

Business at OECD (BIAC) Written Input to the Public Consultation on the review of the OECD Guidelines on Corporate Governance of State-Owned Enterprises

11 September 2023

*Please note that, in this document, sentences and paragraphs where we suggest specific wording changes are **highlighted in yellow**.

The OECD Guidelines on Corporate Governance of State-Owned Enterprises (SOE Guidelines) play a crucial role in ensuring transparency, equity, and sustainability in the operation of State-Owned Enterprises (SOEs). Drawing upon our previous submissions and the latest draft, *Business at OECD* (BIAC) is pleased to provide this input to further contribute to the evolution of these Guidelines.

- **Overall Comments:** We recognize and commend the thorough endeavors of the OECD Working Party on State Ownership and Privatisation Practices in establishing a comprehensive, balanced governance approach for SOEs. The introduction of key facets like sustainability, digital transformation, clarity in bankruptcy laws, and the inclusion of virtual/hybrid shareholder meetings are particularly noteworthy. The move towards emulating the private sector's best practices, especially in board evaluations, is a significant step forward.
- **Alignment with G20/OECD Principles and ACI Guidelines:** We advocate for a more harmonized approach between the SOE Guidelines, the G20/OECD Principles of Corporate Governance (G20/OECD Principles), and the OECD Guidelines on Anti-Corruption and Integrity in SOEs (ACI Guidelines). This coherence, especially regarding the disclosure of board and executive remuneration and the accountability of external auditors, would foster more transparency and trust.
- **Sustainability and SOEs:** The pivotal role of SOEs in driving sustainable objectives deserves additional emphasis. We champion a “bottom-up” approach, where sustainability is not merely a top-down directive but ingrained at all operational levels.
- **Clarification on Terminologies:** For the broader applicability and relevance of the SOE Guidelines, we suggest refining certain terminologies. Clearer definitions surrounding terms like “control,” “public policy objectives,” “stakeholders,” “sustainability,” and “independent board member” would significantly enhance the practicality and effectiveness of the Guidelines.

Business at OECD remains steadfast in its commitment to collaborate with the OECD, ensuring that corporate governance in both SOEs and the private sector remains robust, transparent, trustworthy, and fair. We appreciate the opportunity to participate in this consultation process and hope that both our overarching comments and specific comments hereafter can be taken into consideration. We look forward to the continued dialogue.

[Specific Comments](#)

Overall

External auditors

BIAC Input

We suggest that the SOE Guidelines should offer clearer guidance regarding the appointment of external auditors.

Contrary to the SOE Guidelines, the revised G20/OECD Principles explicitly outline the right to "elect, appoint or approve the external auditor" under Principle II.A, highlighting a fundamental shareholder right. Additionally, the ACI Guidelines generally stipulate that external auditors are appointed by the company's annual general meeting. Given the Draft SOE Guidelines' encouragement of adopting the ACI Guidelines, there seems to be an indirect endorsement of appointing external auditors through the company's annual general meeting. However, greater clarity is needed to address this significant matter effectively.

Materiality

BIAC Input

We propose that the SOE Guidelines incorporate clarity on the concept of materiality, encompassing material information, interests, risk factors, transactions, etc. Currently, the absence of a materiality definition hampers uniform guideline application. Notably, the draft discusses materiality only within the sustainability context (Guideline VII.C.1). Our suggestion is to integrate a discourse elucidating the concept of "material" by aligning with the materiality definition from the updated G20/OECD Principles tailored to SOEs.

Proportionality

BIAC Input

We suggest enhancing the Guidelines by incorporating the principle of proportionality. This principle should encompass factors like a company's status (whether listed or not), size (ranging from large to very small, state-controlled entities), and the extent of private capital within SOEs. Throughout the Guidelines, this principle should be elaborated to account for the diverse spectrum of SOEs across OECD jurisdictions and beyond, while ensuring the Guidelines' efficacy. Additionally, we propose reevaluating the adaptation of tools designed for listed companies (e.g., board self-evaluation, board committees, detailed board composition provisions) to non-listed companies. This approach avoids imposing overly burdensome and ineffective governance practices.

Independent board member

BIAC Input

We suggest consolidating the definition of an independent board member. Currently, this term is defined in three instances: within the Applicability and Definitions section (page 9), Guideline V.A.5 (page 52), and Guideline VI.D (page 62). The first two definitions match, while the third slightly diverges. To enhance brevity and uniformity, we propose presenting the independence definition once, merging the criteria stated across various sections.

Emergency government support

BIAC Input

Given the recent emergency government support measures taken to address the challenges related to the pandemic and European gas shortages, we welcome the inclusion of “ad-hoc interventions” into the scope of Guidelines I.C. and III.E.2. However, such interventions have been addressed here only with respect to their potential negative implications for competition and trade.

The state exercises the ownership of SOEs in the interest of the general public and, as the annotations to Guideline II.E. state, the state ownership entity should be accountable to bodies representing the interests of the general public, such as the legislature. Therefore, we suggest the Guidelines should also provide guidance on how the rationale of such emergency government support should be disclosed to the public and how it should be designed, implemented, and eventually unwound to ensure the safeguarding of the public interest.

