# OECD Review of the Corporate GOvernance of State-Owned Enterprises Questionnaire part 2 of 2: governance arrangements for state-owned enterprises

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| This questionnaire is for use by the OECD Secretariat in conducting national reviews of state-owned enterprise (SOE) governance relative to the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (“SOE Guidelines”). This Part 2 of the questionnaire reproduces the individual guidelines contained in the *SOE Guidelines*, followed by questions which seek to ascertain the extent to which the relevant guidelines are implemented in practice. Questionnaire responses should relate to the regulatory and governance arrangements bearing on state-owned enterprises (SOEs) that are currently in effect. Respondents are asked to provide the latest available information, specifying the year that the information concerns. Respondents are further asked, where relevant, to provide an indication of recent or prospective future change in corporate governance or regulatory arrangements. Recent change may be defined to cover the latest three years, or changes so recent that their full effect has not yet materialised. The Secretariat should be provided with copies, in English or French, of all relevant laws and regulations or a reference to websites from where they can be downloaded.  |

# Questions and annotations

## I. Rationales for State Ownership

***The state exercises the ownership of SOEs in the interest of the general public. It should carefully evaluate and disclose the objectives that justify state ownership and subject these to a recurrent review.***

*A. The ultimate purpose of state ownership of enterprises should be to maximise value for society, through an efficient allocation of resources.*

### Questions:

1. Respondents are invited to provide an initial, brief explanation of the values or strategies influencing their government’s decision to establish or maintain state ownership in certain companies or sectors. In which, if any, concrete ways does the notion of value creation manifest itself in the government’s decision to establish or maintain state ownership of enterprises?

*B. The government should develop an ownership policy. The policy should inter alia define the overall rationales for state ownership, the state’s role in the governance of SOEs, how the state will implement its ownership policy, and the respective roles and responsibilities of those government offices involved in its implementation.*

### Questions:

1. An “ownership policy” would normally define the state’s overall ownership objectives; articulate the mandate of the ownership entity and clarify its main functions; specify the state’s expectations from the companies; and spell out the main principles followed by the ownership entity regarding the exercise of the ownership rights. Based on this, has your government implemented, or partly implemented, an ownership policy?
2. Please describe the main priorities underpinning the government’s ownership policy for SOEs. How does the policy vary according to sectors and economic activities?
3. What government bodies are responsible for defining the ownership policy? Has it been defined in consultation with stakeholders (e.g. consumers; employees) and the general public? How is it implemented and monitored?

*C. The ownership policy should be subject to appropriate procedures of political accountability and disclosed to the general public.* *The government should review at regular intervals its ownership policy.*

### Questions:

1. Is the ownership policy disclosed in public forums and, if so, where is it accessible?
2. Does the government review at regular intervals its ownership policy, and if so, through what mechanisms?

*D. The state should define the rationales for owning individual SOEs and subject these to recurrent review. Any public policy objectives that individual SOEs, or groups of SOEs, are required to achieve should be clearly mandated by the relevant authorities and disclosed.*

### Questions:

1. Does the government define and communicate the rationales for owning individual SOEs? If so, are the rationales underpinning ownership of individual enterprises subject to recurrent review?
2. Please describe any public service, public policy and other requirements placed on SOEs that deviate from the expectations one might have of a private enterprise in like circumstances.
3. By what inter-governmental processes are such requirements developed? Are they specified in laws or regulations? Are they defined in the statutes of the relevant SOEs?

## II. The State’s Role as an Owner

***The state should act as an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness.***

*A.**Governments should simplify and standardise the legal forms under which SOEs operate. Their operational practices should follow commonly accepted corporate norms.*

### Questions:

1. Please list the legal forms under which SOEs may operate. In particular, does the law allow SOEs to have specific, different legal forms from other companies? If the answer to the previous question is yes:
	1. How do rules concerning the composition and structure of corporate boards, the authority of boards vis-à-vis the ownership function or disclosure requirements differ from those of private limited liability and listed companies?
	2. Are some SOEs protected, wholly or in part, from insolvency or bankruptcy procedures by their specific legal status? Is there an explicit budget guarantee? If so, how is this administered?
	3. Do the legal forms of SOEs provide for different treatment of employees (e.g. remuneration, pension rights and job protection) compared with other companies?

