Government is to be performed by the Agency. The Agency will also prepare a proposal for a "Strategy" and an "Annual Plan" for the Corporate Governance of State Capital Investments. The Strategy shall be approved by the National Assembly for a period of at least three years, while the Annual Plan shall be approved annually by the Government. The first Plan and Strategy must be developed before the end of 2010.

The shares and stakes of the Republic of Slovenia will be governed as state capital investments by the Agency, acting as an individual corporate entity. Its roles include: (a) acquiring capital investments; (b) the disposal of capital investments; and (c) exercising the State's rights as a shareholder or stakeholder. The disposal of capital investments is defined as the sale, exchange or any other legal transaction based on which a shareholding of State is transferred to another legal entity or natural person.

Information on individual countries is provided in Table 2.2. The main elements of their state ownership functions for SOEs, in the areas covered by the SOE Guidelines, are summarised as follows:

A. *Developing and issuing an ownership policy.* None of the new member countries has developed or issued an ownership policy. Corporate governance codes for SOEs (e.g. Chile) or specific legislation (Estonia) can be said to provide elements of an ownership policy. In Israel, SOEs are subject to a company law that establishes profit maximisation as their overriding objective, which, combined with a dividend policy, arguably would make an ownership policy redundant.

B. *Avoiding involvement in day-to-day management and allowing operational autonomy.* The area of operational autonomy is one of recent change in some new member countries. For example, Estonia has put in place specific legislation forbidding SOE board from taking "instructions" from government. The main formal source of influence in most countries is the recurrent approval of SOE business plans by AGMs. In Israel, specific complaint mechanisms have been established to prevent government interference. In Chile, the governing body of the ownership agency has been instructed not to "duplicate the work" of SOE boards.

C. *SOE boards' responsibilities and independence.* All new member countries have civil servants on SOE boards, who essentially serve as directors for the State. However, these directors are bound by the responsibilities (e.g. loyalty; care; diligence) established by normal company law, and in most cases they are obliged to observe board confidentiality. Some individual SOEs in some new member countries continue to have ministers and other high-level policy makers on their corporate boards.

D. *Identifying the exercise of ownership rights*. No accession country operates a fully centralised ownership structure. Chile and Israel come closest, both of them having a dual structure with a strong coordinating agency in a prominent position. In the case of Chile, the "duality" consists of the agency SEP acting as a coordinator for the ownership ministries, partnering with the Ministry of Finance in overseeing the SOEs. Conversely, in Israel the agency GGA acts as part of the Ministry of Finance and partners with ownership ministries in the oversight of each individual SOE. In Estonia and SOEs are entirely in the hands of individual ministries. Slovenia is, as mentioned, in a transitory phase, with sector ministry control gradually replaced by a central ownership unit and the previously strong role of state-controlled investment funds being reduced.

E. *Holding the ownership entity accountable*. The ownership entities in all new member countries are formally accountable to parliament and/or government. The accountability mechanisms do, however, differ somewhat. Unsurprisingly, those countries with a centralised State ownership function (Chile, Israel) have greater emphasis on annual and case-by-case reporting to Parliament. In Estonia, annual reporting by a coordinating function informs government of the operations of SOES held by individual ministries. In Slovenia, parliament and state auditors have up to now probed SOEs on an individual basis, but no coordinated accountability mechanisms was in place. As of 2011, the new ownership agency will report annually to government and parliament on the implementation of the government's Ownership Plan.

F. *Exercising ownership rights.* Even new member countries with a "decentralised" ownership structure do apply certain coordination to their exercise of ownership rights through shareholder meetings. Ownership ministries may need cabinet approval to vote their shares (Estonia) or vote through a proxy deposited by the ownership ministries (or ministry) with the coordinating ownership agency (Israel). SOE directors may be nominated either centrally (Chile) or by individual ministries (others), but in the latter case either vetting procedures or eligibility criteria are usually in place.

