

By email: stateownedenterprises@oecd.org

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Dear Sir/ Madam

OECD consultation on the Guidelines on Corporate Governance of State-Owned Enterprises

We welcome the opportunity to comment on the OECD's consultation on the Guidelines on Corporate Governance of State-Owned Enterprises ("SOE(s)"). The Institute of Chartered Secretaries and Administrators ("ICSA") is the professional body that qualifies Chartered Secretaries and, as such, our members are well placed to understand the issues connected with corporate governance of SOEs. In preparing our response we have consulted, members with experience in such enterprises.

General comments

We would agree with the sentiment behind the amendments that these Guidelines should continue "to set high levels of aspiration for SOE owners and serve as a guidepost for their continued reform efforts"¹.

SOEs experience different governance challenges to corporations in the private sector. For example, SOEs can benefit from the protection of two major threats experienced by private sector corporations: takeover and bankruptcy. However, this can lead to further distortions by those dealing with SOEs taking advantage of this protection e.g. through the abuse of payment terms. SOEs can also suffer "just as much from undue hands-on and politically motivated ownership interference as from totally passive or distant ownership by the state"². SOEs often have a complex chain of agents involved in the performance accountability for the SOE. Structuring this to ensure efficient decisions and good corporate governance can be challenging. Despite all of the above, corporate governance of SOEs is just as important as it is in the private sector and needs to be proportionate and balanced – both for the SOEs, their stakeholders and the private sector with which they interact. Guidelines are

¹ Page 2 Section 3 of the OECD Guidelines on Corporate Governance of State-Owned Enterprises

² Page 3 Section 6 of the OECD Guidelines on Corporate Governance of State-Owned Enterprises



necessary, and should not seek to place SOEs in handcuffs or to be more onerous than governance guidelines for the private sector. Similarly they should enable an open, accountable and transparent playing field for all concerned.

Commentary on specific sections

Section I Rationales for State Ownership

We would agree with the intentions behind this section. We would particularly agree that such policies define the state's role in the corporate governance of SOEs.

Section II The State's Role as an Owner

Much of this section reflects the 2005 Guidelines and the amendments support the main premise that the state should be an informed and active owner, ensuring that governance of SOEs is carried out in a transparent and accountable manner.

Section III State-Owned Enterprises in the Marketplace

This section reflects the requirement for legal and regulatory frameworks for SOEs to ensure a level playing field in markets where SOEs and private sector companies compete. The amendments to the 2005 guidelines are again a reasonable update. As mentioned in the introduction, additional requirements on SOEs should be balanced and proportionate, thus avoiding market distortions and enable trust and transparency for all parties and stakeholders.

IV Equitable Treatment of Shareholders and Other Outside Investors

We would support the additions to this section, especially the requirement to adhere to national corporate governance codes by all listed and, where feasible, unlisted SOEs.

V Stakeholder relations and Sustainable Business

Again the amendments to this section regarding SOEs responsible business conduct and their not being used as vehicles for financing political activities are reasonable.

VI Transparency and Disclosure

The amendments to this section reflect current practices and expectations with regards to transparency and disclosure requirements and accounting and auditing standards. In particular, additions regarding remuneration policies and board member qualifications and appointment processes are welcomed.

VII The Responsibilities of the Board of State-Owned Enterprises

We support the amendments to this section and the intention to reflect current practices regarding the avoidance of conflicts of interests, board member independence, the Chair assuming responsibility for boardroom efficiency, establishment of committees and the carrying out of annual, well-structured board evaluations, the outcome of which should inform the board nomination process.



With regards to the efficiency of the board, ICSA helped develop the Financial Reporting Council's ("FRC") "Guidance on Board Effectiveness" published in March 2011. This document was then adapted, with the support of ICSA and FRC, by the Baltic Institute of Corporate Governance who published the Guidance on Board Effectiveness, Handbook for State-Owned Enterprises in October 2013 and we would commend this publication to you³.

Conclusion

To conclude, the intention behind the revised Guidelines and the amendments therein are appreciated. Guidelines which seek to achieve the following are to be commended:

- Level the playing field in markets where SOEs and private sector companies compete in order to avoid market distortions;
- Aid transparency and accountability in public policy;
- Introduce proportionate frameworks and regulations with regards to finance and legal structures;
- Provide for independent and impartial redress;
- Ensure internal operations are clear, transparent, monitored and disclosed; and
- Promote board independence, objectivity and efficiency.

However, as with all governance guidelines and frameworks seeking to ensure trust and transparency, they need to be proportionate and balanced for all parties involved.

We hope our feedback is useful and if you would like to discuss any comment in more detail, please contact me.

Yours faithfully



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³ http://bicg.onclick.lt/uploads/docs/BICG_Guidance%20on%20Board%20Effectiveness-15.pdf

