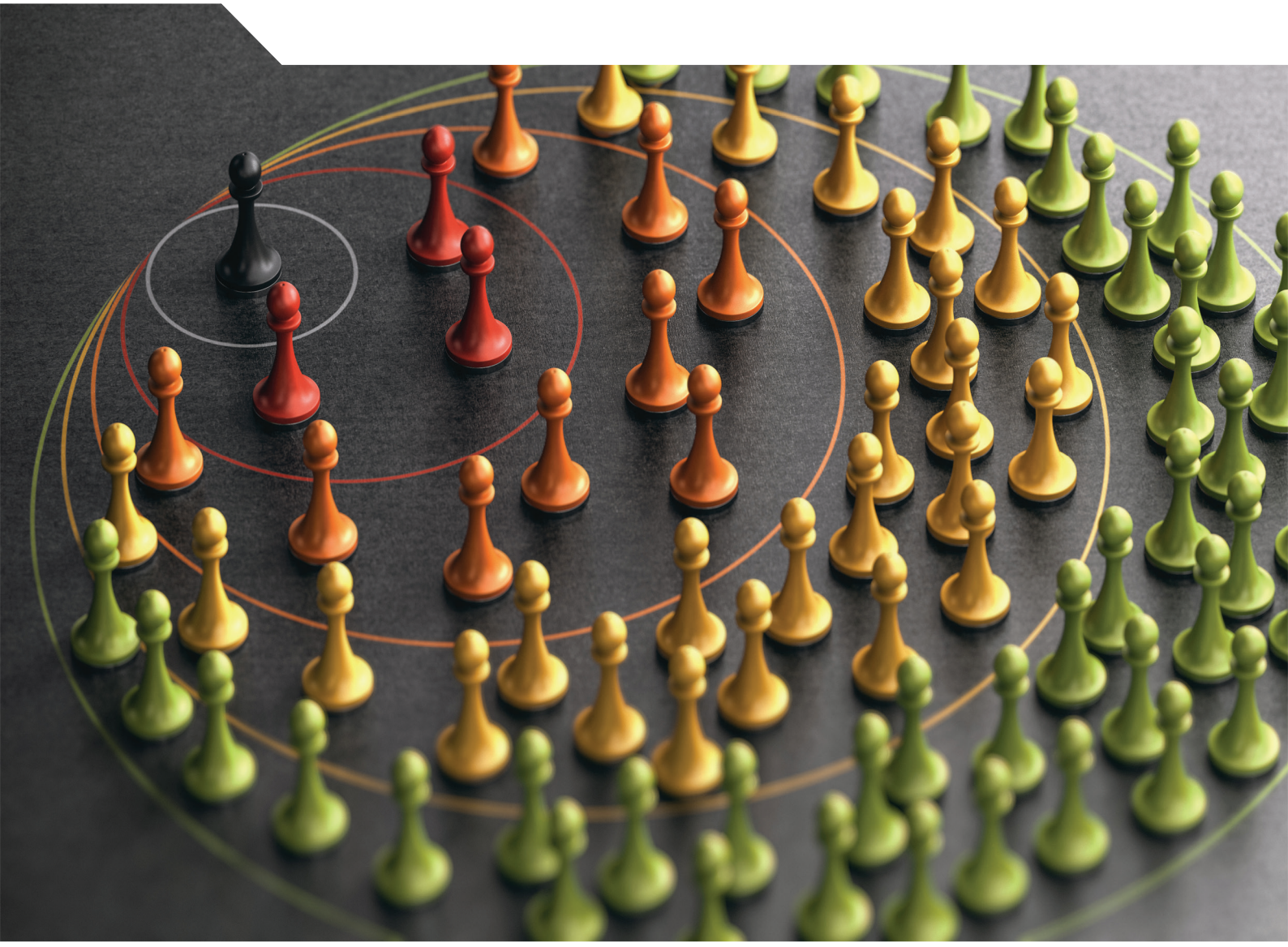
Corporate Governance

Safeguarding State-Owned Enterprises from Undue Influence

IMPLEMENTING THE OECD GUIDELINES ON ANTI-CORRUPTION AND INTEGRITY IN STATE-OWNED ENTERPRISES



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Foreword

In adopting the Recommendation on Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises (ACI Guidelines), the OECD Council instructed the Working Party on State Ownership and Privatisation Practices (Working Party), in co-operation with the Working Group on Bribery in International Business Transactions and the Working Party of Senior Public Integrity Officials, to monitor its implementation and report on it no later than five years following its adoption. It is in this context that the Working Party agreed to prepare a thematic report of national practices towards safeguarding state-owned enterprises (SOEs) from undue influence that will support the monitoring of the Recommendation.

The report has been discussed and approved by the Working Party, with inputs and review from the two other OECD bodies and their respective secretariats. It has also benefited from feedback from colleagues in other areas of the OECD and consultation with external stakeholders. The report was first prepared by Alison McMeekin with oversight from Hans Christiansen, both from the Corporate Governance and Corporate Finance Division in the OECD Directorate for Financial and Enterprise Affairs. It benefited from contributions of their colleague Apostolos Zampounidis.

The OECD Secretariat is grateful to all the countries that submitted responses to a questionnaire issued in October 2021. The report was prepared based on their responses, as well as desk research and the contents of other relevant OECD Recommendations and documents that, in certain cases, provided data on additional countries to those mentioned. Country practices presented in the text appear primarily as they were reported to the OECD.

Table of contents

TABLES

Executive summary

SOEs remain vulnerable to being used as conduits for political finance, patronage, and personal or related-party enrichment. Lingering weaknesses in corporate governance and ownership arrangements can expose SOEs to such exploitation and undermine SOE efforts to uphold integrity. The report highlights these weaknesses and provides state owners with a better understanding of which activities are effective in safeguarding SOEs from undue influence.

The report also takes stock of how OECD member and participating countries are implementing relevant provisions of the ACI Guidelines, serving as the first report on the implementation of the ACI Guidelines since their adoption in 2019. These provisions are grouped into four key themes and are unpacked by relevant ACI Guidelines provisions together with commentaries on the provisions' implementation. The main findings of the report are summarised below.

Taking specific legal and regulatory measures

The ACI Guidelines recall that SOEs are autonomous legal entities that should be subject to and protected by the general rule of law, including as regards bribery and financing of political activities, in their countries of operation.

The report finds that all participating countries criminalise foreign bribery and have established liability of legal persons for foreign bribery as per the OECD Anti-Bribery Convention, with most countries applying the regime to SOEs. However, there may be exceptions where certain SOEs or SOE representatives are not subject to these measures. The report also finds that countries are less clear on prohibiting the use of SOEs as vehicles for engaging in bribery, and that only a few allow for individuals to be held liable for engaging in bribery on behalf of or through a third party.

With regard to financing of political activities, the report finds that most participating countries have banned donations by at least partially owned SOEs to political parties and candidates. However, it is unclear how states regulate the contributions made by fully owned SOEs, as well as in-kind contributions, which may suggest that there may be different rules for different corporate forms and state holdings within a given country.

Protecting state ownership entities' integrity and decision making

The ACI Guidelines also promote active and informed ownership, whereby the state owner fulfils its core responsibilities. Promoting transparency around objectives and the objectives-setting process makes it harder for illicit interests to change SOE directions at will. In addition, ensuring that nominations to SOE boards are merit-based and professional can help limit the likelihood of patronage, nepotism, and cronyism in appointments.

The report finds that most participating countries subject representatives of the state ownership to conflict of interest rules, and all countries to rules on handling sensitive information. It appears moreover that

countries offer representatives of the state ownership avenues to report concerns of irregular practices through public sector reporting channels. Underreporting remains, however, a challenge and with individuals still fearful in many countries of using reporting channels, state owners should continue to strive towards meeting international standards on whistle-blower protection.

With regard to objective setting, states are commonly involved in the exercise and, in most case have clear records of individual SOE objectives, though the specificity varies. However, the report also finds that there is substantially less information available on the procedures for modifying SOE objectives. With more than half of the assessed countries having centralised functions within one entity, the report further explores how separating ownership from other government functions can minimise conflict of interest, and opportunities for political intervention and undue influence.

Protecting the integrity and autonomy of SOE decision makers

As established in the OECD Guidelines on Corporate Governance of State-Owned Enterprises (SOE Guidelines) and elaborated upon in the ACI Guidelines, it is a prime responsibility of the state to ensure that boards have the necessary authority, diversity, competencies, and objectivity to autonomously carry out their function with integrity.

The report finds that most participating countries require independent board members to sit on SOE boards of at least large companies, and generally limit the presence of politicians or at minimum hold them to equal standards as other board members. Former politicians are generally permitted to sit on boards, and a number of countries have reported implementing “cooling off periods” to manage potential conflicts of interest or transfer of sensitive information.

The report also finds that in most countries the state is involved, at least to some degree either through shareholder meetings, in approving board nominations or by direct appointment of the CEO and other members of executive management. This may pose a significant risk because, as demonstrated by earlier OECD studies, some of the worst integrity breaches tend to occur when CEOs are appointed at the sole discretion of high-level politicians. Moreover, just over half of participated countries reported having established minimum qualification criteria for board members, with some countries having criteria that help to elucidate personal integrity.

Bringing transparency to ownership arrangements and communication

Finally, the ACI Guidelines seek to limit opportunities for instructions or dealings that fall outside of formal channels of communication by encouraging state owners to establish with whom, how and when communication should occur.

The report finds that there is little information available on countries’ ownership structure and the roles of non-ownership state functions in overseeing SOEs. While some of this information may be available in annual aggregate reports, or their online equivalents, information can be inconsistent and unavailable for a swathe of SOEs. There is also little information available about the communication between various representatives of the state and SOEs, which may mean that communication itself is informal and inconsistent, or simply that there is no framework that countries can easily point to that captures the occasions for interaction.

Countries are therefore encouraged to develop frameworks that clarify the acceptable opportunities and forms or means of communication between the state owner, the board, and the executive management in line with the ACI Guidelines recommendations.

1 The risk of undue influence in SOEs

This chapter introduces undue influence as it pertains to the risk of corruption in SOEs, and discusses main challenges, in order to establish which aspects of the OECD ACI Guidelines are most pertinent and thus which national practices can help contribute those specific goals.

This report aims to shed light on one of the main concerns related to the integrity and governance of SOEs – that is, the risk of undue influence in SOE operations for personal or political benefit and at the expense of the firm or even citizens as the ultimate shareholder. This issue is pronounced in the legal text of the ACI Guidelines (OECD, 2021[1]), "[recognising] that SOEs should not be operated as conduits for political finance, patronage, or personal or related-party enrichment". The Guidelines state that the risk of SOEs being used deliberately by high-level public officials for these purposes must be considered.

When surveyed in 2017, over half of the SOE leaders participating around the world expressed concern about "a lack of integrity in the public and political sector", ranking it the number one challenge to improving integrity in their companies.[1] SOEs rated interference in decision making, favouritism (nepotism, cronyism, and patronage) and non-declaration of conflict of interest among the top five risks in their companies (out of 24).

Since those findings were issued in 2018 and the Guidelines were adopted in 2019, public controversies have indicated that many SOEs remain vulnerable to being exploited or used as 'cash cows' to support personal and political aspirations of individuals or groups. Information gathered through the Working Party's country reviews and regional networks point to some lingering weaknesses in corporate governance and ownership arrangements that can expose SOEs to such exploitation. SOE leadership positions are often politicised at the expense of merit-based nomination processes that leave key decision-making bodies open to undue influence. Objectives can be unclear and communications opaque, leaving room for high-level officials to assign SOE decision-makers with instructions that are nonstrategic or operational in nature.

Table 1.1 below presents the multiplicity of ways that public officials or those in their networks (in third-party positions or within SOEs) can influence decisions in their favour (for political financing, or personal or related-party enrichment).