Table 2.2. **Changes in the State's role as an owner**

	Chile	Estonia	Israel	Slovenia
Developing and issuing an ownership policy	No formal ownership policy document. However, an SOE Code issued by the ownership unit and ministries contains equivalent provisions.	No formal ownership policy document. However, elements of an ownership policy are elaborated by the State Assets Act.	No formal ownership policy has been developed or disclosed[4].	No formal ownership policy and no overriding rationale for state ownership[5]. Also no formal process for developing objectives for individual SOEs. An overarching SOE governance code is being developed.
Avoid involvement in day-to-day management of SOEs and allow them full operational autonomy	The ownership unit may submit recommendations to the board, but it is formally obliged to avoid "duplication" of its own work and that of SOE boards.	Recent legal change has abolished ministers' previous right to issue instructions to directors for the state. The main channel of influence is now the AGMs[6].	The law provides for strong autonomy. Complaint mechanisms are in place to prevent ministerial interference. There have been some complaints about interference in staffing decisions.	The law provides for strong autonomy. Main formal channel of influence is the approval of "business plans" by AGMs.
Let SOE boards exercise their responsibilities and respect their independence	Civil servants, ministers and elected politicians serve on some SOE boards. Ordinary board responsibilities apply. Guidance to SOE boards is strategic in nature, sometimes formalised as "board agreements"	A system whereby ministers were allowed to issue instructions to directors for the state was recently abolished. SOE boards now function essentially like those of private companies.	Civil servants on boards act as directors for the State. However, they are subject to duties of loyalty and care, bound by legal requirements to profit maximisation, and must respect corporate confidentiality.	Civil servants may serve on boards, but not in companies for which they have oversight responsibility. They are subject to duties of loyalty and care and must respect corporate confidentiality.

	Chile	Estonia	Israel	Slovenia
Clearly identify the exercise of ownership rights	The ownership rights are vested in a dual structure, including the Ministry of Finance and an ownership unit (SEP), acting on behalf of SOEs' ultimate owners. Some large SOEs stand outside this structure.	SOEs are overseen by nine different ministries, most of which do so in their ordinary line of business. A coordinating unit operating as part of the Ministry of Finance monitors board minutes and financial accounts, designs regulation and reports to government and parliament.	The ownership rights are vested in a dual structure including one line ministry (per SOE) and the Ministry of Finance, subject to the mandatory advice of an ownership unit (GCA) under the Ministry of Finance.	No coordinating or central ownership agency. The ownership rests with ministries as well as the two government investment funds KAD and SOD. (Subject to major ongoing change, with a central ownership Agency in the process of establishing itself.)
Holding the ownership entity accountable	The SEP reports to parliament and the Office of the Comptroller when requested. It is also required to compile an annual report, and address it to the President and both houses of parliament.	The coordinating unit reports annually to government. The state auditor plays no oversight role vis-à-vis the unit.	The GCA reports to government and parliament when requested. It is also required to compile an annual report, released to the parliament and public by the Minister of Finance.	No regular reporting by the ownership ministries. Parliament and the state auditors supervise on a case-by-case basis. (As of 2011, annual reporting to the government and parliament.)
Exercising ownership rights according to the legal structure of each SOE	SEP staff participates in SOE shareholder meetings on behalf of the State. Directors are nominated by the SEP Board.	Ownership ministries sometimes need government approval to vote their shares. Board members are appointed by the minister subject to certain eligibility criteria.	The State votes its shares at AGMs through a proxy issued by the ownership ministers. SOE directors are nominated subject to approval by an examination committee.	Ownership ministries vote their shares in coordination with other ministries and subject to certain government directives.

2.3 Equitable treatment of shareholders

The new member countries are generally well advanced in assuring equal treatment of shareholders in SOEs with minority non-state participation. Minority shareholders are guaranteed, by law, non-discrimination, access to information and access to vote in shareholder meetings. Remaining challenges in some countries relate to absentee voting, golden shares and, perhaps particularly, difficulties with establishing the ultimate beneficiary ownership in some companies.

Information on individual countries is provided in Table 2.3. The main elements of their practices toward ensuring equitable treatment of shareholders, in the areas covered by the SOE Guidelines, are summarised as follows:

A. *Ensuring that all shareholders are treated equitably.* The legal principle of non-discrimination between shareholder groups applies generally in the new member countries – including in the case of SOEs. However, in two of the four countries (Chile and Israel) the State maintains shares with special voting rights in some companies. Also, the principle of non-discrimination should not be confused with minority protection: the States have, in some cases, voted their controlling share blocks in the perceived national interest and against the wishes of minority investors.