Others

BIAC Input

We suggest that the Guidelines incorporate or acknowledge the inclusion of specific chapters concerning SOEs in modern FTAs or similar trade agreements as often found. This would provide a comprehensive framework or set the stage for potential consideration in future revisions.

Applicability and definitions

Page 7, Ownership and control

Draft

In the case of statutory corporations, the state's control is conferred by the legislative provisions pertaining to the corporations. Otherwise control can be exercised by the state either

- *directly or indirectly holding the majority of the share capital,*
- *directly or indirectly holding the largest number of shares where those shares provide control,*
- *being the ultimate beneficiary owner of the majority of voting rights, or*
- *otherwise exercising an equivalent degree of **direct or indirect** control.*

BIAC Input

We appreciate the revised perspective on the definition of SOEs, which now encompasses aspects of both direct and indirect ownership and control, instead of limiting its scope to full ownership or a majority stake. The sustained emphasis on the need to explain and keep validating the rationale for government ownership, and – where such rationale exists – adopting the whole-of-government approach to SOE oversight, is very helpful to ensure that SOEs are not subject to competing or contradictory policy mandates.

However, there is ambiguity in understanding how these two sentences are meant to interact with each other. On the one hand, the assumption is that SOEs are typically statutory corporations established within the framework of various corporate types defined by the law, such as joint stock companies, limited liability companies, limited or special partnerships, and so on. In such cases, "*the state's control is conferred by the legislative provisions pertaining to the corporations.*" Consequently, the other criteria mentioned in the proposed revision of the Guidelines may not be relevant, or more precisely, they would be relevant only if explicitly referenced in the applicable corporate laws. This interpretation arises from a literal reading of the aforementioned provisions. From this perspective, it may seem unusual that substantial changes to the control definition, as outlined in the proposed revision of the Guidelines, would have direct implications for a very limited number of SOEs.

Conversely, if the intention of the aforementioned provisions is to extend the applicability of the stated criteria to statutory corporations (in addition to the control situations specified by the law), we suggest that this intent be explicitly clarified. One potential way to achieve this clarification is to revise the wording as follows:

*In the case of statutory corporations, the state's control is conferred by the legislative provisions pertaining to the corporations. **In any case**, control **is deemed to** be exercised by the state either ...*

In the second paragraph, the last sentence indicates that "*Control may also be exercised through rights or contracts conferring decisive influence on the composition, voting or other commercial decisions of the undertaking; the ownership or right to use all or substantial parts of its assets.*"

For the sake of clarity, it is suggested to better specify the reference to the “*composition ... of the undertaking*” (e.g., reference is made to the ownership structure and/or to board of directors composition?).

We also recommend refining the definition of SOEs. The current text refers to “ownership **and** control” as well as to “ownership **or** control.” We believe this is a key issue and recommend that the Guidelines focus on control, whether this is effected via direct ownership of shares or via other means.

Page 8, Corporate group structures

BIAC Input

We propose that we begin by clarifying that if the parent SOE is listed, it cannot act as the state's representative when interacting with its subsidiaries. This avoids inconsistencies with listed company laws and regulations. We also request clarity about whether and how the SOE Guidelines will apply to SOE subsidiaries within group structures.

Page 8, Public policy objectives.

BIAC Input:

We propose clarifying that these national interest objectives could be more specific than the broad responsibilities of corporate social responsibility, which are applicable to both state-owned enterprises (SOEs) and private entities.

Page 9, The governing bodies of SOEs

BIAC Input:

We suggest enhancing the focus on accountability for all C-suite leaders. In addition to cultivating strong connections between boards and CEOs, it is important to foster similar relationships with other C-Suite leaders. This entails overseeing how they handle operations and implement strategies in alignment with the organization's objectives and values. The decisions made by these leaders have significant implications for employees, customers, communities, and other essential stakeholders.

The expression in parenthesis “(including remuneration)” is too succinct and may be misinterpreted. We recommend considering the alignment with Principle V.E. of the revised G20/OECD Principles.

And the requirement of possessing “*an independent mindset and sufficient competencies to carry out the board duties*” should apply not only to independent board members but to all of them. This is supported by the annotations to Guideline II.C.

Therefore, we recommend the following amendments:



Broadly speaking, independent board members are understood to mean individuals free of any material interests (including remuneration, directly or indirectly, from the enterprise or its group other than directorship fees) or relationships with the enterprise (non-executive board members), its management, the state (neither civil servants, public officials, nor elected officials), its management, and other major shareholders, as well as with institutions and interest groups with a direct interest in the operations of the SOE that could jeopardise their exercise of objective judgement. Independent board members should be in possession of an independent mindset and sufficient competencies to carry out the board duties.

Page 9, Stakeholders.

BIAC Input:

We propose enhancing the definition of stakeholders by incorporating a comprehensive list of examples. While these examples currently exist in the annotations V.A.10, it would be more effective to include them within the initial definitions.

We also suggest aligning this definition with the stakeholders from the Preamble to the 2023 G20/OECD Principles of Corporate Governance. In these Principles, "stakeholders" encompass non-shareholder stakeholders like the workforce, creditors, customers, suppliers, and affected communities. As "the Guidelines are intended as a complement to the Principles, with which they are fully compatible" (as noted in the 2015 edition's Preamble), any deviation from the Principles' definitions should be thoroughly assessed and well-justified. In the proposed revision of the Guidelines, clarity is needed regarding whether shareholders other than the state in SOEs are considered "stakeholders." Additionally, the question arises whether every citizen could be seen as a stakeholder in an SOE.