Table 1.1. Manifestations of undue influence in SOEs: a typology

	Where exploitation manifests (*all from real cases of corruption or irregular behaviour)	
Source of exploitation	**Ownership entity and/or on decision-making by those able to exercise decisions related to SOEs**	**SOE and its decision-making bodies**
Third-party actors external to but with relationships with public officials/politicians, and external to SOEs (e.g. business, intermediaries/ agents)	• pressure, threats, and intimidation • financial promises • non-financial promises (e.g. promise of future earnings through, for instance, a system of collusion and bid-rigging)	• pressure, threats, and intimidation • financial and non-financial promises (of teaming up with the third party and public official partnership) • required to meet with third party actors, pressured to 'join in' on the game
Actors internal to government/public sphere (including politicians), and external to SOEs	• pressure, threats, and intimidation • financial promises (kickbacks, bribery proceeds) • non-financial promises (appointments/patronage, currying favour with powerful public officials, offer of protection/insulation from market forces or prosecution/impunity, protection from privatisation) • doctoring ownership and governance arrangements to favour certain individuals or SOEs sympathetic to corruption schemes • placing their "people" (family or political party members) into positions within	• pressure, threats and intimidation (coinciding with instructions from public officials to SOE leadership [e.g. to develop infrastructure in the jurisdiction of a given politician seeking re-election; to contract with bank to which a public official is indebted)] • financial promises • non- financial promises (e.g. for career advancement, for individuals or companies to remain in favour with certain public officials) • placing their "people" (family or political party members) into lucrative and powerful positions within SOE leadership (board or executive level) • state's role in nomination unclear and/or state

	Where exploitation manifests (*all from real cases of corruption or irregular behaviour)	
Source of exploitation	**Ownership entity and/or on decision-making by those able to exercise decisions related to SOEs**	**SOE and its decision-making bodies**
	administration that can influence SOE operating and governance arrangements, or the system of checks and balances, in order to facilitate corruption • abuse of confidential information/insider trading for personal or related-party benefits (real example: public officials buying real estate at low costs based on confidential information about locations where SOEs will develop new infrastructure to resell at a profit) • blocking or gutting reforms and legislation meant to promote performance and professionalism of SOEs • making carve-outs and exemptions for SOEs (e.g. allowing for exemptions in procurement regulations for SOEs to circumvent controls and rules applied to other companies) • refusal to justify ownership of SOEs in the first place (e.g. no justification for why the state retains control of lucrative SOE / no plan to privatise) • - state sets 'local content requirements' (e.g. government requires foreign companies to work with SOEs, or certain SOEs, involved in corruption schemes)	involved directly in appointing and removing board members • state appoints and removes the CEO and/or members of executive management
Actors internal to the SOE	• board members or executive management with relations to high-ranking officials bypass official reporting channels (for instance, with the ownership entity) • individuals involved ignore due process established by the ownership entity or • - financial promises (e.g. individuals involved pressure or intimidate ownership entity or ministries representatives to overlook/ignore or join in on corruption schemes by offering kickbacks or bribes)	• SOE leaders involved in corruption schemes push pressure downward through the ranks or onto people involved in checks and balances (e.g. forcing internal audit / accountants to lie; establish "off the books accounts"; retain external auditors that are willing to turn a blind eye) • individuals involved make decisions in favour, or pressure others to make decisions in favour, of personal or related-parties enrichment (e.g. influencing M&A, contracting and procurement processes, exploration) • culture of intimidation or coercion within the company • leadership avoids or falsifies checks and balances (e.g. fails to submit or falsifies asset declarations or disclosures) • - individuals not directly involved in schemes turn a blind eye, ignore warning signals

Source: Based on assessment of multiple cases of corruption involving SOEs.

Based on an assessment of the typology of the manifestations of the risk of undue influence of SOEs and the cases of corruption that underpin it, it emerges that there are certain commonalities regarding the risk of undue influence or common red flags (Table 1.1):

- Exploitation usually relies on patronage or placement of orchestrators' "people" in key (that is, decision-making) positions (whether at the state or company level).

- There is usually a combination of exploitation, threats, pressure, or coercion as well as, at the same time, a degree of opportunistic behaviour. SOEs (or individuals within) can be perpetrators, victims, or both at once. In other words, there are both facilitators and followers – as will be discussed in the case study presented in Chapter 2.
- There is most often a combination of an absence of controls and override of controls but depending on the corruption scheme one will be more prominent than the other. Undue influence in SOEs could include ignoring roles and responsibilities correctly established by law.
- Corrupt individuals create a situation where individuals – in decision-making positions in government or at the SOE level – are unable (often in the presence of threats, pressure to follow or perform) or unwilling (opportunistic behaviour or self-seeking behaviour, or fear of reporting or 'doing the right thing') to walk away from known corruption risks.
- There is often multiplicity of patronage, political financing and personal or related party enrichment. Or at least patronage, plus political party financing or enrichment. For instance, funds from SOEs may be used for individuals and families and/or political parties – with the latter usually requiring a broader network of facilitators within the company.

The Working Party identified that corruption risks "may be heightened in instances of (i) a general lack of integrity in the public sector; (ii) a lack of professionalism in the exercise of state ownership; (iii) risk management and corporate controls that are insufficient or ignored, and; (iv) weak enforcement or undue protection from legal enforcement and other disciplining forces". The above conclusions demonstrate that these basic premises established in the ACI Guidelines still hold.

1.1. Undue influence as a proxy for understanding the risk of patronage, political party financing or personal or related party enrichment

Tackling actual or potential exploitation of SOEs is inherently complicated and would probably call for a full implementation of both of the Working Party's instruments. The report's scope however will be narrowed to protecting key decisions of ownership entities and SOEs from undue influence by high-level public officials. Explanation is provided below.

This thematic report of national practices looks at means of insulating SOEs from undue influence in decision making as a proxy for limiting political financing, patronage, and enrichment. Interfering in key decisions is one of the main ways in which high-level officials can manipulate SOEs to secure those gains. In other words, it is the means to the end. In order for corrupt individuals (or groups of individuals) to improve chances of re-election by having an SOE cater to their jurisdiction, skim bloated contracts or mandate that an SOE hires a company ultimately owned by them, they most often need to control or at least interfere in key decisions.

In jurisprudence, undue influence implies that the exertion of power renders the exploited party unable to freely exercise independent will. In the case of state ownership entities, representatives may be pressured to make decisions that are incongruent with the rationales of state ownership and ignorant to due process for setting objectives, nominations, and monitoring. In the case of SOEs, representatives' free will (that is, autonomy) to make decisions in the best interest of the firm are at best limited. Undue influence is not corruption by definition but, for the purposes of this report, will be considered as such when high-level officials abuse their authority to tilt operations towards their personal or political gain.

Political patronage is itself a form of undue influence in decision making when high-level officials bypass or ignore formal processes, requisite qualifications, or limitations on their personal or state power to nominate or appoint members of boards or executive management. Insofar as exploitation of SOEs by high-level officials usually relies on at least one 'insider' in the company to be acting in concert with or on their behalf, political patronage also paves the way for other forms of corruption.

Box 1.1. State capture in South Africa's SOE sector: a real-life illustration

For years, some officials at the highest levels of government in South Africa worked illicitly with private individuals to orchestrate a scheme of state capture, implicating many of the most economically important SOEs in the country. Information about this can be found in the reports of the "Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State", better known as the Zondo Commission, which detail the ways in which corruption took hold in the public and political sector, SOEs and private-sector parties. According to the reports, elected and public officials and their non-state allies used and abused their influence and powers to secure allies in key positions in state institutions and SOEs and developed corrupt relationships with private sector representatives and state entities that would help facilitate the entrenchment of political power and diversion of SOE and other state resources for personal and related-party enrichment.

The Commission highlights the placement of allies in key positions in shareholding ministries, SOE boards and executive management, which let, in the words of the Commission, "fraud and corruption become the order of the day". In the case of the national airline the appointment of a board member to the position of Chair was subject to controversy. The Commission found that the Chair subsequently "proceeded, through a mixture of negligence, incompetence and deliberate corrupt intent, to dismantle governance procedures, create a climate of fear and intimidation and make a series of operational choices that saw it decline into a shambolic state". Those that attempted to oppose them were side lined, resigned or were removed. Executive managers that tried to oppose or raise concerns about "unreasonable and unlawful demands… were slowly but surely removed from their positions".

Similarly, the capture of South Africa's main power utility SOE and the largest producer of electricity in Africa was facilitated through a scheme that gave non-state actors a say in the appointment of executive management. Those suspected of not co-operating were removed and replaced. It is reported that in 2015 alone four executives were suspended in the power utility SOE with the Commission concluding that "the members of the [power utility SOE] board took part in the decision to suspend the executives because some must have known that it was part of the scheme and were happy to advance the agenda and others may have simply done so to do the bidding of [the former President]… and not because they regarded the suspensions as in the interest of the power utility SOE."

The Commission also identified "a pattern of executive interference and political overreach at the SOEs" with ministers, and even the former President, being regularly involved with operational matters. Evidence obtained by the Commission further suggested that corrupt individuals had relationships and direct communication with certain board members and executive management in certain SOEs, where "anyone in the ministry would communicate directly with the CEO and there was not an enforced structure. This meant that issues fell through the cracks. There was a breakdown in the division of roles in the organisation and therefore a breakdown in good governance".

Aside from external interference, the state capture also required that SOE boards and executive management had to neglect controls and responsibilities that were otherwise dictated by legislation and corporate governance practices. For example, the Commission concluded that "there are many decisions that were made by the 2014 Board of directors of [the main power utility SOE] which were in breach of their duty in terms of section 50(1) and (2) as well as section 51 of the PFMA including their decision to suspend the executives who were suspended and their decision to push three of those executives out of [the power utility SOE] and to pay them the millions of rands that they decided should be paid out to them".

At the operational level, internal controls and processes for audit and assurance failed, as procurement of goods and services became the primary target for corruption and the means through which funds were diverted into the hands of non-state actors and their cronies. The Commission found that, in the national airline SOE, external auditors during the most problematic years, failed to detect any of the illegal acts occurring, while its internal audit function was "hopelessly ineffective" in identifying or limiting these criminal acts. It further revealed "a steady decline in the quality and effectiveness of the governance of the [national airline SOE] from 2012 onwards" owing in part to the capture and orchestration of the entity's Chair that allowed for corruption and fraud to take place.

The Commission reports finally show that the neglect for the rules was rooted in a lack of culture of integrity in SOEs that allowed state capture to take hold. The state capture relied on "facilitators" and "followers" within public entities and SOEs, as elaborated upon in the Commission report specific to main power utility SOE but which are considered to be applicable to the entire scheme. These facilitators used threats and intimidation to ensure that the will of non-state actors was carried out and they relied on a culture of silence and compliance from employees within the entities. The followers "were the subordinates to the facilitators who did not stand up to their superiors or speak out when there was evidence of corruption in their organisations". These followers varied in the degree to which they resisted or complained about the orders they were given, but it is evident that the project of state capture would not have thrived as it did, if these key employees had not participated in the scheme by taking irrational decisions that were not in the best interests of their organisations. While some of these followers attempted to raise red flags, they ultimately compromised themselves and helped to cover up or legitimise skimming of public funds.

Source: Commission of Inquiry into State Capture (2022[2]), https://www.gov.za/sites/default/files/gcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf.

1.2. Identifying specific provisions to counteract undue influence

The scope of this thematic report is limited to good practices in limiting interference in (i) the decisions of those responsible for exercising ownership on behalf of the state (e.g., in ownership entities and/or line ministries) and (ii) SOE decision-making bodies (including executive management). In other words, the assessment is of practices and behaviours of natural or legal persons that fall more clearly under the purview of the state ownership entity. It follows that the thematic report would offer good practices on what the ownership functions can do and are doing to limit the possibilities of SOEs being exploited by representatives of government. The report however may also be instructive for countries seeking to limit influence by third parties (e.g. private firms, intermediaries, or foreign interests), as well as useful for promoting increased autonomy and integrity of SOEs around the world.

The ACI Guidelines' (and SOE Guidelines') provisions most relevant to the thematic report are grouped into four key themes. The four themes are provided below, and each are unpacked by relevant ACI Guidelines' provisions in Chapters 2-6 of this report:

- *Specific legal protections*. The ACI Guidelines recall that SOEs are autonomous legal entities that should be subject to and protected by the general rule of law in their countries of operation. Protection should extend to abuse of SOEs as conduits for political finance, patronage, or personal or related-party enrichment.
- *Protection of state ownership entities' integrity and decision making (particularly regarding setting clear objectives, merit-based nomination processes and monitoring SOE performance)*. The ACI Guidelines promote transparency around objectives and the objectives-setting process, in part to make it harder for illicit interests to change SOE directions at will. Merit-based and professional

nominations to SOE boards help to limit the likelihood of patronage, nepotism, and cronyism in appointments.

- *Protection of boards' integrity and decision making (particularly regarding strategy and appointing and monitoring management)*. As established in the SOE Guidelines and elaborated upon in the ACI Guidelines, it is a prime responsibility of the state to ensure that boards have the necessary authority, diversity, competencies, and objectivity to autonomously carry out their function with integrity.
- *Transparent ownership arrangements and communication*. The ACI Guidelines seek to limit opportunities for instructions or dealings that fall outside of formal channels of communication by encouraging state owners to establish with whom, how and when communication should occur.

There are naturally other factors that reduce SOE exposure to corruption and the likelihood that undue influence occurs in decision making. Public sector integrity (covered in ACI Guidelines' recommendation II) and effective enforcement and sanctions regimes (covered in ACI Guidelines' recommendation V) are critical in this regard. These provisions will not be explored in detail in this particular report but could form the basis of future thematic studies or assessments of the instrument's implementation.

References

Commission of Inquiry into State Capture (2022), *Judicial Commission of Inquiry into State Capture Report: Part I, Vol. 1: South African Airways and its Associated Companies*, https://www.gov.za/sites/default/files/gcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf. [2]

OECD (2021), *Guidelines on Anti-corruption and Integrity in State-Owned Enterprises*, http://www.oecd.org/corporate/Anti-Corruption-Integrity-Guidelines-for-SOEs.htm. [1]

OECD (2018), *State Owned Enterprises and Corruption: what are the risks and what can be done*, https://doi.org/10.1787/9789264303058-en. [3]

Note

[1] In 2017, the Working Party surveyed 347 SOE representatives across 213 SOEs (confidentially) and 28 state ownership entities across 34 countries. The results are presented in the OECD report (OECD, 2018[3]), *State Owned Enterprises and Corruption: what are the risks and what can be done?, https://doi.org/10.1787/9789264303058-en*.

2 Taking specific legal and regulatory measures

The ACI Guidelines recall that SOEs are autonomous legal entities that should be subject to and protected by the general rule of law in their countries of operation. Protection should extend to abuse of SOEs as conduits for political finance, patronage, or personal or related-party enrichment. This chapter focuses on national practices in applying specific legal measures to SOEs that can help to mitigate the risk of exploitation of SOEs to this end.