B. *Transparency, communication and consultation.* In none of the new member countries is the State legally entitled to obtain information in preference over other shareholders in SOEs. Their financial and other reporting is made generally available on an annual, and sometimes higher frequency, basis. In the case of Israel, SOEs' internal information (with an exception for corporate confidentiality) is moreover subject to the public sector Freedom of Information Act. Shareholder information is in all countries made available to the public – either through public databases or the disclosure of the companies' own shareholder registers.

C. *Participation of minority shareholders in shareholder meetings.* SOEs' shareholder meetings in all new member countries are guided by general corporate laws, which allow no discrimination against minority shareholders. In two of the four (Chile and Estonia) absentee voting is possible solely through proxy or power of attorney. In Israel and Slovenia SOEs (and other companies) provide for voting by letter and via internet.

Table 2.3. **Changes related to the treatment of shareholders**

	Chile	Estonia	Israel	Slovenia
Ensuring that all shareholders are treated equitably	SOEs operate subject to general company law and are not allowed to discriminate between share-holders. The state holds shares with special voting rights in a few companies.	SOEs operate subject to general company law and are not allowed to discriminate between share-holders. No voting right differentiation or golden shares are in place.	SOEs operate subject to general company law and are not allowed to discriminate between share-holders. The State, however, retains golden shares in some companies.	The Companies Act establishes equal rights for the State and other shareholders.
A high degree of transparency toward all shareholders **An active policy of communica-tion and consultation**	Most SOEs are registered with the securities regulator, and subject to the disclosure requirements of listed companies. Others adhere to general company law. SOEs maintain a publicly accessible share register.	Annual reporting by all SOEs and quarterly reporting by listed SOEs. SOEs have to disclose these reports on their websites. Shareholder information is reported in real time to a national shareholder register.	Disclosure by SOEs is subject to the Freedom of Information Act. Exceptions are made to safeguard corporate confidentiality for SOEs in competitive sectors. SOEs must maintain a shareholder register accessible by the public.	Discrimination between shareholder groups is legally forbidden. SOEs maintain a shareholder registration either with the securities regulator (joint stock companies) or in the Court register (others).
Facilitating the participation of minority shareholders in shareholder meetings	Shareholder meetings are guided by the general company law, which allows for voting by power of attorney but not by letter.	Shareholder meetings are guided by general company law, which allows for voting by power of attorney but not by letter. The nomination of directors is normally by proportional allocation according to number of votes.	Shareholder meetings are guided by the general company law, which allows for voting by letter, via the internet and by proxy. Non-state shareholder participation is generally high.	Shareholder meetings are guided by the general company law. Absentee voting by letter and internet was recently introduced, *inter alia* to address generally low shareholder participation.

2.4 Relations with stakeholders

The new member countries differ somewhat in respect of stakeholder relationships in SOEs. The "legal basics" tend to be similar, with creditors and employees treated according to the same laws that apply to private companies. However, employee representation on board is mandatory in some of the four countries and virtually unknown in others, and practices towards company-internal ethics and compliance codes differ significantly. None of the four countries has implemented formal mechanisms for reporting on stakeholder relationships.

Information on individual countries is provided in Table 2.4. The main elements of their arrangements for stakeholder relations, in the areas covered by the SOE Guidelines, are summarised as follows:

A. *Recognising and respecting stakeholders' right.* SOEs' "commercial stakeholders" (e.g. creditors and business partners) are in all new member countries treated according to laws also in force for the private sector. Employees likewise enjoy a similar degree of legal protection as in private companies – except for a few cases of grandfathered civil servant status were protection is stronger. Countries differ in respect of employee representation on corporate boards. This is mandatory in Slovenia, mandatory in large SOEs in Israel and it rarely occurs in Estonia. In Chile, full board representation of employees is mandatory for a few large SOEs, and in a number of other enterprises employee representatives have speaking but not voting rights on the boards.