Page 9, Sustainability

BIAC Input

The definition of sustainability previously circulated (with some changes) is more appropriate. The current proposed definition is also too limiting with respect to the proposed requirements in Chapter V on disclosures.

If retaining SDG language, it may need to be defined as follows:

- *Sustainable development has been defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*
- *Sustainable development calls for concerted efforts towards building an inclusive, sustainable and resilient future for people and planet.*
- *For sustainable development to be achieved, it is crucial to harmonize three core elements: economic growth, social inclusion and environmental protection. These elements are interconnected and all are crucial for the well-being of individuals and societies.*
- *Eradicating poverty in all its forms and dimensions is an indispensable requirement for sustainable development. To this end, there must be promotion of sustainable, inclusive and equitable economic*



growth, creating greater opportunities for all, reducing inequalities, raising basic standards of living, fostering equitable social development and inclusion, and promoting integrated and sustainable management of natural resources and ecosystems.

Page 9, Applicability

BIAC Input

We propose that the central government should strengthen its responsibility for ensuring that the Guidelines are applied by sub-national entities.

II. The state's role as an owner

II. Preamble

BIAC Input

We suggest the following amendment since not the government but the state is the owner of SOEs.

*In order to carry out its ownership functions, the government should refer to private and public sector governance standards, notably the G20/OECD Principles of Corporate Governance, which are also applicable to SOEs when **the state** is not the sole owner of SOEs, and of all relevant sections when it is the sole owner of SOEs.*

II.C.

Draft

.. The ownership entity should establish and maintain appropriate frameworks for communication with SOEs highest governing body, typically through the Chair.

BIAC Input

Such provisions (and the corresponding quote in the Annotations) seem to request an explicit clarification for SOE listed companies that operate under the overarching principle of equitable treatment of all shareholders (see Guideline No. IV) and the rules on the management of price sensitive information. In this light, it shall be considered that in some jurisdictions, listed companies, including listed SOEs, are also invited to draft suitable policies for managing dialogue with the generality of shareholders, taking into account the engagement policies adopted by institutional investors and asset managers.

In addition, please consider that such clarification of the aforesaid “frameworks for communication” would result in better alignment with the same annotations of the SOEs guidelines: e.g., the last sentence of Annotations to Supporting Guideline IV.A.2 (page 46), according to which “*particular care should be taken to ensure that when SOEs are partially privatised, the state as shareholder should have no greater ... access to information, than what its shareholding provides as a right.*”

II.D.

BIAC Input

The draft revisions to Section II.D. define five different state ownership models: “a centralised model, a coordinating agency model, a dual ownership model, a twin track model and a decentralised ownership model” and provide details only on the first two models. This may be due to the guidelines’ strong recommendation to centralise the exercise of state ownership rights. However, a non-negligible percentage (40%) of surveyed countries continue to use the latter three less-centralised ownership models (OECD 2021, Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices).

Furthermore, some countries may find it less desirable to adopt a centralised model if it is not easy to shield its operations from irregular practices and undue political interference. Adopting a decentralised ownership model in such cases could mean diversification of corruption risk. OECD has also recognised such concerns by stating, “In jurisdictions with weak rule of law and high corruption levels, pooling large amounts of corporate powers in a central agency could accompany regulatory risks” in a related report (OECD 2021, Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices).

For the reasons above, we suggest that the Guidelines provide a description of the 3 less-centralised models, their advantages and disadvantages and address any concerns about centralising the ownership function.

II.E.

Draft

The ownership entity should be held clearly accountable for the way it carries out state ownership. Its accountability should be, directly or indirectly, to bodies representing the interests of the general public, such as the legislature. Its accountability to the legislature should be clearly defined, as should the accountability of SOEs themselves, which should not be diluted by virtue of the intermediary reporting relationship.

BIAC Input

We suggest clarifying the accountability of SOEs to the legislature, particularly for SOE listed companies, whose accountability is established by the law vis-a-vis the generality of shareholders.

II.E.

Draft

The ownership entity should report on its own performance in exercising state ownership and in achieving the state’s objectives in this regard. It should provide quantitative and reliable information to the public and its representatives on how the SOEs are managed in the interests of their owners. In the case of legislative hearings, confidentiality issues should be dealt with through specific procedures such as confidential or closed meetings.

BIAC Input

We suggest that the provision explicitly clarifies procedures for SOE listed companies. These procedures relate to handling and sharing inside (and, more broadly, confidential) information in alignment with regulations on preventing market abuses.



II.F.

Draft

The ownership entity should moreover have competencies with regard to and be attentive to digital technologies and the risks and chances of their use in the oversight and implementation of corporate governance regulatory requirements and practices. ... Important considerations include ensuring the quality of data; ensuring that staff have proper technical competence; considering interoperability between systems in the development of reporting formats; and managing third-party dependencies; digital security risks; and data security processes and measures.

BIAC Input

We suggest substituting "chances of" with "opportunities arising from."