A comprehensive and clear legal framework is the backbone to promoting integrity and preventing corruption in SOEs. It is the means through which those within or interacting with SOEs can understand their rights and obligations as well as which activities and actions are considered illegal. It provides the grounds for accountability, reduces guesswork and room for impunity and acts as a blueprint against which individuals, including all levels of government, can be brought to justice.

The framework's clarity and comprehensiveness is key. Clear laws provide less room for interpretation and discretionary decision making that can facilitate or be reflective of undue influence in SOEs while, on the flipside, ambiguity can create opportunity for corruption.

Advantages, exemptions or loopholes in legislation or enforcement of legislation granted to SOEs, can be representative of undue influence or an uneven playing field and provide opportunities for exploitation (particularly when regarding audit, accounting, or procurement). On the other hand, disadvantageous treatment of SOEs can, and has, encouraged SOEs to find illicit ways to make up for losses.

There are multiple bodies in the public sector who are responsible for setting and upholding the legal and regulatory provisions that seek to prohibit patronage, political party financing or personal or related party enrichment – whether as policy makers, overseers of its implementation or enforcers.[1] For its part, the state owner can reinforce provisions of the legal framework by setting the expectation that all levels of corporate control and assurance are working effectively to ensure each SOE complies with laws in full. Such an expectation can be included in an ownership policy, for instance. The board ultimate responsibility for the enterprise's performance and should ensure compliance risks to the achievement of objectives are properly managed. Countries also highlighted the importance of non-state actors in ensuring accountability of SOEs including with regards to compliance with the law.[2] There is moreover an important role for civil society and media in bringing concerns to light and putting pressure on SOEs and officials to be held to account.

Countries' legal and regulatory frameworks for SOEs, including their anti-corruption and integrity requirements, differ greatly depending on national legal systems and types of ownership arrangements. However, they commonly entail: a general framework for SOEs that provide rules of governance, accountability and transparency (e.g. Corporation or Commercial Law), SOE-specific legislation, general public service or administrative legislation and criminal laws.

Specific legal measures that prohibit patronage, political financing or personal or related-party enrichment might appear across a variety of criminal and administrative laws. All countries in the study criminalise foreign bribery, and often other offences related to patronage, political financing and illicit enrichment. The measures apply primarily to SOE representatives classified as public officials and/or, in some countries, those who are in positions otherwise considered to be 'sensitive' or 'high risk'. In many countries SOEs can be held liable as enterprises (as legal persons).

The application of relevant and specific measures to SOEs depend inter alia on SOEs' representatives' classification as public officials, and on whether any existing liability regime for legal persons applies to all or certain SOEs. In **Chile**, the directors, managers and officials of SOEs created by law – that is, 20 of the 28 state enterprises in Chile – are considered to be government officials for purposes of probity standards and criminal legislation (ruling No. 16.164 of 1994 of the Comptroller General of the Republic). Directors, managers, and officials of state-owned enterprises that were not created by law – that is, the remaining eight state companies – are considered government officials for the purposes of criminal offences. **Norway**'s Criminal Code (§ 27) establishes penalties for enterprises: "When a penal provision is violated by a person who has acted on behalf of an enterprise, the enterprise is liable to punishment. This applies even if no single person meets the culpability or the accountability requirement. «Enterprise» means a company, co-operative society, association or other organisation, sole proprietorship, foundation, estate, or public body".

Appropriate steps should be taken by the state to use the legal framework to prevent the abuse of SOEs for patronage, political financing and personal or political gain. There is a myriad of ways to do this, and this chapter focuses on the legal measures that state owners can take in accordance with the relevant recommendations in the ACI Guidelines and the OECD Anti-Bribery Convention and Anti-Bribery Recommendation.[3] This chapter focuses specifically on:

- Taking specific measures to prohibit personal or related-party enrichment
- Taking specific measures to apply anti-bribery legislation to SOEs
- Taking specific measures to prohibit the use of SOEs as vehicles for political party financing
- Taking specific measures to prevent patronage in SOEs.

2.1. Taking measures to prohibit personal or related-party enrichment

Personal or related-party enrichment refers, for the purposes of this report, to the situation whereby public officials or their related parties seek to exploit the position of the SOE to obtain unwarranted or unfair financial enrichment or gain. It is closely related to the concept of 'illicit enrichment' or 'unexplained wealth', as personal or related-party enrichment often involves a significant increase in assets that individuals cannot reasonably explain in relation to their lawful income (United Nations, 2003[1]).

Illicit enrichment laws are often controversial and vary between countries. Investigations into illicit enrichment will generally place the burden of proof on the investigated – that is, to justify the accumulation of wealth that is not commensurate with the position or professional circumstance of the individual. According to international bodies, illicit enrichment is said to have five key elements: persons of interest, period of interest, conduct of enrichment (that is, the significant increase in assets), intent (including awareness or knowledge) and the absence of justification.[4] How a country sets boundaries on these individual elements will vary by country and will determine what is grounds for investigation in the instance that unexplained wealth or illicit enrichment is suspected. The classification of "persons of interest" might only include certain positions in the public sector or to all public officials, or it could extend to family members or other kin (such as spouses, in **Argentina**). The period of interest might be focused on when an individual was holding a position or in elected office but not after (**Chile**), or it could extend beyond tenure. The type of assets can be financial or other, including property, and other benefits could include cancellation of debt or other obligations, rights granted, or services produced. Investigations into unexplained wealth rely on supporting regulations, including clear requirements for managing sensitive or insider information, declarations of conflicts of interest and kinship ties or even declaration of assets, which will be explored in later chapters of this report.

The United Nations Convention Against Corruption would have all SOE representatives be considered as public officials so that illicit enrichment regulations would apply to them, but this is not provided for in all countries' classification. In reality, countries more commonly take a range of legal measures in an effort to prevent personal or related party enrichment – unsurprisingly, by targeting individuals' actions that predicate amassing of illicit wealth. They apply to SOEs in different ways.

- Primary among those are the offences contained in penal or criminal codes, that commonly include bribery and provisions related to patronage, both of which are discussed below. In **France**, the Penal Code targets offences of misappropriation, passive bribery and influence peddling, active bribery and influence peddling, illegal taking of interests and destruction, embezzlement and embezzlement of public funds and property. These provisions are applied to SOE representatives considered as public officials, or to SOEs where their managers and collaborators do not come under the categories of persons charged with a public service mission.
- Countries participating in this study also report to use of a range of civil and administrative laws that contribute to reducing personal or related-party enrichment.[5] As per **Korea**'s 'Public Service

Ethics Act (Articles 3~14-2)', political officials such as the President, National Assembly members, heads of public institutions, deputy directors, and standing auditors must register their property, providing the state with the ability to monitor property changes, and detect or punish illegal construction by public officials inside and outside public institutions.

- In addition, many countries include measures or communicate expectations in codes of ethics, anti-corruption strategies and programmes. Some countries have specific codes for SOEs, but most often SOEs are subjected to public sector guidance. Korea's Code of Conduct for Public Organization Employees of the "Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption and Civil Rights Commission" clearly states that "a public official shall not directly use his or her public position to unduly benefit him/herself of other people" (Art. 10).
- Finally, publicly traded SOEs may have listing requirements that require them to uphold standards that work to prevent offences aimed at amassing illicit wealth.

2.2. Taking measures to apply anti-bribery legislation to SOEs

One of the preeminent sources of corruption in or around SOEs has to do with the bribery of (passive bribery) SOE representatives or by (active bribery) SOE representatives. The OECD Foreign Bribery Report found that SOE officials were promised or given foreign bribes, and of a higher financial value, more often than any other public official in all concluded cases of foreign bribery of public officials between 1999 and 2014 (OECD, 2014[2]). SOEs can also be used as a conduit for bribery – whereby those in a position of power or authority use the SOE's position or contracting power to secure bribes or other undue advantages from third parties. Herein lies one manifestation of 'exploitation' of SOEs.

There are multiple ways for anti-bribery legislation to be applied to SOEs that shapes who and how SOEs can be held liable: through application to individual SOE representatives as public officials, or to SOEs as legal persons; through criminal or non-criminal liability; and for engaging in active or passive bribery (or both) of or by foreign or domestic public officials (or both). To render it more complex, countries may have exceptions for certain categories of SOEs or representatives. These subjects are explored below.

2.2.1. Liability of individuals within SOEs

The ACI Guidelines built on the OECD Anti-Bribery Convention by calling on Adherents to take "the measures necessary to establish that applicable laws criminalising bribery of public officials apply equally to the representatives of SOE governance bodies, management and employees where these are legally considered as public officials" (II.4.i). This pushes states towards applying not only foreign bribery laws (as provided for in the Convention) but also domestic bribery laws to SOEs. This provision aims at addressing consistent concerns raised by the Working Group on Bribery in International Business Transactions, which monitors the OECD Anti-Bribery Convention, about a lack of clarity in the application of anti-bribery legislation to SOEs, and the existence of carve-outs for SOEs in the framework that criminalises foreign bribery.

The Convention focuses on holding individuals and legal persons accountable for offering, promising, or giving bribes to foreign public officials – "the supply side of bribery". The recently-adopted 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (hereafter "Anti-Bribery Recommendation") also seeks to address the "demand side of bribery" – that is, receiving bribes – calling on parties to "raise awareness of bribe solicitation risks among relevant public officials, particularly those posted abroad, and the private sector, with particular attention to high-risk geographical and industrial sectors of operation". Some countries' existing legislation already requires public officials to report instances of solicitation, such as in Korea. This is rather important

for the SOE sector, given that the OECD 2014 Foreign Bribery Report found SOEs to be offered or given more bribes than any other public official.

Bribery of foreign public officials is now a crime in all 44 Parties to the Convention.[6] Based on the responses of participants in this thematic study, it appears that almost all countries apply these laws criminalising bribery (at least foreign bribery) to individual representatives of SOEs, predominantly because of the classification of individuals within SOEs as public officials (for instance in Chile, Colombia, Japan, Latvia, Lithuania, New Zealand, Spain, Sweden, Switzerland, and South Africa). They are either included in the definition of the public official itself, or explicitly listed as persons to which the provisions (articles) apply (OECD, 2020[3]).[7]

2.2.2. Liability of SOEs as legal persons

The Anti-Bribery Recommendation goes beyond holding individual SOE representatives liable and applies to SOEs as a whole – that is, as a 'legal person'.[8] Such a framework for corporate liability is a cornerstone of the Convention and the liability of legal persons has become a key feature of the emerging legal infrastructure for the global economy.

Specifically, the Anti-Bribery Recommendation asks signatories to "**ensure that SOEs can be held liable for the bribery of foreign public officials in international business transactions**".[9] Note that this does not require countries to hold SOEs *criminally* liable – as the Convention itself does not require countries to make legal persons criminally liable for foreign bribery where they are not otherwise subject to criminal liability.[10]

All countries participating in this thematic study are signatories to the Convention, except Croatia which, at the time of writing, had begun the accession process to become an OECD member country. Thus, all other countries herein have established liability of legal persons for foreign bribery as per the Convention. A way to meet the requirements of the more recent Anti-Bribery Recommendation and the ACI Guidelines – that is, to ensure SOEs are liable for foreign and domestic bribery – is to make SOEs liable as legal persons (LP) – whether criminally liable or not. Table 2.1 provides an overview of which countries apply the LP regime to SOEs, as well as provides insights on their liability for foreign bribery specifically. It demonstrates that the vast majority of countries assessed apply the LP regime to SOEs.