B. *Reporting on stakeholder relations.* As a general rule, no reporting on stakeholder relations is formally required in the four new member countries. Annual financial disclosure and corporate governance reports however contain elements of such reporting and some of the largest SOEs have commenced disclosing information on stakeholder relations on their own initiative.

C. *Compliance codes for internal codes of ethics.* New member countries differ with respect to codes of ethics in SOEs. Chile has promulgated binding ethics standards through its SOE Code. In Israel, ethics is the subject of circulars by the ownership agency, and directives for company-internal ethics codes and compliance programmes are currently being developed. In Estonia and Slovenia there are no formal requirements, but a few SOEs have developed ethics programmes on their own initiative.

Table 2.4. **Changes in stakeholder relations**

	Chile	Estonia	Israel	Slovenia
Recognising and respecting stakeholders' rights	Protection of creditors and customers is similar to private companies. In addition, the SEP Code expressly requires companies to respect stakeholders' contractual and legal rights, and guaranteeing regular access to company information.	No mandatory employee representation on boards of directors.	Protection of creditors and customers is similar to private companies. Employees are protected by general Labour Law, and by specific provisions covering female and minority group employment. There is employee representation on most SOE boards[7].	Specific legislation guides employees' "participation in management". Similar rules may be established by decree in the case of public enterprises.
Important SOEs to report on stakeholder relations	The SEP Code and the legal framework do not require such reporting. Some large SOEs do this on their own initiative.	No reporting on stakeholder relations is required beyond general rules on financial and related disclosure.	The public has access to information through mandatory directors' reviews that companies submit annually to the ownership unit[8].	No specific legislation on reporting on stakeholder relations. However, the largest SOEs engage in a process of reporting on material events.
Compliance programmes for internal codes of ethics	The SEP Code establishes an ethics standard that individual SOEs are required to implement, if necessary adapted to their specific situation and regulations.	No legal requirement for SOEs to develop codes of ethics. Few have done so.	Corporate ethics is the subject of circulars by the ownership unit, but SOEs are not required to develop internal codes and compliance programmes. Some SOEs have acted individually to develop ethics codes.	There is no legal requirement that SOEs should adopt codes of ethics. Some companies have done so, generally in line with international standards.

2.5 Transparency and disclosure

The new member countries differ somewhat in respect of their transparency and accountability arrangements. All governments undertake some form of aggregate reporting, but unsurprisingly its depth and consistency is seen as higher in those countries that have a centralised ownership function. Internal audit procedures to the standards of listed companies are required in some countries, whereas in others this depends on the size of the SOEs concerned. The four countries generally apply sound accountancy, but (with the exception of listed SOEs and, in some cases, financial institutions) whether or not the SOE Guidelines' recommendations of "high international standards" are implemented is a question of interpretation.

Information on individual countries is provided in Table 2.5. The main elements of their transparency and disclosure frameworks for SOEs, in the areas covered by the SOE Guidelines, are summarised as follows:

A. *Developing aggregate annual reporting.* Aggregate reporting is to some extent practiced by all new member countries, but important differences remain reflecting the different ownership architectures. In the two countries with the most centralised ownership function, Chile and Israel, aggregate annual reports are compiled centrally, sent to the executive power and/or parliament, and publicly disclosed. In Estonia, the ownership ministries report individually to the Ministry of Finance which on the basis thereof compiles an aggregate document. Slovenia has no history of aggregate reporting but, as mentioned, is in the process of establishing such a process. In all the countries, aggregate reporting generally does not extent to statutory corporations and, in the case of central ownership units, other SOEs that are for some reason not subject to the centralised oversight.

B. *Developing an internal auditing function and procedures.* New member countries differ in respect to internal audit procedures. In Chile and Israel all SOEs are requested to have internal auditors. In Estonia only large SOEs must do so (whereas all SOEs must maintain "control systems"), and in the case of Slovenia[9] this is left for individual SOEs to decide.

C. *Annual independent external audits.* SOEs in new member countries are generally subject to internal external audits of a similar standard as those applied to private companies – albeit in some cases only SOEs above a certain minimum size. In Chile, many SOEs are moreover subject to reporting requirements by the securities regulator similar to those applied to private listed companies.