*B. The government should allow SOEs full operational autonomy to achieve their defined objectives and refrain from intervening in SOE management. The government as a shareholder should avoid redefining SOE objectives in a non-transparent manner.*

### Questions:

1. What safeguards are in place to prevent the government from intervening in the day-to-day management of SOEs? Does the government have the right to give directions directly to SOE managers? If yes, under which circumstances and subject to what public disclosure requirements?
2. Do the government’s ownership entities communicate commercial policies and strategies to SOE boards on a regular basis, or is the government guidance provided in more irregular or informal ways?

*C.* *The state should let SOE boards exercise their responsibilities and should respect their independence.*

### Questions:

1. Are SOE boards granted full responsibility and autonomy to define – in accordance with the objectives defined by the government – strategies for the company? By what processes does government or its ownership unit set objectives and communicate them to SOE boards?
2. Where ministry officials are appointed to the board of directors of SOEs, how independently are these officials functioning? For example, do they get written instructions on how to vote on the agenda? In partly owned SOEs, are these officials entitled to keep confidential company or commercial business information for themselves, without informing the Ministry?

*D. The exercise of ownership rights should be clearly identified within the state administration. The exercise of ownership rights should be centralised in a single ownership entity, or, if this is not possible, carried out by a co-ordinating body. This “ownership entity” should have the capacity and competencies to effectively carry out its duties.*

### Questions:

1. What public sector bodies are involved in owning, or exercising the ownership function of, SOEs? What is the size of their staff and financial resources?
2. In case there are several such bodies, how is a sufficient degree of coordination of actions and policies achieved (e.g. in appointing boards; operational control)?
3. Conversely, has a central ownership unit been established? If this is the case:
	1. What are the precise responsibilities of the ownership unit? Does it exercise the ownership function of all SOEs or only in certain areas of the economy? Does it exercise the ownership function alone, or does it act in coordination with the treasury and/or line ministries?

*E. The ownership entity should be held accountable to the relevant**representative bodies and have clearly defined relationships with relevant public bodies, including the state supreme audit institutions.*

### Questions:

1. What are the accountability requirements to the co-ordinating or ownership entity? Are these defined directly vis-à-vis Parliament and other representative bodies, or indirectly via the accountability of government ministries?
2. What is the role of state auditing institutions *vis-à-vis* the ownership unit, individual SOEs and parliament?

*F.**The state should act as an informed and active owner and should exercise its ownership rights according to the legal structure of each enterprise. Its prime responsibilities include:*

*F1. [The state’s prime responsibilities include:] Being represented at the general shareholders meetings and effectively exercising voting rights;*

### Questions:

1. Which procedures and rules are in place guiding state representation in general shareholder meetings? What is the role of the state coordinating or ownership entity?

*F2. [The state’s prime responsibilities include:] Establishing 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 board diversity;*

### Questions:

1. How is the board nomination process designed? Is there a role for independent nomination committees? How is a sufficient degree of transparency around the process, including regarding nomination criteria, secured? What is the role of the incumbent SOE board?
2. Where the state is not the sole owner, what are the procedures for consulting with other shareholders? Where the state has a minority holding, does it retain a right to appoint board members? If so, does it systematically use this right?

*F3. [The state’s prime responsibilities include:] Setting and monitoring the implementation of broad mandates and objectives for SOEs, including financial targets, capital structure objectives and risk tolerance levels;*

### Questions:

1. Do the objectives established by the state for SOEs include well-defined financial targets, capital structure objectives and risk tolerance levels? If so, please provide examples.

*F4. [The state’s prime responsibilities include:] Setting up reporting systems that allow the ownership entity to regularly monitor, audit and assess SOE performance, and oversee and monitor their compliance with applicable corporate governance standards;*

### Questions:

1. What external reporting systems are in place for SOEs? Do these vary according to organisational form or ownership structure of SOEs?
2. What processes and methods do coordinating or ownership entities use to monitor SOEs performance? In particular, to what extent is benchmarking to absolute targets or relative to private or other public enterprises undertaken?
3. What are the expectations of SOEs with regards to their standards of corporate governance? What measures are in place to monitor SOEs’ compliance with applicable corporate governance standards?

*F5. [The state’s prime responsibilities include:] Developing a disclosure policy for SOEs that identifies what information should be publicly disclosed, the appropriate channels for disclosure, and mechanisms for ensuring quality of information.*

### Questions:

1. Has the state developed a policy outlining the financial and non-financial disclosure requirements for SOEs? If so, does this policy outline what information should be publicly disclosed and the channels by which the information should be disclosed? What procedures are in place to ensure that SOEs respect high standards of corporate disclosure?