Table 2.1. Liability of state-owned enterprises as legal persons for foreign bribery

Country	Application of LP regime to SOEs	Observations about liability of LP for foreign bribery (based on selected quotes from phase monitoring reports of the OECD's Working Group on Bribery)	Legal basis for legal person liability for foreign bribery			
			General Criminal Law	Case Law	Other statute	Bribery-specific legislation
Argentina	•	The LP Llaw covers all relevant legal persons, including state-owned and state-controlled enterprises (Article 1 of Law 27 401)	◦	◦	•	◦
Australia	•	According to authorities, all corporate bodies should be covered, even if owned or controlled by State.	•	•	◦	◦
Austria	•	OECD's WGB found LP liability for entities with or without "legal personality", including "not-for-profit" and "public" entities. Public LPs not liable for acts in "exercise [of] state authority.	•	◦	•	◦
Belgium	•	Belgium's LP liability provisions apply to "public law legal persons", "private law legal persons" (e.g. "commercial companies and associations" and "certain entities that do not have legal personality but are assimilated to legal persons".	•	•	◦	◦
Brazil	•	Though LP law does not expressly cover SOEs, in 2016, Brazil	◦	◦	•	◦

Country	Application of LP regime to SOEs	Observations about liability of LP for foreign bribery (based on selected quotes from phase monitoring reports of the OECD's Working Group on Bribery)	Legal basis for legal person liability for foreign bribery			
			General Criminal Law	Case Law	Other statute	Bribery-specific legislation
		enacted an implementing Decree and several other legal texts in support of the LP law, which clarified application to SOEs (Phase 3 Follow-Up).				
Bulgaria	•	Bulgaria claims that "state-owned or controlled entities" can be held liable.	•	◦	•	◦
Canada	•	For purposes of the CFPOA, a "person" includes "Her Majesty and an organisation", while "organisation" is further defined as "a public body, body corporate, society, company, firm, partnership, trade union or municipality", or "an association of persons that (i) is created for a common purpose, (ii) has an operational structure, and (iii) holds itself out to the public as an association of persons". Section 2 of the Criminal Code (incorporated by reference in CFPOA section 2)	•	•	◦	•
Chile	•	Chile's LP law also applies to "State companies" and would also cover State-controlled "private companies".	•	◦	◦	◦
Colombia	•	Law 1 778 of 2016, which governs "administrative liability of legal persons" for the bribery of foreign public officials, permits the Superintendence of Companies to impose sanctions on "legal persons", including fines. Article 2(2) of Law 1 778 specifies that the law applies to "state-owned industrial and commercial enterprises" as well as "companies in which the State has a share" or "mixed private public ownership companies". Colombia confirms that non-profits can be sanctioned if they are "legal persons"; however, Law 1 778 does not apply to entities that lack legal personality.	◦	◦	•	◦
Czech Republic	•	LP liability law does not define "legal persons", but Civil Code provides that LP covers "associations of natural persons or legal persons or legal entities" as well as "other entities designated as such by law". WGB believed this was broad enough to cover "non-profit" entities as well. Finally, the LP liability law expressly provides that State ownership of shares "'does not preclude criminal liability'".	◦	◦	•	◦
Denmark	•	SOEs can be liable "for acts committed in the course of the performance of functions comparable to functions exercised by natural or legal persons." According to prosecutor guidelines, SOEs can be liable "when carrying out activities corresponding or similar to activities carried out by private individuals or companies".	•	◦	◦	◦
Estonia	•	All "companies founded in private interests are considered legal persons in private law". Estonia excludes State and local governments as well as "legal persons in public law", such as public libraries or radio, which "do not exist primarily to conduct economic activities". Authorities asserted that SOEs would be covered as they primarily "perform economic activities".	•	◦	◦	◦
Finland	•	Finnish law requires SOEs to "abide by the same norms" as other Finnish LPs, but public and private LPs are exempt from liability for "offences committed in the exercise of public authority".	•	◦	◦	◦
France	•	Article 121-1 PC applies to "all" LPs, "whether public or private, for profitable or non-profitable aims, French or foreign, with the exception of the State".	•	◦	◦	◦
Germany	•	Administrative offences apply to all LPs "based on private law", whether private or "state-owned or state controlled". WGB suspects also applies to entities "under public law".	•	◦	•	◦
Greece	•	Greece's law applies to any type of "legal persons" and covers	◦	◦	•	◦

Country	Application of LP regime to SOEs	Observations about liability of LP for foreign bribery (based on selected quotes from phase monitoring reports of the OECD's Working Group on Bribery)	Legal basis for legal person liability for foreign bribery			
			General Criminal Law	Case Law	Other statute	Bribery-specific legislation
		"State-owned and State-controlled enterprises". Non-profit entities are also "legal persons".				
Hungary	•	Hungarian authorities assert SOEs are covered because they are defined as "legal persons" and "function in accordance with the Civil Code".	•	◦	•	◦
Iceland	•	Icelandic authorities explain that SOE will be covered like any other "joint stock company or other enterprise", provided offence occurs in course of commercial operations.	•	◦	◦	•
Ireland	•	The term "bodies corporate" would cover "private, public or statutory companies".	◦	•	•	•
Israel	•	No legal barrier prevents "the prosecution of State-owned or State-controlled companies for criminal offences."	•	•	◦	◦
Italy	•	Public entities are subject to Decree 231/2001, unless not "enterprises", not engaged in for-profit activities, or performing public functions.	•	◦	•	◦
Japan	•	Japan explained that, so long as entities are "juridical persons", then "there are no restrictions on the types of companies" subject to liability, including "state owned or state-controlled" entities.	◦	◦	•	◦
Korea	•	Korea explained, with support from case law, that "no legal barrier to prosecuting … state-owned or state controlled" LPs.	•	•	◦	•
Latvia	•	Law covers "partnerships", "private law legal persons" and "State or municipal capital companies".	•	◦	•	◦
Lithuania	•	State and municipal enterprises, as well as public entities whose owner or shareholder is the State or municipality, and joint-stock and closed joint-stock companies, all or part of whose shares are owned by the State or municipality can be held criminally liable (Article 20 para. 6 of the Criminal Code).	•	◦	◦	◦
Luxembourg	•	OECD WGB found LP liability applied broadly to "all legal persons, including those incorporated under public law", except for "the State and municipalities". Phase 3 para. 29; see also Phase 3 para. 54 ("a legal person is an entity effectively endowed with legal personality by virtue of a law").	•	◦	◦	◦
Mexico	◦	OECD WGB has found that Mexico cannot impose liability on state-owned or state-controlled enterprises".	•	◦	•	•
Netherlands	•	Under Dutch civil law, "legal persons" include "all kinds of corporations hav[ing] legal personality" as well as "religious associations", "companies limited by shares", "limited liability" companies, and "foundations". Phase 2 para. 198. Further, the "Dutch authorities confirm that state-controlled and state-owned companies are covered".	•	•	◦	◦
New Zealand	•	Given New Zealand's law, the foreign bribery offence presumably would apply to any "incorporated" or "unincorporated" entity, whether state-owned enterprise or non-profit.	•	•	◦	◦
Norway	•	Penal Code applies to an "enterprise" including "a company, society or other association, one-man enterprise, foundation, estate or public activity". While SOEs and non-profits not expressly covered, they could be captured by the terms "company", "society" or "association".	•	◦	◦	◦
Poland	•	The law covers "state-owned and – controlled entities and organisations"	•	◦	•	◦
Portugal	•	Portuguese law covers expressly SOEs and all other legal persons, excluding, however, those "acting in the exercise of	•	◦	◦	•

Country	Application of LP regime to SOEs	Observations about liability of LP for foreign bribery (based on selected quotes from phase monitoring reports of the OECD's Working Group on Bribery)	Legal basis for legal person liability for foreign bribery			
			General Criminal Law	Case Law	Other statute	Bribery-specific legislation
		public power prerogatives".				
Slovak Republic	•	The Act expressly excludes certain legal persons from criminal liability, including "the Slovak Republic and its authorities" as well as "legal persons which … were established by operation of law". Section 5(1). However, it also specifies that an "[o]wnership interest" held by the State or another excluded entity "does not exclude criminal liability" of the legal person owned by the excluded entity. Section 5(2). In addition, the OECD Secretariat has searched the Slovak register of commercial entities for 7 the Slovak SOEs and confirms that all 7 were on the register.	•	◦	•	◦
Slovenia	•	According to authorities, SOEs are not considered part of the "Republic of Slovenia" and thus can be held liable.	•	◦	•	◦
South Africa	•	South African authorities assert that SOEs can be held liable. However, given lack of case law, WGB decided to follow-up the application of the law in practice.	•	•	•	•
Spain	•	At time of Phase 3, certain LPs are excluded from liability, such as "commercial public entities" and "public companies … providing services of general economic interest". Phase 3 para. 44. However, by Phase 3 Follow-up, Spain anticipated enactment of legal reforms.	•	◦	◦	◦
Sweden	•	"According to the Swedish authorities, 'entrepreneur' is a general term that is used in different statutes. The uncodified definition of the term is 'any natural or legal person that professionally runs a business of an economic nature'. They add that the term covers state owned and municipal trading companies."	•	◦	◦	◦
Switzerland	•	Swiss law covers "private law legal persons", "companies", "sole proprietorships" and "public law legal persons except for territorial corporations". Phase 3 para. 27. According to officials, this would cover "public law companies".	•	◦	◦	◦
Türkiye	◦	Turkish LP liability provision applies to a "civil legal person". WGB had "serious doubts" whether this would cover state-owned or state-controlled enterprises, as this term would exclude any company in which "State owns more than 50% of the shares".	•	◦	•	◦
United Kingdom	•	According to UK officials, "state-owned or controlled bodies" would also be considered "relevant commercial organisations" for purposes of Section 7.	◦	•	◦	•
United States	•	All US "state-owned and state-controlled companies are subject to criminal responsibility", if domestic concern.	◦	•	◦	•

Note: the information presented here is about liability of legal person (in this case, SOEs) for foreign bribery. It derives from OECD (2016[4]), *Liability of Legal Persons for Foreign Bribery: A Stocktaking Report (2016)*, which is based on the experience and knowledge of the OECD's Working Group on Bribery and its monitoring reviews of Parties to the Convention. Where relevant, the table has been updated to include more recent information from the Working Group on Bribery monitoring reviews and responses to the 2021 Questionnaire.

2.2.3. Exemptions and enforcement concerns

Table 2.1 suggests that SOEs are generally liable for foreign bribery offences as legal persons that may come in addition to the criminal liability of individuals within SOEs considered as public officials.

However, there may be exceptions for certain types of offences or the circumstances under which those offences are carried out. Exceptions might be applied for certain individuals within SOEs or for categories of SOEs. While often justified, the state owner and SOEs should be aware of exemptions and the risks that they may present (opaque loopholes). Exceptions may depend on how a country defines public official, legal persons, or state-owned enterprise, as well as the SOE level of incorporation, the share of state ownership or the presence of public policy (vs. commercial) objectives.

- In **Spain**, certain offences will only apply to certain types of public officials. In **France**, certain offences in the Penal Code target and apply only to specific persons "holding public authority, entrusted with a public service mission (commonly called "public officials") or vested with a public elective mandate".
- Exemptions could take the form of excluding particular types of illicit activities from the penal code. **New Zealand**'s Crimes Act[11] presently contains exclusions for facilitation payments (small, routine, payments for the purpose of expediting government processes) and payments that were not at the time an offence in the relevant country (with the defendant having the burden of proving this). **Switzerland**'s Criminal Code allows for two exemptions to its criminal provisions by exempting two acts from being classified as "undue advantages": a) advantages permitted under public employment law or contractually approved by a third party; b) negligible advantages that are common social practice.[12]
- Exemptions can be found in other pieces of legislation – including in SOE-specific or statutory legislation. In **Mexico**, where Article 29 of the Federal Electricity Commission Law and Article 30 of Law of Mexican Petroleum establishes that the members of the Board of Directors are not subject to administrative responsibility (the Law on General Administrative Responsibility establishes bribery as a crime). Nonetheless, the directors can be responsible for damages that may be caused to the SOEs, derived from acts, facts or omissions they incur, or damages that may be caused by the violation of their obligations, in accordance with Article 31 of Petroleos Mexicanos Law and 30 of the Federal Electricity Commission Law.

Exceptions for SOEs may not only be made in law but in their enforcement. As of 2020, 19 out of 44 Parties to the Convention had yet to conclude a foreign bribery enforcement action (OECD, 2020[5]). A lack of enforcement may be especially concerning when considering that the cases of foreign bribery concluded in 1999-2014 involved more SOE representatives than any other public official.[13]

Moreover, with SOEs being often important for national economic interest, or having connections to natural or legal persons that may be in a position to exert undue influence, the state shareholder may have disincentives to hold SOEs to account where it could negatively impact its political interests at stake. It is for this reason that the ACI Guidelines mirrors Article 5 of the Convention, by stating that: "**Investigation and prosecution of cases of corruption or related unlawful acts involving SOEs should not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved**" (V.8.2). While establishing and applying anti-bribery legislation to SOEs is a critical first step, its enforcement is paramount to improving integrity in the state-owned sector.

2.2.4. Considering the use of SOEs as conduits for bribery

The ACI Guidelines is also the first international standard to explicitly encourage states to take "**the measures necessary to prohibit the use of SOEs *as vehicles* to engage in bribery of foreign and domestic public officials**" (II.4.ii). Note that this latter provision focuses not only on criminalising the behaviour of SOE officials or high-level representatives within SOEs internal corporate structures, but those seeking to exploit SOEs.

While most participating countries have measures in place to apply anti-bribery legislation to SOEs or individuals within SOEs, there are no reported cases where legislation explicitly prohibits *the use of* SOEs for bribery for the benefit of another. In the latter scenario, SOEs would be considered a victim to the abuse of power by public or political officials outside of the company. However, there are provisions in anti-bribery legislation that might help in this regard:

- In **Japan**, it is a crime for engaging in bribery "for Exertion of Influence" (Article 197-4a). In this case, a public officer can be punished for accepting, soliciting, or promising to accept a bribe as a reward for influencing, or agreeing to influence, another public official to cause them to act illegally or refrain from official duties, following a request from another individual". In this case an individual can be found guilty of accepting a bribe to influence an SOE official, where the latter is considered to be a public official. Or, similarly, an SOE official considered as a public official can be punished for accepting to unduly influence another public official.
- Multiple countries establish punishable offences when bribes are offered or given on behalf of a third person. For instance, **New Zealand**'s Crimes Act of 1961 provides that "every official is liable to imprisonment for a term not exceeding seven years who, whether within New Zealand or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by him or her in his or her official capacity" (Section 105: Corruption and bribery of officials). In **Lithuania**, "whoever, directly or through an intermediary, accepts, requests, or accepts the promise of a bribe, for themselves or another person to act or refrain from acting in such a way that violates obligations arising from their employment, occupation, position or function, shall be punished by a prison sentence of two to five years (Section 328, Penal Code). In **South Africa**, the Constitution prohibits bribery for the "benefit of that public officer or for the benefit of another person".
- SOE representatives, whether or not considered as a public official depending on the country, can be liable (criminally or otherwise) for accepting or offering bribes on behalf of a third party (for instance, a politician). On the other hand, public officials outside of SOEs can be liable for accepting or offering bribes on behalf of SOE representatives.
- Other supporting instruments and legislation may also provide disincentives for using bribes to exploit SOEs. **Latvia**'s *Law on Prevention of Conflict of Interest in Activities of Public Officials* considers state-owned and state-controlled enterprises as public entities and their corporate executives and board members as public officials. It envisages punishments for accepting a bribe, being an intermediary and giving or offering or promising of bribes.