D. *High quality accounting and audit standards.* Most SOEs in new member countries are not (yet) subject to the highest internationally-recommended accounting standards such as IFRS and US GAPP. Listed SOEs are, and in some cases also SOEs operating in the financial sector. Accounting standards in other SOEs are generally consistent with those applied to private, unlisted companies.

E. *Disclosure of material information*. Whereas all commercially operating SOEs disclose financial information regularly, the publication of material non-financial information differs across countries. Such information would normally include corporate objectives, rights, risks and guarantees. It may also include corporate governance reporting, although some countries rely on public registers to relay this information rather than regular reporting.

Table 2.5. **Changes in transparency and disclosure arrangements**

	Chile	Estonia	Israel	Slovenia
Developing aggregate annual reporting on SOEs	The SEP issues an annual report to the President and parliament. The report is also made public on SEP's website. However, this report does not cover some of the largest SOEs, which are not under SEP oversight.	Ownership ministries provide annual information to the Ministry of Finance which publishes a consolidated report. The report is approved by the government, and then sent for information to parliament.	The GCA is required to send to the Minister of Finance each year a report detailing the performance of all SOEs, the government's rights in them, their objectives and their office holders. This report is published, including on GCA's website.	The Public Finance Act mandates reporting by all ministries about their investment situation at year-end. The information is compiled and made public by the Ministry of Finance.
Developing an internal auditing function and procedures	The SEP Code stipulates the establishment of internal audit procedures monitored by the board. Non-SEP SOEs also have internal audit functions.	Internal control systems are mandated for all SOEs, but internal audit functions only beyond a certain size.	SOEs are required by law to appoint an internal auditor. The quality of internal auditing is the subject of external audits, with regular reporting by the external auditor to GCA.	Internal audit functions are not mandated by law[10]. Where they exist they may report either to management or the board of directors.

	Chile	Estonia	Israel	Slovenia
Annual independent external audits	Most SOEs are subject to oversight of their disclosure by the securities regulator. They, and most other SOEs, are subject to external audits by international auditing firms.	All SOEs are subject to external audits. The audits are overseen by the Estonian state auditor.	All SOEs are subject to external audits. The State has strong powers of inquiry over the auditors.	All medium and large SOEs (i.e. almost all such companies) are subject to external independent audits.
High quality accounting and auditing standards	Accounting standards of SOEs are the same as those applied in similar private enterprises (mostly IFRS).	IFRS is only implemented for listed SOEs. Others follow accounting rules that are described as "simplified IFRS" broadly consistent with ISA.	IFRS has generally not yet been implemented in the SOE sector. Accounting standards are those in force in Israeli private companies until two years ago. Auditing standards are similar to those applied in private companies.	Accounting standards for listed and financial SOEs are IFRS. For others, the standards applied by private Slovenian companies are in force.
Disclosure of material information	All SOEs issue quarterly financial accounts. Operational information such as risks and guarantees are disclosed in the ways of private companies. Information about objectives and control structures is publicly available, but is not subject to regular reporting.	All SOEs submit quarterly financial accounts to the Ministry of Finance and public annual reports detailing operations and financial accounts. Information on control structure and related party transactions is disclosed in the annual report of the Ministry of Finance.	Annual (and for some information quarterly) disclosure of financial accounts and directors' reports. These include objectives and their fulfilment, financial performance, rights and risk management. Control structures and corporate governance is subject to ongoing disclosure by GCA.	Annual reports, including consolidated financial statements, of SOEs are published online. Ownership by different public bodies is disclosed, but consolidated data for beneficial ownership and control structures has up to now been hard to obtain. (This is one of the issues being addressed by the ongoing reform.)

2.6 The responsibilities of the boards of state-owned enterprises

As a general rule, the mandates, duties and responsibilities of SOE boards in the new member countries do not differ much from national practices regarding private company boards. Boards are subject to similar fiduciary duties – which also help safeguard their independence – as in the private sector and in most cases have the right to appoint and remove senior management. The main exception is statutory corporations, which continue to operate more closely to general government and often have their top executive appointed by the national executive. The four countries differ in respect of whether ministers and other high-level government officials may serve on SOE boards, though the direction of change in recent years has been to restrict the practice. The use of board committees to support the board's work is commonplace across the four countries, whereas annual board evaluations are not.