*F6. [The state’s prime responsibilities include:] When appropriate and permitted by the legal system and the state’s level of ownership, maintaining continuous dialogue with external auditors and specific state control organs;*

### Questions:

1. Is a continuous dialogue between external auditors and the state legally permitted? If yes, what are the prevailing practices in structuring the cooperative relationship?

*F7. [The state’s prime responsibilities include:] Establishing a clear remuneration policy for SOE boards that fosters the long- and medium- term interest of the enterprise and can attract and motivate qualified professionals.*

### Questions:

1. By what procedures, and according to which standards, are SOE board remuneration policies established? For instance, how does remuneration compare with similar private companies? Are remuneration policies and levels based on performance benchmarking with regular follow-up?

## III. State-Owned Enterprises in the Marketplace

***Consistent with the rationale for state ownership, the legal and regulatory framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities.***

*A. There should be a clear separation between the state’s ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation.*

### Questions:

1. Are some SOEs used as a vehicle for industrial, regional and/or sectoral policies? If so, which ones? Is the responsibility for industrial/sectoral policies separated from the state’s ownership function vis-à-vis those SOEs affected by, or acting as an instrument for, these policies? If so, how?
2. What public bodies are responsible for regulating SOEs? What measures, if any, have been taken to secure a full administrative and/or legal separation of responsibilities for ownership and market regulation within the general government?
3. Please describe public procurement practices where an SOE acts as a prospective supplier. Are the government bodies responsible for procurement separated from the ownership function of the SOE? What, if any, other safeguards are in place to avoid conflicts of interest?

*B. Stakeholders and other interested parties, including creditors and competitors, should have access to efficient redress through unbiased legal or arbitration processes when they consider that their rights have been violated.*

### Questions:

1. What legal and arbitrational mechanisms for redress are available to the stakeholders of SOEs? How, if at all, do these mechanisms differ from those applicable to private companies? Are measures available to ensure an effective enforcement, including in cases where the outcome of juridical or arbitrational findings may go against the publicly owned entity? Are commercial disputes between two SOEs resolved through the court system, or are there special arbitration procedures?

*C. Where SOEs combine economic activities and public policy objectives, high standards of transparency and disclosure regarding their cost and revenue structures must be maintained, allowing for an attribution to main activity areas.*

### Questions:

1. For SOEs that engage in both public policy and competitive activities, to what extent has a structural separation of those activities been implemented? Where full structural separation is not feasible, are separate accounts kept?

*D. Costs related to public policy objectives should be funded by the state budget and disclosed.*

### Questions:

1. For SOEs engaged in fulfilling public policy objectives, how (if at all) are related costs identified, disclosed, and funded?
2. For SOEs engaged in competitive activities (either solely or in combination with public policy activities), do they face any uncompensated financial or operational obligations that could confer a competitive disadvantage compared to private companies in like circumstances? For example, are any SOEs required to implement similar employment policies or regulations as those that apply to the general government sector?

*E. As a guiding principle, SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulations.* *Laws and regulations should not unduly discriminate between SOEs and their market competitors. SOEs’ legal form should allow creditors to press their claims and to initiate insolvency procedures.*

### Questions:

1. Do SOEs or their board members have special legal privileges, such as sovereign immunity to lawsuits? Do any SOEs, owing to their legal form, benefit from exemptions to taxation, competition, environmental and/or zoning regulations?

*F. SOEs’ economic activities should face market consistent conditions regarding access to debt and equity finance. In particular:*

*F1. [SOEs’ competitive activities should face market consistent conditions regarding access to debt and equity finance. In particular:] SOEs’ relations with all financial institutions, as well as non-financial SOEs, should be based on purely commercial grounds.*

### Questions:

1. Do governments provide state guarantees for SOE debts? If so, what mechanisms are available to, and used by, government to avoid moral hazard in consequence of managerial over-confidence?
2. Please describe the primary lenders to SOEs. In particular, do state-controlled financial institutions act as lenders to (other) SOEs? If the answer to the previous question is yes:
3. What mechanisms, if any, ensure that the creditor/debtor relationship is conducted at arm’s length, on purely commercial terms and free from undue influence by government officials?
4. Are there mechanisms in place to ensure market consistent costs of equity financing from the state? For example, are capital injections from the state subject to a minimum expected rate-of-return on equity?