*The ownership entity should moreover have competencies with regard to and be attentive to digital technologies and the risks and **opportunities arising from** their use in the oversight and implementation of corporate governance regulatory requirements and practices. ...*

We appreciate the inclusion of digital technologies in various sections of the Guidelines. We most welcome this new emphasis on the importance of the ownership entity having competencies with regard to digital technologies in terms of both risks and opportunities they create regarding oversight and other aspects of corporate governance, including due diligence, all of which is often lacking.

In the list of important considerations for the use of digital technologies in the context of SOEs oversight, we suggest including the importance of focusing on ICT procurement practices. This will help ensure transparency and encompass vital aspects beyond simply opting for the lowest price bid. Factors such as cybersecurity and data privacy should also be taken into consideration.

II.F.

Draft

The applicability of these responsibilities depends on the degree of ownership of the state over the SOE. If the SOE is indirectly held by the state via another parent SOE (as part of a corporate group structure), it is the parent company and not directly the state who exercises the following responsibilities. In the case of other shareholders, the ownership rights need to be exercised in accordance with all of these, in line with general corporate law, by-laws and regulations.

BIAC Input

This approach to drafting has received positive evaluation, as it allows to consider as automatically not applicable to SOE listed companies some activities hereby indicated and assigned to the state as an active owner (i.e., (i) the setting of broad mandates and objectives for the SOEs, including financial targets, capital structure objectives and risk tolerance levels, (ii) the setting up of reporting systems that allow the state to regularly monitor and assess the SOEs performance, (iii) the drafting and communication of coherent transparency and disclosure policies applicable to SOEs and (iv) the maintaining of continuous dialogue with the SOE external auditors).



II.F.2

Draft

*Establishing **and safeguarding** well-structured, merit-based and transparent board nomination processes ~~in fully or majority-owned SOEs~~, actively participating in the nomination of all SOEs' boards and contributing to **gender and other forms of board diversity**.*

BIAC Input

We commend the increased focus on "gender and other forms of board diversity." However, we suggest that it could be beneficial to provide early clarification within the Guidelines that this pertains not only to demographic dimensions of diversity but also, significantly, to the skills, competencies, and experiences that are essential for making well-informed decisions. Although diversity criteria are elaborated upon on page 33, it might be advantageous to indicate this definition when introducing the phrase for the first time.

II.F.3

Draft

*Setting and monitoring the implementation of broad mandates and objectives for SOEs, including financial targets, capital structure objectives and risk tolerance levels **consistent with the state's rationales for ownership**;*

BIAC Input

We propose refining this recommendation to achieve greater proportionality, particularly for listed SOEs. This ensures that the recommendation preserves the integrity of board powers, fiduciary duties, and accountability, without impacting company law rules. While the Annotations to Supporting Guideline II.F. (identifying the primary responsibilities of the state as an active owner, p. 32) clarify that "*The applicability of these responsibilities depends on the degree of ownership of the state over the SOE. ... In the case of [presence of] other shareholders, the ownership rights need to be exercised ... in line with general corporate law, by-laws and regulations,*" a more explicit clarification could also be provided at the principle level.

*Setting and monitoring the implementation of broad mandates and objectives for SOEs, including financial targets, capital structure objectives and risk tolerance levels consistent with the state's rationale for ownership, **and ensuring the integrity of the role, authorities and accountability of the SOEs highest governing body.***

III. State-owned enterprises in the marketplace

III.E.1

Draft

All business relations of SOEs', including relations with ~~all~~ financial institutions, ~~as well non-financial SOEs and business partners~~ should be based on purely commercial grounds;.

BIAC Input:

In addition to the already suggested language, we recommend incorporating a reference to the ownership policy, for example:

*SOE's relation to other business partners, including other SOEs, should be based on commercial considerations, and at arm's length, and in no case amount to cross-subsidisation of other SOEs or private entities, or **become a conduit for political influence over other sectors where no commercial rationale for public ownership exists. Additional guidance regarding the rationales for state ownership is provided in Chapter I.***

III.F.

Draft:

*When SOEs engage in public procurement, whether as bidder or procurer, the procedures **involved should be open, competitive, non-discriminatory, promote supplier diversity and safeguarded by appropriate standards of integrity and transparency,** ensuring that SOEs and its potential suppliers are not subject to undue advantages or disadvantages.*

BIAC Input:

We suggest the following amendment:

*When SOEs engage in public procurement, whether as bidder or procurer, the procedures **involved should be open, competitive, non-discriminatory, promote supplier diversity and be safeguarded by appropriate standards of integrity and transparency, to ensure** that SOEs and **their** potential suppliers are not subject to undue advantages or disadvantages.*

We also propose addressing the issue of payment delays, which are often problematic with SOEs, by highlighting the importance of exemplary procedures and supply chain collaboration.

III.G.1.

Draft

Conduct all business, other than carrying out public service obligations, in accordance with commercial considerations and high standards of responsible business conduct;

BIAC Input

We suggest that the reference to "carrying out public service obligations" be further clarified to prevent potential mismanagement. While there is a definition of Public Service Obligations (PSOs) on page 8, we recommend enhancing it to clearly convey that ensuring adequate access to essential services for all consumers is not, on its own, a sufficient justification for exempting services provided by SOE from commercial considerations. Furthermore, it should not serve as a reason to bypass high standards of responsible business conduct.