2.3. Taking measures to prohibit the use of SOEs as vehicles for political party financing

The ACI Guidelines recommend "taking the measures necessary to prohibit use of SOEs as vehicles for financing political activities and for making political campaign contributions" (II.4.iii). As suggested in the ACI Guidelines' Implementation Guide, such provisions can be and are introduced into political party financing laws, electoral codes and other electoral legislation, and can be included in the laws governing SOEs. Advanced practice sees states encouraging SOEs to introduce such provisions in their Codes of Ethics or other similar documents. The state may go further towards some countries' good practice of stating that SOEs should not be used for any purpose related to political parties in the ownership policy, anti-corruption policy documents or strategies (OECD, 2020[3]).

Table 2.2. Limitations on political financing by SOEs

Country bans for partially-owned SOEs (2020) and on the legislation without reference to a specific type of SOE (2021-22)

Country	**Partially-owned SOEs**		References to legislation for **all SOEs**
	Ban for donations to political parties	Ban for donations to candidates	
Argentina	Yes	Not available	There is no specific legislation on party financing in companies with state participation. However, Law No. 26 215 on Financing of Political Parties seeks ways to obtain resources, which do not include funds from state-owned companies.
Brazil	Yes	Yes	In the Direct Unconstitutionality Action trial nº 4.650/DF, the Supreme Court, judged as unconstitutional the legal provisions that authorised the donations done by companies to electoral campaigns.
Chile	Yes	Yes	Decree with force of a law (D.F.L.) No. 3 of 2017, which establishes the text of Law No. 19.884, Article 26. Nevertheless, the provisions of Title V of Law No. 18.603, as well as in paragraph 2 of this title, the pre-candidates, candidates and political parties may not receive, directly or indirectly, electoral campaign contributions from State bodies, from SOEs, nor from those in which the State, its companies, or institutions have participation.
Colombia	Yes	Yes	Law 1 778 of 2016, Article 33: "Legal entities who have financed political campaigns for the Presidency of the Republic, for governor, for mayors or to the Congress, with contributions greater than 2% of the maximum sums to be invested by the candidates in the electoral campaigns in each electoral district, who will not be able to enter into contracts with public entities, including decentralised entities, of the respective administrative level for the which candidate was chosen".
Croatia	Yes	Yes	Pursuant to Article 46 of the Act on the Financing of Political Activities, Election Campaigns and Referendums (OG 29/19 and 98/18), the financing of political parties, independent representatives, independent councillors, independent lists or lists of groups of voters and candidates from, inter alia, state bodies, public enterprises, legal entities with public authority, companies and other legal entities in which the Republic of Croatia, according to the State Property Register, has more than 5% of shares or public enterprises, legal entities with public authority, commercial companies and other legal entities in which the self-government unit has more than 5% of shares or stakes and public and other institutions founded by the Republic of Croatia or a self-government unit or owned by the Republic of Croatia or a self-government unit
Czech Republic	Yes	Yes	Act 424/1991 on Associations in Political Parties and Political Movements.
Estonia	Yes	Yes	State Assets Act § 88 section 1 Article 11 and section 2 are regulating allowed sponsorship Anti-Corruption Act Money Laundering and Terrorist Financing Prevention Act – politically exposed person § 9'1 section 2 Article 9: Political Parties Act – donation prohibition § 12'3 section 2 Article 2:
Finland	Yes	Yes	Limited liability company law requires the Share Holder Meeting to approve and decide about all the donations the limited liability company does. All the SOEs are limited liability companies in Finland.
France	Yes	Yes	Article L. 52-8 of the Electoral Code prohibits legal persons (with the exception of political parties or groups) from participating in the financing of a candidate's electoral campaign. This prohibition applies to both private and public companies.
Greece	Yes	Yes	Articles 5 & 7 of PD 15/2022 (FEK 39/A'/1-3-2022) Political Parties Financing
Hungary	Yes	Yes	Act XXXIII of 1989 on the Operation and Financial Management of Political Parties declares clearly in Section 4 subsection (2): Legal persons and unincorporated business associations are not allowed to make any financial contribution to political parties, and political parties shall not be authorised to accept any financial contribution from legal persons and unincorporated business associations.
Japan	Yes	Yes	The Political Funds Control Act, 1948 (as amended by Act No. 135 of 2007) prohibits companies that "receive entire or partial capital investment or donation from the state" from contributing political donations (Art. 21-3.2). Corporations (as well as trade unions, employee organisations and other organisations) "shall not contribute to a person other than political parties and political fund organisation" (Art. 21-3.2).
Korea	Yes	Yes	There are no legal provisions to prevent SOEs engaging in or being used for financing political activities or making political campaign contributions, but there is a Supreme Court ruling that SOEs employees, like public officials, cannot engage in election activities by maintaining political neutrality. A public official cannot engage in political acts such as supporting or opposing a specific party or political organisation or a specific

Country	Partially-owned SOEs		References to legislation for all SOEs
	Ban for donations to political parties	Ban for donations to candidates	
			person with money or material for political purposes pursuant to Articles 3, 22, 65 of the State Public Officials Act, and 27 of the State Public Officials Service Regulations
Latvia	Yes	Yes	Law on Prevention of Squandering of the Financial Resources and Property of a Public Person states that SOEs can donate (financial means or its assets) only for activities related with promotion of culture, art, science, education, sport, environment, or health protection or social assistance.
Lithuania	Yes	Yes	Republic of Lithuania Law on Funding of, and Control over Funding of, Political Campaigns.
Mexico	Yes	Yes	The Mexican legal system prohibits the use of public resources of state-owned enterprises to finance political activities or carry out political campaigns, by general rules applicable to all the federal administration (Constitution, Art. 190; General Law on Electoral Crimes, Art. 11; Administrative Responsibility Art. 73; Federal Penal Code, Art. 222-3, 401-3; General Law of Electoral Institutions and Procedures; Federal Electricity Commission Law; Petroleos Mexicanos Law).
Netherlands	No	No	The Political Parties Financing Act, 2013 (amended 2019) allows for all political parties and candidates to receive unlimited contributions from private individuals and legal entities.
New Zealand	No	No	There is not specific legislation for SOEs, however they are covered by the wider legislation: Official Information Act 1982; The Crimes Act 1961; The Secret Commissions Act 1910 Guidance for Ministers and government departments - Guidelines for Government Advertising approved by Cabinet and issued on 20 November 1989 - Cabinet Office Circular: CO (20) 1 – Government Decisions and Actions in the Pre-Election Period
Norway	Yes	Yes	Norwegian Code regarding political parties (code-2005-06-17-102) § 17a (2) Political parties and their parts may not receive any contributions in any kind from legal subjects that are under the state or other public authorities' control. This includes SOEs.
Slovak Republic	Yes	Yes	Constitutional Act No. 357/2004 Coll. on the Protection of Public Interest in the Performance of offices – Article 2, Article 6
South Africa	Yes	No	The Political Party Funding Act (PPFA), 2018 states that "Political parties may not accept a donation from any of the following sources: (...) (d) state-owned enterprises" (Art. 8 (1)). 10. (1) No person or entity may deliver a donation to a member of a political party other than for party political purposes (Art. 10 (1)). Independent candidates are currently exempt from the Political Party Funding Act and its regulations.
Spain	Yes	No	The present legislation covers "contribution to the electoral accounts of funds from any Administration or Public Corporation, Autonomous Organization or Parastatal Entity, from public sector companies whose ownership corresponds to the State, the Autonomous Communities, the Provinces or the Municipalities and of the mixed economy companies, as well as of the companies that, by means of a current contract, provide services or carry out supplies or works for any of the Public Administrations" (Organic Law 5/1985, of 19 June, on the General Electoral Regime, Article 128).. It does not cover contributions to individuals.
Sweden	No	No	Swedish Companies Act (Sw: Aktiebolagslag (2005:551)) Act (2018: 90) on transparency in the financing of parties (Sw: Lag (2018:90) om insyn i finansiering av partier).
Switzerland	No	No	Transparency of financing of political campaigns is regulated since 18 June 2021, in Art. 76c LDP (Loi fédérale sur les droits politiques). Above a limit of CHF 50 000, financing of election and voting campaigns must be disclosed. However, this rule is not specifically for SOEs, and the effective date has not yet been determined.
Türkiye	Yes	Yes	According to 18th article of DL. 399, which aims to regulate the personnel regime of the SOEs, the personnel of the enterprise and affiliates shall not be engaged in political activities or become a member to political parties.
Totals	**21 / 25**	**18 / 24**	

Source: Data the first and second columns come from IDEA (International Institute for Democracy and Electoral Assistance (IDEA), n.d.[6]) Political Finance Database, http://www.idea.int/political-finance/ (accessed on 24 February 2022); information in column three comes from 2021 Questionnaire responses.

Table 2.2 shows which countries participating in the study have banned donations by *partially-owned* SOEs to both political parties (84%) and candidates (75%) (International Institute for Democracy and Electoral Assistance (IDEA), n.d.[6]). The table also shares country responses to the OECD questionnaire,

providing details on relevant legislation and, in some cases, specific references in legislation to SOEs. Limitations on political party financing by all SOEs, without distinction between degrees of ownership, are less clear. More work needs to be undertaken to understand how political financing limitations apply to all SOEs, but the initial findings suggest that there may be different rules for different corporate forms and state holdings (specifications were not requested from respondent countries).

In addition to the legislation cited above, there are other policies and rules that work to uphold the country's legislative approach towards SOE funding of political parties. These include Codes of Ethics (**Mexico**), ownership policies (**Norway**) and issued instructions from control bodies of the public sector (**Chile**), or reference in SOE corporate bylaws. In the **Czech Republic**, annual reports of joint-stock companies include a statement on the audit of political party financing. Countries that tend to take a more arms-length approach to ownership highlighted the role of the board in ensuring compliance with relevant legislation.

In some cases, the legislation will target SOEs as potential providers or donors, while in others the onus will be placed on the candidate or politician to refuse contributions from SOEs. In some cases, contributions are allowed, subject to regulations that, for instance, limit a politician from entering into a contract with a corporate contributor for a period of time thereafter.

It is an important first step to establish limitations on political party funding, or to go further yet in establishing a ban, to reduce the risk that SOE resources are exploited to finance political activities or campaign contributions. However, the risk of override or violation of rules remains. While no country reported there being any exemptions to the relevant legislation, there can still be opportunities for contributions to be made that facilitate and obscure SOE relations with political parties. For instance, some countries allow indirect benefits of funding, such as providing free airtime on state-owned radio, providing space for campaign materials or meetings, or subsidising postage cost among others. Indeed, one country reported that SOEs are not allowed to finance political parties but can make contributions to political events. Attention should be paid to other in-kind benefits that SOEs could offer and, otherwise, that checks, and balances and legal enforcement are key (OECD, 2016[7]).

Contributions may also be ruled upon on a case-by-case basis. **Switzerland** reported: "According to the case law of the Federal Supreme Court, companies which – irrespective of their organisational form – are directly or indirectly under the determining influence of a community are in principle obliged to political neutrality. However, an opinion in the run-up to a vote is permissible in individual cases if a company is particularly affected by the vote, namely in the implementation of its legal or statutory mandate and is affected in its economic interests in a similar way to a private party. In such cases, the company may in principle make use of the information media otherwise used in the voting campaign, but it must in any case exercise a certain degree of restraint. It must represent its interests in an objective and factual manner and may not use any means that are frowned upon or reprehensible. This also includes not interfering in the referendum campaign with disproportionate use of public funds (e.g. funds generated by exploiting legal or de facto monopolies and compulsory tariffs) Cf. BGE 145 I 1 E. 7 and 8 (only in German)".

The subject of political financing is often closely linked to the risk of patronage in SOEs, whereby board or management positions are used as rewards for political loyalty or to reap the promise of future gains by the politician that put them in place. The next section explores how countries are using the legal and regulatory framework to prohibit patronage in SOE decision making bodies.

2.4. Taking measures to prevent patronage in SOEs

Patronage, in the context of SOEs, is the act whereby those in a position of power (whether at the state or SOE level) bypass or ignore formal processes, requisite qualifications, or limitations on their personal or state power to nominate or appoint members of SOE boards or executive management. Patronage can manifest as, or be a reflection of, nepotism, cronyism or favouritism in appointments.

Many of the provisions of the ACI Guidelines seek to prevent patronage – including those related to nominations and appointments that are covered later in this report (Chapter 3). The OECD's standards posit that reducing patronage are critical for improving integrity in SOEs insofar as it can reduce the politicisation or manipulation of decision-making bodies in SOEs, where oftentimes SOE positions are used as reward for political allegiance or to secure the promise of future illicit gains (e.g. placing an insider in the company to divert profits to the person who placed them there).

Countries may criminalise or make punishable the act of patronage by classifying it as one of the intended benefits of a bribe. Since patronage can involve in-kind favours, 'payments' or rewards, many countries' anti-bribery rules will apply in this case too. In other words, it can be a punishable offence to offer, accept, solicit or agree to accept a bribe in return for a position within an SOE.