Information on individual countries is provided in Table 2.6. The main elements of their arrangements to establish and protect the responsibilities of SOE boards, in the areas covered by the SOE Guidelines, are summarised as follows:

A. *A clear mandate and ultimate responsibility for SOE performance.* The mandates of SOE boards are in all new member countries equivalent to what is found in the private sector. However, some national specificities such as ministerial approval of boards' elected chairs (Israel) and a widespread use of alternate directors (Chile[11]) may in practice detract from the board of directors' ideal role as an independent, collegial body.

B. *Monitoring management and providing strategic guidance.* The twin roles of monitoring management and providing strategic guidance hinges on whether boards, on the one hand, operate independently from government and, on the other hand, have real powers to appoint and dismiss management. As a general rule, SOE boards in new member countries operate consistent with the board responsibilities established by general company law and hence appoint and replace senior executive. The main exception is corporations guided by specific legal frameworks, whose CEOs are sometimes appointed by government decree. In Israel, CEOs are appointed by the corporate boards subject to government approval, but they can be removed by the boards alone. Directors are generally protected, through their duties of loyalty and care, from receiving direct orders from government, though in practice most countries and companies have an ongoing communication between boards and ownership representatives through which "recommendations" of various degree of specificity can be passed to directors.

C. *Composing boards so they can exercise independent judgment.* The new member countries differ in respect of whether they allow politicians and political civil servants to sit on SOE boards. At one end, Israel and more recently Slovenia have taken significant steps to ban the practice. Both governments have further established a system of accreditation and appointment of SOE directors. Conversely, Chile and Estonia have ministers on the boards of some SOEs. The four governments have appointed independent or external directors to some SOE boards, but it is not a general practice. It is shared position across the new member countries that the CEO of an SOE should not chair the board of the same company.

D. *Mechanisms for enhancing board participation of employee representatives.* Between the two new member countries where employee representation is common (Israel and Slovenia) practices differ somewhat. In both cases employee directors are subject to the same duties and responsibilities as any other board member. However, in Israel there are stronger mechanisms to ensure the nomination of the most suitable individuals: employees elect a pool of candidates from which the owners pick two directors. In Slovenia, one third of the supervisory board is appointed directly by the SOEs' Work Councils.

E. *Reliance on board committees*. In three of the new member countries (Chile, Estonia and Israel) SOEs must establish auditing committees – in Slovenia this applies to listed SOEs only. Board committees are in practice widespread in all four countries, including in areas such as risk management, finance, remuneration, purchasing and nomination.

F. *Evaluation and appraisal of board performance.* Of the new member countries, only Chile requires SOE boards to carry out annual assessments of their functioning. These may rely solely on self evaluation, or involve external facilitators. In the other countries, evaluations are not uncommon especially in large SOEs (to which may be added evaluations of the management board by the supervisory board in Slovenia's two-tier structure), but they are not mandatory.

Table 2.6. **Changes in the responsibilities of boards of state-owned enterprises**