In addition to ensuring non-discriminatory practices in the purchases and sales related to PSOs, it is crucial to establish other essential criteria for promoting good governance. These criteria should prevent the incumbent SOE from using PSOs as a means to justify the mismanagement of public funds or to impose entry restrictions that negatively impact competition. Previous OECD research underscores that imposing entry restrictions is often unnecessary to fulfill service obligations. Maintaining the incumbent monopolistic provider as the exclusive "universal" provider can lead to increased costs, as the incumbent might be less efficient compared to existing competitors when delivering services. Moreover, there might be a failure to adopt cost-effective technologies tailored to different customer segments.

III.G.2**Draft**

[Avoid activities that directly or indirectly discriminate, on the basis of nationality, against competitors, goods and services.](#)

BIAC Input:

The developments on non-discrimination based on nationality and political references are particularly important at a time when public policies tend to jeopardize a level playing field. It is worth noting that SOEs can serve as a tool for protectionist policies to varying degrees.

IV. Equitable treatment of shareholders and other investors

IV.A.

BIAC Input

We suggest the following amendments. Furthermore, we appreciate more clarification on No. 5, i.e., what type of transactions are in between the state and other SOEs? And what do market consistent terms mean, i.e., is this FX related?

A. The state should strive toward full implementation of the G20/OECD Principles of Corporate Governance when it is not the sole owner of SOEs, and of all relevant sections when it is the sole owner of SOEs.

Concerning shareholder protection this includes:

1. The state and SOEs should ensure that all shareholders are treated equitably.
2. SOEs should observe a high degree of transparency, including as ~~a general rule~~ equal and simultaneous disclosure of **up-to-date** information, towards all shareholders.
3. SOEs should develop an active policy of communication and consultation with all shareholders **at home and abroad**.
4. The participation of minority shareholders in shareholder meetings should be facilitated so they can **exercise fundamental powers of ownership**~~take part in fundamental corporate decisions~~ such as board election. When necessitated, ~~remote participation should be conducted in a manner that ensures equal access to information and opportunities for participation of all shareholders.~~
5. Transactions between the state and SOEs, and between **other** SOEs, should take place on market consistent terms.

IV.A.4

Draft

The participation of minority shareholders in shareholder meetings should be facilitated so they can take part in fundamental corporate decisions such as board election. When necessitated, ~~remote participation should be conducted in a manner that ensures equal access to information and opportunities for participation of all shareholders.~~

BIAC Input

We applaud the inclusion of encouraging remote participation. However, we suggest that the guidelines concerning equitable treatment of shareholders also encompass non-discrimination and diversity principles. Also, we recommend aligning this guideline with Principle II.C.4 of the revised G20/OECD Principles by explicitly addressing the ability of minority shareholders to place items on the agenda and propose resolutions.



IV.B.

Draft

National corporate governance codes should be adhered to by all listed, and ~~where practical~~, unlisted SOEs *to the extent possible*.

BIAC Input

We propose that while we agree with the principle of the statement, the OECD would consider recalling the principle of proportionality at a general level. In this regard, adherence to the code could be taken into account for unlisted SOEs, considering their company size and organizational complexity.

National corporate governance codes should be adhered to by all listed, and unlisted SOEs, **taking into account the company's size and organisational complexity**.

IV.C.

BIAC Input

We suggest the changes below because (i) the disclosure of public policy objectives to the public is already addressed in Guideline I.D., (ii) Chapter IV focuses on the equitable treatment of shareholders and not on disclosures to the public, and (iii) the disclosure of public policy objectives to the public does not depend on their effect on enterprise valuation.

Where SOEs are required to pursue public policy objectives that may have a material effect on the company's performance, results and viability, adequate information about these should be available to **the public and non-state shareholders at all times.**

As part of its commitment to ensure a high degree of transparency with all shareholders, the state should ensure that material information on any public policy objectives an SOE is expected to fulfil, *as well as on their rationales*, is disclosed to non-state shareholders **and the public**, *in compliance with competition laws, insofar as this may affect the valuation of the enterprise*. The relevant information should be disclosed to all shareholders at the time of investment and be made continually available **and updated** throughout the duration of the investment.

IV.D.

Draft

When SOEs engage in co-operative projects such as joint ventures and public-private partnerships, the contracting parties should ensure that contractual rights and obligations are upheld and that disputes are addressed in a timely and objective manner.

BIAC Input

We recommend adding a line to the effect of:



These co-operative projects and joint ventures entered into by SOEs should be consistent with the ownership policy set out for the SOE by the state, without prejudice to the ordinary company law framework regarding the powers and the responsibility of the SOE's board.

V. Disclosure and transparency

V.A.

BIAC Input

We recommend the following amendments, encouraging disclosure in compliance with internationally recognised standards or with consistent national standards. We believe this guideline is consistent with the annotations to Guideline V.B.