Aside from such restrictions, it appears that patronage itself is not cited in legal frameworks. Patronage is instead tackled through a series of provisions across the legal and regulatory framework. Countries cited reference to a slate of rules, including state assets and companies acts, commercial codes and civil codes, whistle blower protection laws and of course criminal codes. They may be supported by Codes of Conduct or Ethics, such as in **Sweden**. Patronage appears to be targeted primarily through regulations on board nominations processes and, to a lesser extent, nomination, and appointment of executive management. These include incompatibilities for candidates to the board, terms for dismissal or penalties for abuse of authority of board members, penalties for violations of an ownership policy or duty of loyalty of public employees.

2.5. Final commentary on the implementation of select provisions of the ACI Guidelines

Box 2.1. ACI Guidelines provisions: a legal framework that helps to prevent the abuse of SOEs for personal or political gain

II.4. [The state should take] appropriate steps… to prevent the abuse of SOEs for personal or political gain, including by:

1. Taking the measures necessary to establish that applicable laws criminalising bribery of public officials apply equally to the representatives of SOE governance bodies, management and employees where these are legally considered as public officials.
2. Taking the measures necessary to prohibit the use of SOEs as vehicles to engage in bribery of foreign and domestic public officials.

Taking the measures necessary to prohibit use of SOEs as vehicles for financing political activities and for making political campaign contributions.

2.5.1. Commentary on recommendation II.4.i and ii

Thanks to the power of the OECD Anti-Bribery Convention, all countries participating in this study have criminalised foreign bribery. As Parties to the Convention, except Croatia which, at the time of writing, had begun the accession process to become an OECD member country, all countries herein have established liability of legal persons for foreign bribery as per the Convention. The vast majority apply the liability of legal persons regime to SOEs. It should follow then, that virtually all countries in this report hold SOEs liable – criminally or otherwise – for foreign bribery.

Countries comply with the ACI Guidelines' II.4.i if they: (i) criminalise foreign as well as domestic bribery and apply it to SOE officials, while at the same time (ii) can hold SOEs liable as legal persons for foreign and domestic bribery (or other related offences as provided for in their legislation). In future assessments of the implementation of the ACI Guidelines, attention could be paid to any differences in SOE liability for engaging in bribery of domestic public officials.

However, there may be exceptions where certain SOEs or certain SOE representatives are not subject to the aforementioned measures. Loopholes commonly exist in legislation that might – on the one hand – make it difficult for SOEs to understand their responsibilities or – on the other hand – provide opportunity to exploit carve-outs in legislation. More work could be undertaken to understand how such carve-outs impact the overall accountability of SOEs for engaging in domestic or foreign bribery.

While the Convention focuses on offering, promising, or giving bribes to foreign public officials (supply), the adoption of the Anti-Bribery Recommendation brings promise to improving the overall integrity in SOEs, in that it calls SOEs to develop and adopt adequate internal controls, ethics and compliance programmes or measures, and countries to promote awareness of the risk of bribe solicitation, which should also force Parties of the Convention to place a greater focus on tackling SOEs as bribe recipients. Since these provisions of the Anti-Bribery Recommendation are new, future analysis can help to determine how they could work together towards strengthening the implementation of the ACI Guidelines recommendations II.4.i and ii.

However, countries are less clear on prohibiting the use of SOEs as vehicles for engaging in bribery or foreign or domestic public officials. Only a few allow for individuals to be held liable for engaging in bribery on behalf of or through a third party. This report calls on countries to pay closer attention to how individuals within their countries can be held accountable for exploiting SOEs for the purposes of bribery.

2.5.2. Commentary on recommendation II.4.iii

The ACI Guidelines call on countries to take measures to prohibit the financing of political parties. By one measure, most countries participating in the study have banned donations by at least *partially owned* SOEs to both political parties (84%) and candidates (75%). However, it is unclear how states regulate the contributions made by fully owned SOEs, as well as in-kind contributions. The results to the survey underpinning this report suggest that there may be different rules for different corporate forms and state holdings within a given country. Bodies responsible for upholding the relevant regulations vary, which can also disperse the accountability of SOEs in this regard. State owners may wish to clarify where carve-outs may exist for certain types of SOEs, while assessing whether the oversight of third parties (e.g. an electoral monitoring commission), is sufficient to provide the state owner assurance that the SOE's conduct is compliant.

References

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OECD (2014), *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, Paris, https://doi.org/10.1787/9789264226616-en. [2]

United Nations (2003), *United Nations Convention Against Corruption*, https://www.unodc.org/unodc/en/treaties/CAC/. [1]

Notes

[1] Countries rightly assigned responsibility for policy making and design of the legislative framework to the legislature. The justice branch was commonly attributed a main responsibility for enforcement and monitoring (and, as in **Norway**, for designing the criminal code), along with the courts system or other prosecution authorities, and/or the police (as cited in **Estonia**, **Norway** and the **Slovak Republic**). Control bodies of the public sector also play an important role – namely, Anti-Corruption bodies, Supreme Audit Institutions or Comptroller Generals (or similar control). As regards the implementation of specific political financing regulations – certain countries (**Croatia**, **Lithuania**, and **Mexico**) pointed to the importance of the electoral bodies or commissions, which has a specialised prosecutor for electoral crimes. In certain countries, those responsible for monitoring SOEs' finances have an important role to play in upholding laws created to insulate SOEs from abuse or exploitation. This includes Ministries of Finance, financial investigations or intelligence units (**Estonia**), financial markets or securities regulators and even banks when issues relate to SOE insolvency.

[2] In **Sweden**, the Swedish Anti-Corruption Institute (Sw: Institutet Mot Mutor "IMM") administers *the Code to prevent Corruption in Business* and Swedish Corporate and Governance Board (Sw: Kollegiet för svensk bolagsstyrning) administers *the Swedish Code of Corporate Governance*.

[3] Referring specifically to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the 2021 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions, which aims to support the implementation of the Convention.

[4] According to UNCAC, AUCPCC and IACAC.

[5] Countries cited, for instance: Law of Ethics in the Exercise of Public Function, Law on Fiscal Responsibility, Law on the Adjustment of Public and Private Interests in the Civil Service, Law on Prevention of Squandering of the Financial Resources and Property of a Public Persons, Anti-Corruption Laws and Protection of Public Interest in the Performance of Offices.

[6] The 44 Parties to the Convention include all 38 member countries of the OECD as well as six others: Argentina, Brazil, Bulgaria, Peru, Russian Federation and South Africa.

[7] This list is not exhaustive and is based on self-reporting by countries.

[8] A legal person is also known as a juridical entity that the law recognises as having rights and obligations separate from their members or owners (OECD, 2016[4]).

[9] See Anti-Bribery Recommendation, Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Annex I), sub-section on "Article 2 of the OECD Anti-Bribery Convention: Responsibility of Legal Persons" (B).

[10] The Convention does not require Parties to establish criminal liability of legal persons for foreign bribery when "under the legal system of a Party, criminal responsibility is not applicable to legal persons" (commentaries to the Anti-Bribery Convention, comment 20; see also Anti-Bribery Convention, art. 3).

[11] Crimes Act 1961, section 105: Corruption and bribery of officials: Exceptions.

[12] According to art. 322decies al. 2 Swiss Criminal Code.

[13] The OECD 2014 Foreign Bribery Report found that 27% of all foreign bribes were offered, promised or given to state-owned enterprise representatives, surpassing the category of recipients being customs officials (11%).

3 Protecting state ownership entities' integrity and decision making

The ACI Guidelines promote active and informed ownership, whereby the state owner fulfils its core responsibilities. Primary among those is promoting transparency around objectives and the objective-setting process, in part to make it harder for illicit interests to change SOE directions at will. In addition, the state has a role in ensuring that nominations to SOE boards are merit-based and professional, which helps to limit the likelihood of patronage, nepotism, and cronyism in appointments. This chapter focuses on national practices in protecting state ownership entities' integrity and decision making that can help to mitigate the risk of undue influence in SOEs.

The ownership entity, responsible for exercising ownership on behalf of the state, acts as the state's main point of contact with the SOEs.[1] The ownership entity is assigned key roles and responsibilities that are integral to the well-functioning of SOEs under their portfolios. Citizens as the ultimate owner of SOEs should have assurance that the ownership entity and its employees serve as an example of integrity and, at a minimum, do not act as a conduit for political interest that extends beyond their ownership activities or for political interference in the companies they oversee. The same applies to any state representatives, whether from the ownership entity or other, sitting on the boards of SOEs. This is not only about adherence to the rule of law, but about a culture of integrity. This requires that state officials are sufficiently aware of their responsibilities, including responsibilities for integrity, and are able to discern when fellow representatives of state are not adhering to them or have been stripped of them. The ACI Guidelines establish provisions that can help to protect the integrity and decision-making of state ownership entities. Primary among those covered in the following sub-sections:

- First, the ownership function should be set up in a way that facilitates integrity in the SOE sector. Good practice holds that adherents centralise the ownership function, or as a second option ensure that entities exercising ownership have appropriate walls from regulatory or other functions.
- Second, ownership representatives should have the tools to adhere to high standards of conduct, including to manage conflicts of interest at the ownership level and reporting channels.[2]
- Third, responsibilities of the ownership entity should be clear, and it should have the capacity and autonomy to fulfil its mandate with limited opportunity for illicit influence in their key decisions. There are two activities of the state ownership entity that are particularly susceptible to undue interference, which, when done well, help to reduce the risk of irregular instructions misaligned with pre-determined objectives, as well as to reduce the risk of patronage in SOEs:

  (i) objectives setting and monitoring

  (ii) nomination of boards and appointments of executive management.

3.1. Separating ownership from other government functions

It is good practice for ownership functions to be separate from state regulatory functions that affect the operations of SOEs and the markets in which they operate. Separation helps to avoid situations which give rise to conflicts between government functions – for instance, when government ministries held accountable for the financial performance of SOEs are at the same time responsible for setting the tariffs of these enterprises.

The SOE Guidelines have been a driving force in encouraging countries to work towards separating state functions – now making it core to what is considered internationally as appropriate for the state's ownership and governance arrangements. The ACI Guidelines echo the call, in stating that "**Ownership arrangements should be conducive to integrity, which implies separating ownership from other government functions to minimise conflict of interest, and opportunities for political intervention (non-strategic or operational in nature) and other undue influence by the state, serving politicians or politically-connected third parties in SOEs. Where ownership functions are vested in ministries with other functions related to SOEs, adequate measures should be taken to separate the two (II.5.ii)**".

An efficient way (though not the only way) of ensuring the separation of the exercise of the ownership function from other potentially conflicting activities performed by the state is to centralise the ownership function. Full centralisation is likely to automatically achieve separation of functions, as there is little chance that a government committed to such a reform would pick an ownership agency that holds strong regulatory powers. A possible exception is when such powers are vested in the Ministry of Finance that, in a significant number of countries, combine ownership of financial institutions with elements of market regulation.

Table 3.1 provides an overview of the degree of centralisation of various ownership models in 54 jurisdictions. OECD has gathered anecdotal evidence implying that most states have chosen to adopt a centralised ownership model (with or without exceptions) precisely because they wanted to achieve a separation between the state's ownership function and "regulatory functions", particularly with regard to market regulation such as anti-trust, as well as sectoral rulemaking and enforcement. In **Finland**, the key purpose in centralising ownership in the Prime Minister's Office was to form a unit independent from regulatory functions. In **France**, the role of the government Shareholding Agency is distinguished from a regulatory role carried out by independent authorities established by state or the EU. Within the EU, activities of these SOEs are controlled by competition law and broader European authorities. In **Chile**, its ownership entity, Public Enterprise System, does not exercise regulatory functions and all SOEs are under the regulatory oversight of the Superintendency of Securities and Insurance and of the Office of the Comptroller.

In the **Netherlands** – one of the specific goals of the centralised model is to "split ownership, policy/law making and supervising". In the new policy memorandum, the ownership sticks to this important pillar as it stimulates checks and balances. Commercial banks that were nationalised in the financial crisis are managed by an external ownership entity, to stimulate a pragmatic, non-political management, and a credible exit strategy. In the new policy memorandum, the COE at Ministry of Finance focuses more on the explicit arrangements with line ministries about the different controlling rights afforded to the COE.

Table 3.1. Types of ownership models in 52 jurisdictions

Model	Countries
Centralised model: One Government institution carries out the mission as shareholder in all companies and organisations controlled by the state (with or without exceptions). This institution can either be a specialised ownership agency or a designated government ministry. Financial targets, technical and operational issues, and the process of monitoring SOE performance are all conducted by the central body. Board members are appointed in different ways, but essential input comes from the central unit.	Austria, Chile, China, Colombia, Finland, France, Greece, Hungary, Iceland, Israel, Italy, Korea, the Netherlands, New Zealand, Norway, Peru, Russia, Slovenia, South Africa, Spain, Sweden
A co-ordinating agency/department with non-trivial powers over SOEs formally held by other ministries (and institutions). For example, a co-ordinating department or specialised unit acting in an advisory capacity to shareholding ministries on technical and operational issues, in addition to being responsible for performance monitoring.	Bulgaria, Costa Rica, Estonia, India, Ireland, Latvia, Lithuania, Morocco, Philippines, Poland, United Kingdom
Twin Track Model: Two different government institutions exclusively exercise ownership functions on their respective portfolios of SOEs.	Belgium, Türkiye
Separate Track Model: A small number of ownership agencies, holding companies, privatisation agencies or similar bodies owning portfolios of SOEs separately.	Kazakhstan, Malaysia
Dual ownership: Two ministries or other high-level public institutions jointly exercise the ownership. This would be the case where different aspects of the ownership functions are allocated to different ministers – e.g. one ministry is responsible for financial performance and another for operations, or each ministry appoints a part of the board of directors.	Australia, Brazil, Croatia, the Czech Republic, Indonesia, Romania, Switzerland
Dispersed ownership: a large number of government ministries or other high-level public institutions exercise ownership rights over SOEs (in the absence of a co-ordinating agency)	Argentina, Canada, Denmark, Germany, Japan, Mexico, Saudi Arabia, Tunisia, Ukraine

Source: OECD (2021[1]), Ownership and Governance of State-Owned Enterprises: a compendium of national practices, https://www.oecd.org/corporate/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices-2021.pdf.