	Chile	Estonia	Israel	Slovenia
A clear mandate and ultimate responsibility for the SOEs' performance	The boards of most SOEs are assigned mandates and responsibilities broadly equivalent to those applied by general company law. Like in private companies, alternate directors are sometimes appointed.	SOEs have a two-tier board structure. The boards are assigned mandates and responsibilities equivalent to those applied by general company law. A directors' report must be issued annually by the management board.	SOE boards are assigned mandates and responsibilities broadly equivalent to those applied by general company law[12]. The election of the chair is subject to ministerial approval.	Most SOEs have a two-tier board structure. The boards are assigned mandates and responsibilities equivalent to those applied by general company law. All supervisory board members have equal status and are (except for employee representatives) appointed by an AGM.
Monitoring SOE management and providing strategic guidance	Directors' independence is safeguarded by their fiduciary duties, but SEP may issue "recommenda-tions" to SOE boards. Boards are free to appoint and dismiss senior executives[13].	Directors face the same responsibilities as in private companies. The supervisory boards are free to hire and replace managers. They sometimes exert this right in consultation with ministries.	SOE boards appoint CEOs subject to ministerial approval, but can dismiss them at will. The boards' responsibility for corporate strategy is established by general company law and the government companies law.	In most SOEs the supervisory board has the power to hire, monitor and replace members of the management board. The exception is public enterprises, whose management can be changed only by the President of the Republic.
Composing boards so that they can exercise objective and independent judgment	Ministers, politicians and high-level civil servants may serve on some SOE boards. Directors are mostly appointed by AGMs or by SEP's board. One or two	Ministers and ministerial Secretaries-General can serve on boards of foundations, but not companies. Other public officials and parliamentarians serve on boards.	Ministers, deputy ministers and parliamentarians cannot serve as SOE directors. Further rules were established to prevent possible conflicts of interest. Listed SOEs have	High-level public officials cannot serve on the boards of SOEs. Civil servants are limited to maximum two on either of the boards. The CEO cannot at the same time serve as Chair

	Chile	Estonia	Israel	Slovenia
	independent directors are appointed to each SOE.	The CEO cannot at the same time serve as Chair of the board.	independent directors subject to the general law.	of the board.
Mechanisms for enhancing the board participation of employee representa-tives	Employee representation in a few statutory corporations' boards, sometimes without voting right.	Employees are not represented in boards.	Large SOEs have two employee directors. Ministers appoint these from a pool of six candidates elected by staff. These are not subject to pre-qualification criteria, but face normal board responsibilities once appointed.	SOEs are required to have employee representatives in their supervisory board (at least 1/3), and large SOEs also have an employee representative in their management board. They are nominated by the Workers Councils of the respective SOEs.
The reliance on SOE board committees	Stock companies must establish audit committees. Among SOEs, audit, management, remuneration and risk committees are commonplace.	Audit committees are mandated in SOEs over a given size. The largest SOEs generally have several board committees.	All SOEs must appoint audit committees. Other committees (e.g. purchase; finance) are commonplace.	The Slovenian Corporate Governance Code establishes (on a comply or explain basis) that listed companies (including listed SOEs) establish certain Many others have chosen to establish audit, risk management and nomination committees.
Evaluation and appraisal of board performance	Annual board evaluation is mandated by the SEP Code. These may rely solely on self evaluation, or involve external facilitators.	No formal self-evaluation requirements are established.	SOE boards most evaluate corporate performance annually, but they are not requested to perform self-evaluations and appraisals.	Supervisory boards carry out evaluations of management boards, but self-evaluations by either board are not mandated by law.

Notes

1. A bill currently before Parliament would transfer more companies to a regime of independent regulation and oversight.
2. Companies may obtain State guarantees for projects of "high social profitability", which must in that case be included in the public sector Budget Law.
3. SOEs designated as "non-commercial" may benefit from concessionary financing. However, these are as a rule never in competition with private firms.
4. However, most SOEs operate subject to the general Companies Law which establishes profit maximisation as an overriding purpose of enterprises, with societal and other concerns playing complementary roles.
5. This will change in the near future. The plans and strategies for state ownership that are currently being developed will include elements of an ownership policy.
6. There is limited evidence of ministers using the now-abolished right to issue instructions to interfere in SOE management. A frequently cited example is the railway maintenance company Eesti Raudtee, which in 2007 was not discouraged from pressing a legal case against the State.
7. In large SOEs, employee representation is mandatory.
8. Some of these are published on GCA's website. All such reports are subject to the Israeli Freedom of Information Act.
9. However, this is compulsory for listed companies, and a comparatively high share of Slovenia's SOEs are listed on the stock exchange.
10. However, for listed SOEs this is mandatory.
11. This practice is also commonplace in the Chilean private corporate sector.
12. The Government Companies Law, unlike general company law, limits the size of SOE boards in companies where the State nominates all directors to 12 persons.
13. The exception is ENAMI, whose vice president is appointed by the President of the Republic.

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