~~All SOEs should disclose financial and non-financial all material financial information, and large and listed ones should do so~~ according to **high quality** internationally recognised standards such as the International Financial Reporting Standards (IFRS) or Generally Accepted Accounting Principles (GAAP), or national accounting standards consistent with these standards. **Larger SOEs should disclose material non-financial information in line with the principle of proportionality and flexibility.** ~~All other SOEs should apply these standards to the extent possible.~~

V.A.3

Draft

The governance, ownership, and legal and voting structure of the enterprise or group, including the content of any corporate governance code or policy and implementation processes;

BIAC Input

Please note that in the corresponding Annotation (page 51), the reference to “group” is accompanied by the following expression: “as well as any subsidiaries.”

V.A.6.

BIAC Input

We suggest expanding the term "digital security risks" to encompass a wider range of risks, including those related to technology, under the umbrella of "digital security **and other technology-related** risks."

V.A.8

Draft

SOEs should also report on all contractual relations and transactions with state-owned institutional investors, since these have a high risk of conflict of interest.

BIAC Input

We suggest clarifying the statement for consistency. This sentence seems to be inconsistent vis-a-vis the wording of such Supporting Guideline that requires SOEs to report only on any “material” transactions with the state and other related entities, including state-owned financial institutions. Overall, requiring reporting on all related party transactions, even those of minor value, appears to contradict the obligation to disclose solely "material" related party transactions, as stated in Supporting Principle IV.A.7 of the 2023 OECD Principles of Corporate Governance.

V.B.**BIAC Input**

We suggest revising the current language to include assurance for non-financial/sustainability-related disclosure by SOEs:

An annual audit (or assurance engagement) should be conducted by an independent, competent and qualified practitioner in accordance with internationally recognized standards for audit and assurance engagements, ethics and independence, in order to provide assurance to the board, shareholders and other stakeholders on whether the SOE’s financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework and that other non-financial disclosure is also reliable.

V.B.**BIAC Input**

We suggest clarifying that the process of selecting external auditors should be transparent and aligned with internationally recognized standards.

V.B.**Draft**

This requires the close attention of the audit committee or the board of directors and generally involves limiting the provision of non-audit services to the audited SOE as well as periodic rotation of audit partners or, tendering of the external audit assignment and prohibiting or restricting non-audit services procured by external auditors for their audit clients, such as tax services. Additional guidance, including regarding auditor qualification, under G20/OECD Principles of Corporate Governance [OECD/LEGAL/0413] IV.C should apply.

BIAC Input

We suggest clarifying the wording on prohibiting or limiting non-audit services for external auditors. As it could stem from the same guidelines, that recall the coordination with the G20/OECD Corporate Governance Principles, we suggest to adopt the same G20/OECD Corporate Governance Principles' approach, namely a general limitation – such as maximum caps to costs of non-audit services, disclosure requirements, specific limitations – rather than prohibiting non-audit services altogether.

V.E.**Draft**

The ownership entity should develop consistent reporting on SOEs and publish annually an aggregate report on SOEs including on financial performance and non-financial performance, such as information related to sustainability, governance aspects, as well as on the achievement of public policy objectives.

BIAC Input

We commend the inclusion of transparency, clarity, and accessibility in the annual reporting guidelines. However, we suggest offering further guidance regarding the availability of reports. It is important that these reports are not restricted to a limited timeframe for publication. They should be consistently accessible and readily available in a designated location.

VI. The responsibilities of the boards of state-owned enterprises

VI.A.

Draft:

*The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the enterprise's performance. The role of SOE boards should be clearly defined in legislation, preferably according to company law. The board should be fully accountable to the owners, act in the best interest of the enterprise, **taking into account the interests of stakeholders**, and treat all shareholders equitably.*

BIAC Input:

We suggest addressing the issue of aligning the liability of SOE board members with that of directors in private companies.

VI.A.

Draft

*To encourage board responsibility and in order for boards to function effectively, **the organisation of boards of directors should be consistent with best practices developed for the private sector. They should be limited in size, comprising only the number of directors necessary to ensure their effective functioning.***

Experience further indicates that smaller boards allow for real strategic discussion and are less prone to become rubberstamping entities.

BIAC Input

Following the German Co-Determination Act, companies in Germany that are subject to an equal representation of employees and shareholders in the supervisory boards should have a supervisory board of 12, 16, or 20 members, depending on the number of employees. Although this leads to a larger average board size in Germany compared to many other countries, the effective functioning of the board can still be ensured.

To allow for diverse approaches in different jurisdictions, we suggest that the expression (bold) in Guideline VI.A., which views large boards in a negative light, should be reconsidered.

Furthermore, the FRC in the UK is proposing changes to the UK Corporate Governance Code which makes the issue of significant external commitments an explicit part of board performance reviews.

Service on too many boards can affect the time board members have to effectively fulfil their responsibilities, we don't necessarily suggest there should be a numerical limit to how many board seats one has. However, it would make sense for SOEs and private companies to disclose as much information about the directors' other seats, if any, if we are staying in line with the proposed transparency enhancements here.

Such assessments should be undertaken at least annually, for all directors, as changes to a director's appointment may adversely affect their capacity to act responsibly.

BIAC Input

We propose the following amendments to include debt holders/other capital sources:

*SOE boards should effectively carry out their functions of setting strategy and supervising management, based on broad mandates and objectives set by the **shareholders and other providers of capital**. They should have the power to appoint and remove the CEO. They should set executive*



remuneration levels that *incentivise managers to act consistently* with the long-term interests of the enterprise **and its providers of capital**.