*F2. [SOEs’ competitive activities should face market consistent conditions regarding access to debt and equity finance. In particular:] SOEs’ economic activities should not benefit from any indirect financial support that confers an advantage over private competitors, such as preferential financing, tax arrears or preferential trade credits from other SOEs. SOEs’ economic activities should not receive inputs (such as energy, water or land) at prices or conditions more favourable than those available to private competitors.*

### Questions:

1. Are SOEs subject to an equal or equivalent enforcement of tax obligations as private companies? In practice, do SOEs accumulate tax arrears that would not be permitted for a private company?
2. How important is trade credit from one SOE to another as a source of finance? Do SOEs have substantial arrears with one another?

*F3. [SOEs’ competitive activities should face market consistent conditions regarding access to debt and equity finance. In particular:] SOEs’ economic activities should be required to earn rates of return that are, taking into account their operational conditions, consistent with those obtained by competing private enterprises.*

### Questions:

1. Are SOEs engaged in competitive activities required to achieve a minimum rate-of-return on those activities? If so, how are rates-of-return calculated and what measures are in place to ensure that they apply specifically to the competitive activities of SOEs?
2. What influence does the ownership function, and other public bodies, have on the dividend policy of SOEs? Under what circumstances and/or subject to what limitations may the ownership unit transfer capital from one SOE to another (e.g. through a state bank)?
3. Under what circumstances, and subject to what rules, may the capital structure of an SOE be changed? What measures are in place to secure an adequate disclosure, auditing and accountability of the company with regard to its capital structure?

*G. When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency.*

1. What procurement rules and procedures are SOEs required to abide by, and do they differ based on an enterprise’s level of commercial orientation? In particular:
	1. Under what circumstances are fully incorporated SOEs operating in a largely competitive manner required to abide by the same procurement procedures as comparable privately-owned companies?
	2. When SOEs act as bidders in public procurement, what safeguards are established to ensure that they do not benefit from undue advantages such as incumbency benefits?

## IV. Equitable Treatment of Shareholders and Other Investors

***Where SOEs are listed or otherwise include non-state investors among their owners, the state and the enterprises should recognise the rights of all shareholders and ensure shareholders’ equitable treatment and equal access to corporate information.***

*A. The state should strive toward full implementation of the 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:*

*A1. [Concerning shareholder protection this includes:] The state and SOEs should ensure that all shareholders are treated equitably.*

### Questions:

1. Do the non-state shareholders in SOEs have the same legal rights as shareholders in other companies, and as the state? Otherwise, what are the main differences?
2. Does the state use priority shares (e.g. “golden shares”) and other such mechanisms to exercise control beyond its ownership stake? If yes, please indicate in what cases and provide details.
3. Where the state is a controlling shareholder, are there any rules or explicit policies concerning the consideration that must be given to the interests of minority shareholders?
4. Are there special rules and procedures for transactions among SOEs? What safeguards are in place that such transactions are conducted at arm’s length and not to the detriment of minority shareholders?
5. What options for redress do minority shareholders have if they consider their rights violated?

*A2. [Concerning shareholder protection this includes:] SOEs should observe a high degree of transparency, including as a general rule equal and simultaneous disclosure of information, towards all shareholders.*

### Questions:

1. What mechanisms are in place to ensure that all SOE shareholders have equal and timely access to material information needed to make informed investment decisions?

*A3. [Concerning shareholder protection this includes:] SOEs should develop an active policy of communication and consultation with all shareholders.*

### Questions:

1. What standards for information and consultation are established by national law? Are SOEs required to, or do they on their own accord, go beyond these standards? Is the SOE board able, at all times, to identify the enterprise’s non-state shareholders?

*A4. [Concerning shareholder protection this includes:] The participation of minority shareholders in shareholder meetings should be facilitated so they can take part in fundamental corporate decisions such as board election.*

### Questions:

1. Historically, to what extent have non-state shareholders participated in the general meetings of SOEs? Are they able to vote in absentia?
2. What role do non-state shareholders in SOEs play in nominating board members? Do SOEs use cumulative voting, proportional representation or other mechanisms that facilitate minority representation? Are qualified majorities needed for certain shareholder decisions?