The success of a centralised model in limiting undue influence in SOEs will depend importantly on the entity being sufficiently resourced and itself shielded from ad-hoc intervention and irregular practices. It moreover depends on the quality of overall public governance, the legal environment, the political importance assigned to the ownership function, adequate corporatisation of SOEs and competition and regulation in the marketplace. In jurisdictions with weak rule of law and risk of systemic corruption, concentrating corporate powers in a central agency can lead to risks of undue influence in the centralised entity (OECD, 2021[1]).

If ownership is decentralised – whether or not in the presence of a co-ordination agency – then the adequate separation of functions depends on whether the line ministries that also exercise market regulation (e.g. Transport; Energy) have a strong functional separation of their exercise of the different roles, or ideally have established autonomous regulatory bodies.

3.2. Protecting key decisions of ownership entities

The state should act as an informed and active owner, and one of its prime responsibilities is to establish "**well-structured, merit-based, and transparent board nomination processes (in fully or majority owned SOEs)**" (II.F.2) and to "**set and monitor the implementation of … objectives for SOEs**" (II.F.3). Interference in an otherwise professional and transparent nomination practice can lead to the undue politicisation of the board or management, and to patronage in SOEs. Unclear SOE objectives make it easier for inappropriate instructions, and any subsequent SOE actions and decisions, to go unnoticed.

A first step in protecting the decisions of ownership entities is to ensure that ownership responsibilities – and the decision that accompany them – are clear and that entities have the capacity to fulfil them. In **New Zealand**, the shareholding ministers of a State enterprise are responsible to the House of Representatives for the performance of their functions under the State-Owned Enterprises Act or the rules of the State enterprise. Ministers' powers are set out in the legislation setting up each type of company or entity, and also in the Companies Act 1993 for companies. Their duties include developing and communicating ownership policies and expectations, appointing, and removing directors or members and assessing board performance and taking necessary remedial steps if boards fail to perform in line with expectations. In **Argentina**, the Law of Ministries (No. 22 520) grants powers to different organisational levels of the National Public Sector to understand, intervene, co-ordinate, and execute policies related to majority or minority interests in companies in which the state is a shareholder. In other countries, the role of the state ownership entity is established in the ownership policy, and the mechanisms for ensuring compliance with the ownership policy should provide a degree of assurance on the correct fulfilment and delegation of roles. Box 1. elaborates on how **Norway** establishes the roles and responsibilities of the state owner (and boards) and reflects on its implications for the risk of undue influence in key decisions.

When decisions that fall under the state owner's responsibility are instead undertaken by others, there are a few options for its representatives to seek recourse. Countries' legislation allows for a range of approaches, from seeking to nullify or void a decision, to attempting to charge or take individuals to court. For instance, in **Hungary**, a decision normally owned by the ownership entity but undertaken by another can be challenged at court, which will declare the decision valid or invalid (Civil Code, Section 3:36).

The organisational structure and reporting lines of the state ownership entity can also be important. In the **Slovak Republic**, ownership autonomy is partly guaranteed by organisational structure of the line ministries whereby the shareholders' rights department has a direct command line to the minister. In other cases, the ownership entity representative can submit a complaint to their superior of the civil service. Where powers and tasks can be delegated, questions about validity of decisions taken by those external to the ownership entity would require an assessment about whether a task was first eligible for delegation and second delegated in an appropriate manner. Naturally, the accountability afforded by reporting lines relies on the overall integrity of the public sector and responsible ministers, elaborated upon by recommendation II of the ACI Guidelines, as well as the adherence to rule of law more broadly. In any case, it is good practice for the ownership entity to have access to reporting channels and concerns about suspected or real illegal or irregular practices that is external to their ministry, department, or office.

The overall accountability system naturally plays a role in ensuring that the state acts as an active and informed owner and that, at the same time, other representatives involved in ownership and governance are fulfilling their roles. In **Finland**, the government follows closely the tasks outlined in the State Ownership Policy and the media actively controls that the Policy is followed.

Based on the responses to country questionnaires, there is not much attention placed on the different channels or recourse that state owners can pursue if a decision is taken by an external or unauthorised party. Perhaps this is because ownership entities see it as unlikely to occur. Indeed, there were no cases reported to the OECD of this occurring. However, corruption cases suggest that interference in SOEs often sidesteps the ownership entity, with individuals of the state or political arena bypassing due procedures of the ownership entity. States could raise awareness to penalties for individuals overstepping their rights and interfering in the decisions of the state owner, which would be coupled with additional administrative or criminal penalties if relevant to the situation.

Box 3.1. Clarifying roles and responsibilities of the state owner and SOE boards, and considerations for undue influence: Norway

The legal framework for the state's exercise of ownership is first and foremost set out in the provisions of the Norwegian Constitution, and the division of roles between a company's owner and management as set out in company law. Pursuant to Article 19 of the Norwegian Constitution, the government administers the state's shares in private and public limited liability companies and ownership in other forms of incorporation such as state enterprises and special legislation companies. Pursuant to the Constitution Article 12 second paragraph, the administration of the ownership is delegated to various ministries. The minister administers the ownership under constitutional and parliamentary responsibility. Pursuant to Article 19, the minister must administer the state's ownership in companies in accordance with parliamentary resolutions concerning the individual company, general statutory provisions and other parliamentary resolutions. The provision expressly authorises the Norwegian Legislature [Storting] to instruct the government in matters pertaining to state ownership. Article 19 of the Constitution does not grant the minister authority to change the size of the state's ownership interest in a company, for example through the purchase or sale of shares, resolutions regarding or participation in capital increases or support for other transactions that change the state's ownership interest. Such actions must be based on a parliamentary resolution whereby the minister is granted authorisation for them.

The Storting has the authority to instruct the government in matters pertaining to state ownership but has no direct authority over the SOEs. Therefore, the SOEs would not be obliged to carry out any instructions issued by the Storting. Parliamentary resolutions concerning companies with a state ownership interest must be resolved by the company's general meeting in order to be legally binding on the company, unless the resolutions are set out in the law.

The legal basis for the minister's authority as owner in a limited liability company is Section 5-1 of the limited liability companies act which reads as follows: 'Through the general meeting, the shareholders exercise supreme authority in the company'. A corresponding provision applies to public limited liability companies, state enterprises and most special legislation companies.

The provision in Section 5-1 of the Limited Liability Companies Act means that the general meeting is superior to and may instruct the board. These instructions can be of a general nature or specific instructions on individual matters. In principle, the board is obliged to comply with such instructions. If the board disagrees with instructions and does not wish to comply, the alternative for the board members is to resign from their office.

The general meeting's authority to issue instructions is not unlimited, however. The board is not obliged to comply with instructions that conflict with the law or the company's articles of association. In companies with multiple shareholders, the board cannot be instructed to make decisions that violate the principle of equality or the common interest of the shareholders.

The state is cautious about instructing SOEs on individual matters. This is because it undermines the division of roles and responsibilities set out in company law. It must also be seen in conjunction with the fact that the company form is chosen to give the management freedom of action. Company law is based on the prerequisite of a relationship of trust between the shareholders and the company's board. If the shareholders instruct the board, it can be perceived as signalling a lack of trust in the board, and the consequence may be that board members resign from their office. Active use of instructions at the general meeting may also affect the minister's parliamentary and constitutional responsibility if the minister, through resolutions by the general meeting, makes decisions that normally rest with the company's board. This can potentially also give rise to liability in damages in relation to third parties.

Section 5-1 of the Limited Liability Companies Act also entails that the minister does not have authority in the company outside of the general meetings. Limited liability Companies and the other corporate forms used for companies with a state ownership interest are based on a clear division of roles between the company's owners, on the one hand, and the company's management, consisting of the board and the general manager, on the other. Pursuant to Sections 6-12 and 6-14 of the Limited Liability/Public Limited Liability Companies Act, and corresponding provisions in other company law, management of the company falls within the authority of the board and the general manager. This means that responsibility for managing the company rests with the board and the general manager. The board and the general manager shall manage the company based on the interests of the company and the owners and in line with the company's articles of association and other resolutions made by the general meeting.

Civil servants and senior officials employed in a ministry or in other central government administrative bodies that regularly considers matters of material importance to certain companies or industries are not eligible for election to the board of such companies.

The recourse for the ownership entity in cases where a company body should undertake decisions or responsibilities that should be taken by the ownership entity, must be read in light of the above. In cases where the company body has undertaken decisions or responsibilities that should be taken by the general meeting according to law that decision would in many cases be void and/or the state would in many cases have the right to compensation if such decision has led to a loss. In other cases, the ownership entity could take actions to remove the board of directors.

Source: Based on Norway's response to the 2021 Questionnaire.

3.2.1. Setting, monitoring, and changing SOE objectives

One of the main activities of an "active and informed" state owner is the development of broad mandates and objectives (financial and non-financial) for SOEs. Communicating clear, specific objectives (as opposed to only broader mandates) helps to avoid the situation where SOEs are given excessive autonomy in setting their own objectives or in defining the nature and extent of their public service obligations (SOE Guidelines, annotations). Opaque or altogether absent objectives can increase individuals' discretion and reduce SOE accountability, leaving 'room' for illicit intervention in SOE operations. One SOE-related corruption case showed how non-transparent changes to the SOE's objectives, motivated by private and political interests, spurred certain SOE representatives to engage in corrupt activity to compensate for the unexpected financial losses associated with the revised objectives.

While it may sometimes be necessary to review and subsequently modify an SOE's objectives, the state should "clearly specify SOE objectives and avoid redefining these objectives in a non-transparent manner. The state's broad mandates and objectives for SOEs should be revised only in cases where there has been a fundamental change of mission" (III.2). Setting objectives is a responsibility of the state owner as

per the SOE Guidelines, and the ACI Guidelines reiterate its importance to avoid change of operational direction for illicit purposes. Objectives should be clear from inception to avoid confusion later.

Countries take various approaches to setting and monitoring SOE objectives, which may be written down in a formal letter, in an annual management plan or agreement between the state and company. At least financial objectives are commonly used as criteria to evaluate SOE performance, and in certain cases are integrated into IT systems to allow for more precise monitoring.

- **Brazil**: the "SOE Statute" (Law 13.303/2016) requires SOEs' boards to publish an annual letter publicising its public policy objectives, and those of subsidiaries, in line with the objectives that were established to justify SOEs' creation. The letter must clearly specify the resources applied in the fulfilment of the objectives, as well as the economic and financial impacts of the pursuit of these objectives. The ownership co-ordination unit, SEST, makes available online a model Annual Letter, along with others documents and manuals to assist and support managers of SOEs.
- **Chile**: The annual objectives or goals of SEP companies are established through documents signed both by representatives of the SEP and the respective company. These objectives are included in the Annual Management Plan (PGA for its acronym in Spanish) in the case of port companies or in the Programming Agreements or Goal Agreements in other cases. In the case of the PGAs, the way to determine the goals, and their evaluation methods are established in a Ministry of Transport and Telecommunications decree. In the case of the Programming and Goal Agreements, the way to determine the goals and their evaluation methods are established in the Regulations for Business Agreements of the SEP. Compliance with the PGA is assessed by an external auditor, reported by the SEP, and approved by decree of the Ministry of Transport and Telecommunications, while compliance with the Programming Agreements is reported annually to Congress. PGAs and Programming Agreements are established by law, in the case of Goals Agreements are frequent practice.
- **Colombia**: Colombia's Directorate for SOE's at the Ministry of Finance has developed IT tools to interact with SOEs and monitor their performance. Firstly, the Ministry of Finance sets specific objectives for strategic and majority-owned companies that include financial goals, public policy impact, disclosure of information regarding international standards and the prevention of corruption. The objective-setting process is based on the Ministry's assessment of, inter alia, valuation and financial due diligence of SOEs, KPIs, SOE annual reports and corruption prevention plans. The objectives are conveyed to boards, which must include them in the strategic plans and follow-up indicators.
- **Lithuania**: The Ownership Guidelines set ultimate purpose of state ownership and define the overall rationales for state ownership. The Ownership guidelines: defines requirements regarding strategic planning and setting objectives at the enterprise level (ownership entities are required to produce Letters of Expectations for each SOE), sets the rules on profitability targets, mostly expressed as Return on equity ratios, provides cases for obligatory establishment of the boards (SOEs of public interest and (or) of strategic importance are required to set up the boards) and specialised committees when necessary and determines appointment of state representatives for state owned company's general meetings, among others.
- **United Kingdom**: Government departments affiliated with the relevant SOEs will develop clear objectives for the SOE, on an annual or multi-year basis, in accordance with the SOE's business-planning cycle, which shall dictate the SOE's strategy, operations and business plan. Government departments will also issue an annual Chair's letter to its affiliated SOEs setting out the strategic priorities of the department and UK Government Investments (performing a co-ordinating shareholder / ownership function for a portfolio of 22 SOEs) for the SOE for the coming year and how the Chair is expected to undertake these.