VI.B.

BIAC Input

We recommend changing “corruption” to “anti-corruption”

*(iii) develop and oversee effective risk management policies and procedures with respect to financial and operational risks, but also with respect to i.e. human rights, **anti**-corruption **and fraud**, equal opportunity, labour, digital security, personal data protection and data privacy, competition, environmental and tax-related issues, and health and safety;*

VI.B.

Draft

In order to carry out their role, SOE boards should actively ... (vi) decide on CEO remuneration and develop effective succession plans for key executives, with a view to ensuring business and public policy continuity.

BIAC Input

We propose a minor adjustment to align fully with Supporting Principle V.D.4 of the 2023 OECD Principles of Corporate Governance. The suggested modification involves the following:

*In order to carry out their role, SOE boards should actively ... (vi) decide on CEO remuneration and **oversee** effective succession plans for key executives, with a view to ensuring business and public policy continuity.*

VI.B.

Draft

Boards may also be assisted by a nomination committee which may be tasked with defining the profiles of the CEO and board members key executives, and making recommendations to the board on their appointment, with all or a majority of committee members being independent directors.

BIAC Input

We suggest a slight modification for better alignment with the Annotations to Supporting Principle V.D.4 of the 2023 OECD Principles of Corporate Governance. This would enhance consistency:

*Boards may also be assisted by a nomination committee which may be tasked with defining the profiles of the CEO and board members **key executives**, and making recommendations to the board on their appointment, with all or a majority of committee members being independent directors.*

VI.C.

Draft

*.. **Boards members’ professionalism and independence should be ensured, for instance through competitive remuneration.***

BIAC Input

We suggest clarifying how competitive remuneration ensures board member independence. The current draft lacks clarity on this link, which may appear counterintuitive. According to Principle V.E. of the G20/OECD Principles, director independence often hinges on remuneration limited to directorship fees. This connection should be expressed more explicitly in the sentence and subsequent annotations. It would be also considerable to remove the reference to competitive remuneration.

VI.C.
Draft

.. SOEs should also engage in board and committee evaluation and training.

BIAC Input

We propose removing the sentence above since board member induction and ongoing training are already addressed in an earlier paragraph. Additionally, board evaluation is thoroughly covered in Supporting Guideline VI.I. and its Annotations.

VI.D.

BIAC Input

We suggest removing the recently added "like all board members" part from the independence criterion mentioned in the annotations to Guideline VI.D. This criterion specifically pertains to independent board members.

Independent board members, ~~like all board members,~~ should be free of any material interests or relationships with the enterprise, its management or its ownership that could jeopardise the exercise of objective judgement.

VI.E.

Draft

Mechanisms should be implemented to avoid conflicts of interest preventing all board members from objectively carrying out their board duties and to limit political interference in board processes. Politicians who are in a position to influence materially the operating conditions of SOEs should not serve on their boards. Former such persons should be subject to predetermined cooling-off periods. Civil servants and other public officials can serve on boards under the condition that qualification and conflict of interest requirements apply to them.

BIAC Input

Beyond disclosure requirements in respect of conflicts of interest, we emphasize the importance of upholding confidentiality obligations and safeguarding sensitive company information.

We welcome the new recommendation to introduce "appropriate cooling-off periods for former politicians and public officials before their appointments to boards." Clarification on what constitutes an "appropriate" cooling-off period would be beneficial, including best practice discussions. We advise states against establishing excessively brief cooling-off periods, as they may not effectively mitigate conflicts of interest. A baseline period of one year is proposed, with an ideal span of 2-3 years depending on the intensity of the relationship between the SOE, the state, and the prospective board member, and the potential conflict of interest.

VI.F.

Draft

Good practice calls for the Chair to be independent with a role separate from that of the CEO.

..

Separation of the Chair from the CEO is particularly important in SOEs, where it is usually considered necessary to empower the board's independence from management

BIAC Input

Despite this strengthening of the rules for two-tier boards, separating the Chair from the CEO in one-tier boards is still not required but only viewed as a “good practice.” We recommend a reconsideration of Guideline VI.F. to require CEO-Chair separation.

VI.F**Draft**

The Chair can also play an essential role in board nomination procedures by assisting the ownership entity, with input from the board’s annual self-assessments, to identify skills gaps in the composition of the current board.

BIAC Input

We suggest that the provision explicitly clarifies expectations for SOE listed companies. They should adhere to the overarching principle of treating all shareholders equitably.

Chap VI., incl. VI.I.**Draft**

SOE boards should, under the Chair’s oversight, carry out an annual, well-structured evaluation to appraise their performance and efficiency, and assess whether they possess the right mix of background and competences, including with respect to gender and other forms of diversity.

BIAC Input

We propose reinforcing ideas of representation, participation, and equity in board composition. It would be beneficial to place additional focus on achieving gender equity and promoting various forms of diversity on SOE boards within this chapter.

VII. State-owned enterprises and sustainability

Chap VII.

BIAC Input

We would ask whether the recently revised G20/OECD Corporate Governance Principles serve as a fundamental framework for Chapter VII for sustainability for SOEs, considering the debt and equity sources of capital that many SOEs rely on.