*A5. [Concerning shareholder protection this includes:] Transactions between the state and SOEs, and between SOEs, should take place on market consistent terms.*

### Questions:

1. What mechanisms are in place to ensure that transactions between the state and SOEs take place on market consistent terms (i.e. in the long term interest of the enterprise and not for the benefit of any interested party)?

*B. National corporate governance codes should be adhered to by all listed and, where practical, unlisted SOEs.*

### Questions:

1. What corporate governance requirements are SOEs required to respect? Are SOEs, including unlisted SOEs, required to comply with the national corporate governance code?

*C. Where SOEs are required to pursue public policy objectives, adequate information about these should be available to non-state shareholders at all times.*

### Questions:

1. Where SOEs are required to pursue public policy objectives, is material information about them – including their recurrence, related costs and funding arrangements – communicated to non-state shareholders?

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

### Questions:

1. How frequently, and in what forms, do SOEs engage in co-operative projects such as joint ventures and public-private partnerships? When SOEs do engage in such projects, what mechanisms are in place to ensure that any disputes arising throughout the duration of the project are addressed in a fair and timely manner?

## V. Stakeholder Relations and Responsible Business

***The state ownership policy should fully recognise SOEs’ responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders. It should make clear any expectations the state has in respect of responsible business conduct by SOEs.***

*A. Governments, the state ownership entities and SOEs themselves should recognise and respect stakeholders’ rights established by law or through mutual agreements.*

### Questions:

1. Do legal provisions, regulations or mutual agreements establish specific rights for the stakeholders (e.g. employees; consumers; creditors) in SOEs? If yes, please describe. For instance, are there special rules for employee board representation? Are there mandatory consultations with stakeholder groups, including consumers?
2. What are the policies and practices for providing stakeholders with timely and adequate information about the SOE?

*B. Listed or large SOEs should report on stakeholder relations, including where relevant and feasible with regard to labour, creditors and affected communities.*

### Questions:

1. What, if any, formal requirements are there for SOEs – or for listed or large SOEs – to make public reports on their relationship with stakeholders? What is the required scope and topical coverage of such reporting? Does it include social and environmental issues? Are any internationally recommended standards of reporting adhered to?

*C. The boards of SOEs should develop, implement, monitor and communicate internal controls, ethics and compliance programmes or measures, including those which contribute to preventing fraud and corruption. They should be based on country norms, in conformity with international commitments and apply to the SOE and its subsidiaries.*

### Questions

1. Are SOEs required to develop internal codes of ethics and, if so, what is the scope and coverage of these codes? To what extent are they based on, and consistent with, agreed international standards? What measures are in place to ensure that these codes are followed, such as mechanisms for reporting on violation and assignation of responsibilities for implementation?
2. Are SOEs required to develop internal controls, ethics and compliance programmes or measures specifically to prevent fraud and corruption? Do these differ from private companies in like circumstances, and if so how?

*D. SOEs should observe high standards of responsible business conduct. Expectations established by the government in this regard should be publicly disclosed and mechanisms for their implementation be clearly established.*

### Questions:

1. Has the government established and communicated specific expectations concerning SOEs’ respect for high standards of responsible business conduct? If so, are these expectations publically disclosed? What mechanisms are in place to ensure their implementation by SOEs?

*E. SOEs should not be used as vehicles for financing political activities. SOEs themselves should not make political campaign contributions.*

### Questions:

1. What rules are in place regarding the use of SOEs to finance political activities? Are SOEs in practice used as vehicles for financing political activities, for example through contributions to political campaigns?

## VI. Disclosure and Transparency

***State-owned enterprises should observe high standards of transparency and be subject to the same high quality accounting, disclosure, compliance and auditing standards as listed companies.***

*A.**SOEs should report material financial and non-financial information on the enterprise in line with high quality internationally recognised standards of corporate disclosure, and including areas of significant concern for the state as an owner and the general public. This includes in particular SOE activities that are carried out in the public interest. With due regard to company capacity and size, examples of such information include:*

### Questions:

1. What are the requirements for periodic disclosure of financial and non-financial information by SOEs? Does each SOE publish regular reports? If so, what frequency and timeliness requirements are SOEs required to respect?
2. What accounting conventions are applied to SOEs? In particular, do SOEs comply with IFRS or US GAAP standards? Or, are there local equivalent standards? Insofar as accounting requirements in SOEs differ from private companies, please explain the differences.