VII. Preamble

BIAC Input

We suggest avoiding excessive climate specificity to ensure the inclusiveness of sustainable goals and consider countries not fully aligned with the Paris Agreement (such as the US pre-2021).

Consequently, a growing number of jurisdictions worldwide have placed sustainability high on their agendas and have made high-level commitments, for example, to transition to a sustainable and resilient, net-zero/low-carbon economy in line with the Paris Agreement and the Sustainable Development Goals, or other sustainability-related goals.

VII.A.

BIAC Input

We suggest fostering a practical sustainability approach that begins at the entity level. Encouraging this "bottom-up" strategy is important, even if it can't span an entire country/government.

It follows that, due to their multidimensional aspects, sustainability-related policies and strategies should be developed on an entity-specific and, to the extent practical, on a whole-of-government basis - in coordination with relevant government entities and in consultation with stakeholders.

VII.A.1., 2.

BIAC Input

We suggest the following amendments:

1. Setting concrete ~~and ambitious~~ sustainability-related expectations and/or objectives for SOEs, consistent with the ownership policy and practices. In doing so, the state should balance the rights and fair treatment of all shareholders and other stakeholders;

2. Communicating and clarifying shareholders' and stakeholders' expectations on sustainability through regular dialogue with the boards, with due consideration for stakeholder interests;

VII.A.3

Draft

The state should monitor the implementation of general expectations and objectives for SOEs related to sustainability issues. To this effect, the state should adequately integrate sustainability-related objectives and targets within the existing reporting system, to be able to regularly assess and monitor SOE performance and oversee their compliance with high-level expectations and applicable legal and regulatory requirements. The state should communicate reporting expectations to all SOEs in a clear manner and disclose sustainability-related objectives and their attainment to the general public, including in its the annual aggregate report.

BIAC Input

We suggest the inclusion of the following:

Such reporting expectations should use, to the extent possible, well-known and broadly accepted reporting frameworks or metrics and standards applicable to public sector or private sector entities, so that the information reported to assess performance is relevant, reliable and decision-useful to all stakeholders. Any sustainable standards or frameworks applied by the SOE should be clearly stated.

VII.B.1

BIAC Input

We suggest the following amendment:

SOE boards should develop, implement and disclose sustainability-related strategies, objectives and targets based on verifiable metrics, set in accordance with internationally-recognized best practices or standards and consistent with shareholders' and stakeholders' expectations and applicable legal and regulatory requirements;

..

Strategic targets linked to sustainability should be based on consistent, comparable and verifiable metrics, aligned where possible with well-known and broadly accepted reporting frameworks or standards for both public or private sector entities, to ensure credibility of the information for users, including investors and stakeholders. They should be regularly disclosed to allow shareholders, investors and stakeholders to assess the credibility of the announced goal and management's progress towards meeting it.

VII.B.3.

Draft

Assessing, monitoring and reporting on sustainability objectives and performance of SOEs on a regular basis

BIAC Input

The sustainability-related criteria integrated into executive remuneration should be challenging to convince shareholders and other stakeholders that they were not just easy to reach targets that allow executives a guaranteed additional income. To assure shareholders and other stakeholders, it is also good practice to set sustainability-related targets in a way that they are rigorous, measurable, and objective.

Better alignment of executive interests with longer-term sustainability considerations should be achieved also by updating executive remuneration schemes and securing that these schemes reward longer-term performance for periods of no less than four years.

VII.C.1

BIAC Input

We suggest refraining from using “Double materiality” since it is a European Union concept, not internationally-accepted practice/terminology.

Many jurisdictions recommend or require that disclosure based on the perspective of a reasonable investor should be the standard for SOEs, while others recommend or require that sustainability reporting and disclosures should address both the impacts of sustainability factors on the SOEs long-term performance as well as the impacts the SOEs may have on external stakeholders and society, as SOEs are typically responsible to a wide group of stakeholders, including citizens.

VII.C.1

BIAC Input

We suggest clarifying the language to avoid confusion with the Integrated Reporting Framework or Principles, which are a corporate concept that is currently the intellectual property of the IFRS Foundation and is currently under discussion by the IASB and ISSB.

In addition, the state should also provide SOEs with guidance on where sustainability-related disclosures should be presented, such as in the primary annual report (i.e. integrated report) or separately. This should include clear expectations regarding publication and accessibility of reports. To the extent possible, an integrated reporting approach should be favored that integrates financial and sustainability-related information and demonstrates as it can be useful in demonstrating the link between a firm’s strategy and its commitment to sustainable development.

VII.C.2**BIAC Input**

We propose the following amendment as the focus here is on independent assurance, not a phased approach.

2. ~~Phasing in of~~ *Expectations or requirements should be considered for annual assurance attestations by ...*

VII.D.2.**BIAC Input**

We suggest the following amendments to focus on the objective without using the term "just transition," as it is not universally accepted but often linked with climate action (refer to recent ISSB Agenda consultation).

SOEs should develop and encourage meaningful stakeholder engagement in advancing sustainability, taking into account to the extent reasonably possible certain persons, groups, or communities that may have an interest in or could be impacted by an enterprise's activities.