*A1. [Examples of information to be disclosed include:] A clear statement to the public of enterprise objectives and their fulfilment (for fully-owned SOEs this would include any mandate elaborated by the state ownership entity);*

### Questions:

1. Are SOEs’ main objectives disclosed to the public and, if so, how? Are they required to report on the fulfilment of these objectives? If so, in what form?

*A2. [Examples of information to be disclosed include:] Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public policy objectives;*

### Questions:

1. Are SOEs, regardless of corporate form, required to disclose financial and operating results to the public? Do related reports include the costs and funding arrangements pertaining to public policy objectives? If so, please provide some examples of disclosure related to the funding of public policy objectives.

*A3. [Examples of information to be disclosed include:] The governance, ownership and voting structure of the enterprise, including the content of any corporate governance code or policy and implementation processes;*

### Questions:

1. Are SOEs required to disclose information about the control structures in SOEs, including mechanisms such as golden shares and power of veto over key corporate decisions? Are SOEs required to disclose information on compliance with applicable corporate governance standards?

*A4. [Examples of information to be disclosed include:] The remuneration of board members and key executives;*

### Questions:

1. Are SOEs required to disclose information on the remuneration levels of board members and key executives? If not, are they required to disclose remuneration policies?

*A5. [Examples of information to be disclosed include:] Board member qualifications, selection process, including board diversity policies, roles on other company boards and whether they are considered as independent by the SOE board;*

### Questions:

1. Are SOEs required to disclose information relating to the composition of their boards? If so, do disclosure requirements encompass the selection process for board members, individual board members’ roles on other company boards and which (if any) board members are considered independent? Please provide some examples of disclosure related to SOE board composition.

*A6. [Examples of information to be disclosed include:] Any material foreseeable risk factors and measures taken to manage such risks;*

### Questions:

1. Are SOEs required to provide information on material risk factors and their risk management systems? How are off-balance-sheet assets and liabilities treated?

*A7. [Examples of information to be disclosed include:] Any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE, including contractual commitments and liabilities arising from public-private partnerships;*

### Questions:

1. Insofar as SOEs benefit from state guarantees or (other) subsidies, are SOEs required to disclose these to the public? If so, please provide some examples of related disclosure.
2. Insofar as SOEs engage in public-private partnerships, are SOEs required to disclose information on related contractual or contingent liabilities?
3. Insofar as SOEs are exempt from the application of general laws or regulations, is information on these exemptions disclosed to the public?

*A8. [Examples of information to be disclosed include:] Any material transactions with the state and other related entities;*

### Questions:

1. What is the definition of a “related entity” of an SOE? What, if any, are the disclosure requirements for transactions with related parties? What mechanisms are available to prevent abusive related party transactions?

*A9. [Examples of information to be disclosed include:] Any relevant issues relating to employees and other stakeholders.*

### Questions:

1. Are SOEs required to disclose information on issues related to employees and other stakeholders that might materially impact the financial and/or non-financial performance of the enterprise? For example, do disclosure requirements encompass information on management/employee relations, relations with creditors, suppliers and local communities, and environmental impact?

*B. SOEs’ annual financial statements should be subject to an annual independent external audit based on high-quality standards. Specific state control procedures do not substitute for an independent external audit.*

### Questions:

1. Are SOEs – or at least listed or large SOEs – required to be subject to external audits along the lines of listed companies? What is the role of state auditing bodies *vis-à-vis* the external auditors? What are the auditing standards applied to SOEs? What procedures are in place to ensure that exernal auditors are independent of management and large shareholders?

*C. The ownership entity should develop consistent reporting on SOEs and publish annually an aggregate report on SOEs. Good practice calls for the use of web-based communications to facilitate access by the general public.*

### Questions:

1. What types of information, financial as well as non-financial, does the co-ordinating or ownership unit provide on SOEs? In what form and how frequently is it made public? Is the information provided in an aggregate form covering all, or most, SOEs? Is information available online?

## VII. The Responsibilities of the Boards of State-Owned Enterprises

***The boards of SOEs should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.***

*A. 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 and treat all shareholders equitably.*

### Questions:

1. Insofar as all SOEs have boards of directors (if not, please explain), what board structure (e.g. unitary vs. two-tier) is chosen and what are their specific responsibilities? What is the typical size of an SOE board?
2. What mechanisms are available for holding board members accountable? For example, are SOEs required to issue a Directors’ Report along with the enterprise’s financial statement? What is the role of external auditors in holding boards accountable?
3. If board members operate subject to direct instructions of a higher authority, is there a legal notion of a “shadow director”? Is there a system of “replacement” directors?

*B. SOE boards should effectively carry out their functions of setting strategy and supervising management, based on broad mandates and objectives set by the government. They should have the power to appoint and remove the CEO. They should set executive remuneration levels that are in the long term interest of the enterprise.*

### Questions:

1. To what extent is it acceptable and legitimate for public authorities to directly influence board decisions? How would one define “undue influence” or “political interference” in an SOE board’s operation?
2. What rules have been established to ensure that SOE board members, subject to the corporate charter, base their decisions on the good of the company? What are the sanctions if a board member were found to have been unduly influenced by outside persons or institutions?
3. Do SOE boards have the authority to effectively monitor and, if necessary, change the top management? Are they free to recruit CEOs without consultation with government officials? What, if any, safeguards are in place to prevent political interference in the process?

*C. SOE board composition should allow the exercise of objective and independent judgement. All board members, including any public officials, should be nominated based on qualifications and have equivalent legal responsibilities.*

### Questions:

1. Please describe the board nomination procedures in SOEs, including the involvement of ministers, public bodies and, where applicable, outside experts.
2. May government employees and politicians serve on SOE boards and, if so, subject to what conditions (e.g. in respect of remuneration) and limitations?
3. What collective and individual responsibilities for SOE board members are stipulated by laws and regulations? Do the boards face the same responsibilities and liabilities as is the case in private companies and do they receive training concerning these responsibilities and liabilities? Do liabilities differ between board members nominated by the state and those nominated by other shareholders and/or stakeholders?

*D. Independent board members, where applicable, should be free of any material interests or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgement.*

### Questions:

1. Is there a requirement, or a widespread practice, to nominate a certain number of independent or non-executive directors in SOEs? How, if at all, does your country define the “independence” of directors?

*E. Mechanisms should be implemented to avoid conflicts of interest preventing board members from objectively carrying out their board duties and to limit political interference in board processes.*

### Questions:

1. What mechanisms are in place to address potential conflicts of interest within SOE boards? Do these apply only at the time of appointment, or is a process of continued monitoring in place?

*F. The Chair should assume responsibility for boardroom efficiency and, when necessary in co-ordination with other board members, act as the liaison for communications with the state ownership entity. Good practice calls for the Chair to be separate from the CEO.*

### Questions:

1. In practice, does the Chair of an SOE act as the primary point of contact between the ownership entity and the board?
2. Is it common, or is it allowed, that the chief executive officer of an SOE at the same time serves as chair of the board?

*G. If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence.*

### Questions:

1. Is employee representation mandated on SOE boards? If so, do they have the same duties and responsibilities as all other board members? How are such board members appointed?
2. What, if any, training is provided to employee representatives to prepare them for their board duties? What safeguards are in place to ensure the confidentiality of board deliberations?

*H. SOE boards should consider setting up specialised committees, composed of independent and qualified members, to support the full board in performing its functions, particularly in respect to audit, risk management and remuneration. The establishment of specialised committees should improve boardroom efficiency and should not detract from the responsibility of the full board.*

### Questions:

1. How common is the use of specialised board committees in SOEs? Are such committees mandated by law or regulation? What are the most widespread types of board committees?

1. Where SOE board committees exist, are their mandates, composition and working procedures well-defined and disclosed? What are the criteria for selecting members for board committees? In what cases is a role for independent directors and directors with specific expertise mandated?

*I. SOE boards should, under the Chair’s oversight, carry out an annual, well-structured evaluation to appraise their performance and efficiency.*

### Questions:

1. Are SOE boards formally required to carry out self-evaluations? If so, what performance benchmarks are commonly applied? What is the role of external advisors and independent experts in the process? To what bodies are the outcomes of the appraisal communicated? To what extent are the results of board evaluations used to inform the board nomination process?

*J. SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent company organ.*

### Questions:

1. Have internal audit procedures been established in all SOEs? If not, which SOEs have established such procedures? To whom do the internal auditors report? Do they work in consultation with the external auditors? Are board audit committees or their equivalent in place?