- **Spain**: Commercial and business objectives are always approved by each company individually with full decision-making autonomy. The objectives of every enterprise are defined in its own articles of association. The majority of SOEs have adopted commercial law and are required to operate in practice as a private company.
- **Switzerland**: The strategic objectives for the SOEs are a key instrument in the Confederation's ownership policy. The Federal Council adopts strategic objectives for each SOE every four years; only in the case of the economic and safety supervision units are the strategic objectives normally adopted by the supervisory body rather than the Federal Council. In these cases, the Federal Council has a right of approval. Every year, the Federal Council issues a report regarding the achievement of the strategic objectives of each SOEs. A detailed, non-public report is submitted to parliamentarian commissions; a short version of each report is made public.

There is less clarity and information about procedures for changing SOE objectives by either the SOE or the state owner. In **Korea**, whenever the management goals set up are changed, the head of institutions (SOEs) shall submit the details of the change to the Minister of Economy and Finance and the head of the competent agency without delay after finalising them through resolution by the board of directors. The Minister of Economy and Finance has the power to demand that the head of an SOE (a "public enterprise") change business goals upon consideration of the management environment, the economic situation, or the direction of national policies, among others. Other entities (competent agencies) may be able to demand changes to objectives of quasi-governmental institutions.

3.2.2. Fulfilling functions related to nominations and appointments of SOE boards

Another key role of an active and informed owner is "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" (SOE Guidelines). These well-structured, merit-based nomination processes will be facilitated if the ownership entity is given sole responsibility for organising the state's participation in the nomination process. Nominations should be informed by board recommendations, nominations committees where useful, or specialised commissions ('public boards') to oversee the nominations process. Proposed nominations should be disclosed prior to the annual shareholder's meeting (SOE Guidelines, II.F.2). Adherence to international good practice in this regard is one of the most impactful ways that the state can limit patronage, and undue influence, in SOEs.

Table 3.2 provides an overview of the involvement of state ownership entities in the nomination process of SOE board members. The OECD's Compendium published information about whether country processes of nomination (i) involve accreditation across government and (ii) involve the ownership entity. This report adds to that data to understand if ownership entities are involved in (iii) board member succession/rotation or interim appointments, and (iv) dismissal, based on country responses for this report.

Table 3.2. Roles of the state in board nominations, appointments, rotation, and dismissal

	i) Accreditation or vetting across government	ii) Ownership entity involved in board nomination (either directly or through representation at the general meeting of shareholders)	iii) Ownership entity involved in succession/rotation and/or making interim or temporary appointments	iv) Ownership entity involved in board dismissals
Argentina	◦	•	• (though SM)	• (though SM)
Brazil	•	•	◦ (Board role / state suggests policies)	• (though SM)

	i) Accreditation or vetting across government	ii) Ownership entity involved in board nomination (either directly or through representation at the general meeting of shareholders)	iii) Ownership entity involved in succession/rotation and/or making interim or temporary appointments	iv) Ownership entity involved in board dismissals
Chile	◦	•	•	•
Colombia	◦	•	◦ (Suggests policies for rotation and succession)	• (The Committee (MHCP) removes)
Croatia	◦	•	•	• (though SM)
Czech Republic	◦	•	◦ (according to company articles of association)	• State decides by specific decision signed by competent minister
Estonia	◦	•	•	• Competent minister has right to remove
Finland	◦	•	• Rules set by ownership steering department for SOEs to follow	• Case by case decision of owner
France	◦	•	• (though SM, confirm for succession not just nomination)	• (though SM)
Greece*	◦	•	•	•
Hungary	◦	•	•	•
Japan	◦	• (Line ministry approves)	NA	• (Line ministry approves)
Korea	◦	•	Not specified in law	•
Latvia	◦	•	•	•
Lithuania	•	•	• (though SM)	• (though SM for LLCs and full responsibility when a state enterprise)
Mexico	◦	•	•	•
Netherlands	◦	•	•	• (through SM)
New Zealand	•	•	• (shareholding ministers)	• (shareholding ministers)
Norway	◦	•	•	•
Slovak Republic	◦	•	•	• (minister authority, no reason required)
South Africa	◦	•	•	•
Spain	◦		• (though SM)	• (though SM)
Sweden	•	•	•	• (in the rare case the state calls an extraordinary general meeting to dismiss a board member before the one-year term is up)

	i) Accreditation or vetting across government	ii) Ownership entity involved in board nomination (either directly or through representation at the general meeting of shareholders)	iii) Ownership entity involved in succession/rotation and/or making interim or temporary appointments	iv) Ownership entity involved in board dismissals
Switzerland	○	●	● (final say on nominations and reappointments)	● (by Federal Council)
Türkiye	●	●	●	●

Note: ● = Yes; ○ = No. Blank fields indicate that information was unavailable at the time of writing. Gaps may be filled by delegates or through additional research for the next version of the report. *For Greece the positive (yes) responses refer to the involvement of the Ministry of Finance and line Ministry. For SOEs under the holding company (HCAP), board members are selected by HCAP, approved by supervisory board validated at SM.
Source: Combined responses from the OECD's Compendium (OECD, 2021[1]) (columns i-ii) and the 2021 Questionnaire responses (columns iii-iv).

In most countries, the state is involved in rotation or succession of board members – namely owing to their role in approval for reappointments of board terms, or in nominations of new board members when others' terms end. Some countries however limit involvement of rotation or succession by providing boards with guidance on how it should be handled at a company level (through legislation or policies). More work would need to be conducted to understand how states are involved, if at all, in the interim appointment of board members. Interim appointments can and have been used in some cases to intentionally insert unqualified or illegitimate members, taking advantage of reduced checks and balances that can accompany an often-fast-tracked interim process. It may also be the case that interim appointments can be made by those not normally authorised to make official appointments following due procedure.

In all countries herein, the state owner is involved in board dismissals. At a minimum, this involvement is limited to the state's representation at shareholder meetings if applicable. The state's involvement may also derive from the ownership entity's involvement in annual board evaluations when board members' extension is up for debate. In **Sweden**, board members' terms end after one year and can be extended with the input and approval of the state. In cases of termination prior to the end of the one-year term, the state would call an extraordinary shareholder meeting.

In all countries except Mexico, the ownership entity has a role in the nominations of SOE boards, in line with the SOE Guidelines recommendation II.F.2. In a handful of countries there is accreditation or validation elsewhere in government, which can take the form of Councils or Commissions. There may be additional mechanisms that can support the integrity of the nomination process, such as use of head-hunters, pre-established profiles, records of the appointment process on the compliance and adequacy of the candidate and even, as done in the **Slovak Republic**, conducting an interview in a public hearing format. To the extent that state ownership entities are responsible for the process, they might consider adding other such tools to protect the integrity of the processes and to limit the risk of individuals arresting otherwise professional nominations – without needing to compromise on autonomy, such as those used in the following countries:

- **Brazil**: the government body responsible for appointment is meant to provide an analysis regarding the compliance and adequacy of the candidate (Article 17, Law 13.303/2016).
- **Norway**: The Norwegian State's process relating to board election is described in its ownership policy (White Paper, Chapter 12.5). According to the Norwegian State's ten principles for good corporate governance, the state's main consideration for composition should be the relevant expertise of potential directors. Based on the expertise needed, the State also places emphasis on

the capacity and diversity of the board. One of the mechanisms to ensure compliance with this policy is that the ownership departments first establish which profile (including competence and experience) a board member should have. Thereafter the candidates are recruited based on the established profile. The ownership department has a dedicated board recruitment employee and use external recruitment (head-hunter) companies whose task it is to find suitable candidates according to the established ownership policy and competence profile.

- **Slovak Republic**: Nominations and appointments of SOE representatives is governed by government decree 159/2011 on selection rules, management, and remuneration of state representatives in the bodies of SOEs. Boards' nomination process requires open tender which is conducted by HR department of the ministry or supervisory board of the company. Ownership entity sets up the requirements and number of seats to be filled. The commission is composed of head of HR, head of shareholders' rights department and head of in matter department. Record of communications includes following tests results: legislation (Act No.513/1991 Coll. Commercial Code, in matter legislation e.g. Act No. 251/2012 Coll. on energy as amended and Act No. 250/2012 Coll. on Regulation in the Network Industries as amended; and, English language test during an interview. To ensure board diversity, the final creation of the board is up to the minister, thus the selection process ordering (sum of the points) is not strictly binding. Most recent nomination and appointment process to the Export – Import Bank of the Slovak Republic introduced a public hearing as an interview.

3.3. Giving the ownership entity tools to uphold integrity

OECD's previous work identified a lack of integrity in the public and political spheres as the number one challenge to SOE integrity (OECD, 2018[2]). Representatives of the state, including elected officials should be held to high standards of conduct, "**setting an example for conduct in SOEs and exhibiting integrity to the public as the ultimate owner**" (II.2).

State ownership entity representatives could be included in the list of public officials covered by national anti-corruption and integrity legislation. In this case, the full range of corruption-prevention measures and restrictions would apply to them. Some countries may choose to go beyond, putting on the list of positions exposed to heightened risks of corruption owing to their proximity to SOEs and the sensitivity of information they are privy to, and therefore making subject to more stringent anti-corruption requirements and controls.

According to the ACI Guidelines, state owners should be **"subject to conflict of interest rules that sufficiently address conflicts that may arise directly in the governance of particular SOEs or portfolios of SOEs, or that may arise as a result of activities conducted by the SOE or matters relating to the sector in which the SOE operates"** (II.2.ii). All countries participating in the study reported that representatives charged with exercising ownership on behalf of the state are subject to conflict of interest rules, except South Africa.

Conflict of interest is not *ipso facto* corruption but can be known to facilitate corruption when it is inadequately managed. As provided for in *Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service*, the goal is not to ban all private capacity interests of public officials, but to "maintain the integrity of official policy and administrative decisions, and of public management generally, recognising that an unresolved conflict of interest may result in abuse of public office". This can generally be achieved when public bodies: (i) implement relevant policy standards; (ii) have processes for identifying and dealing with emergent conflicts of interest; (iii) have appropriate external and internal accountability mechanisms; and (iv) management approaches that aim to ensure compliance (including sanctions) (OECD, 2003[3]).

New Zealand's Cabinet Manual establishes two useful classifications to better understand and regulate conflicts of interest of ministers (which have ultimate responsibility for the SOEs under their portfolio): (1) a

conflict of interest may be pecuniary (that is, arising from the minister's direct financial interests) or non-pecuniary (concerning, for example, a member of the minister's family) and (2) a conflict of interest may be direct or indirect. Ministers must consider all types of interest when assessing whether any of their personal interests may conflict with, or be perceived to conflict with, their ministerial responsibilities.

According to the ACI Guidelines, state owners should also **subject to provisions on handling sensitive information to mitigate risks of insider trading (II.2.iii).** All countries reported that representatives charged with exercising ownership on behalf of the state are subject to rules on handling sensitive information. In the **Netherlands**, price sensitive information about listed SOEs is only shared on a need-to-know basis. By law, the state may not undertake any share transactions when price sensitive information is known within the organisation. A price sensitive information check is done every time transactions are done. Memos about personal/sensitive information get a specific tag. There are directives for how to classify documents. For example, "departmental classified" or "state secret". Finally, the shareholding Ministry is also subject to the EU's General Data Protection Regulation. However, there were little details provided by other countries, suggesting that more work could be done to assess the adequacy of state owners' handling of sensitive information, which is important for avoiding manipulation and corruption.

Moreover, the ACI Guidelines require that "**those exercising ownership on behalf of the state should … have clear rules and procedures for reporting… those reporting concerns should be protected in law and in practice**" (II.2.iv). Typically, representatives of the ownership function have a reporting option within the public administration if not within their particular ministry, department or office. Countries might consider the following practices to this end:

- **Chile:** The Ethics Code covering representatives of the ownership entity (SEP) establishes investigation procedures for complaints. Anonymous complaints can be made through a form available on the SEP intranet that initiates an investigation procedure.
- **New Zealand:** Public service departments and agencies in the state services can seek advice and guidance from the Public Service Commission on matters relating to the integrity and conduct of employees within the state services. The Public Service Commission can advise on: (a) compliance with the principles of public service; and (b) the interpretation and application of the code of conduct for the state services, including advice on any particular cases of actual or potential conflict of interest.
- **Peru:** The Peruvian ownership entity (FONAFE) continues to implement the 'Gap Closure Plan' – updating the reporting hotline for anonymous complaints and facilitating access to this channel through various means, developing a complaints investigation procedure and deploying the crime-prevention model for bribery within the ownership entity.
- **Switzerland**: Article 22a of the Federal Personnel Act provides that all employees shall be obliged to report all crimes or misdemeanours to be prosecuted ex officio, which they have discovered in the course of their official duties, or which have been reported to them, to the criminal prosecution authorities, their superiors, or the Swiss Federal Audit Office (SFAO). Employees are entitled to report to the SFAO (e.g., via an online platform) other irregularities that they have discovered in the course of their official duties or that have been reported to them. Anyone who reports in good faith or who has given evidence as a witness must not be disadvantaged in his professional position as a result. The Federal Office of Personnel has published a guide. The platform is open and accessible for everybody (Swiss Federal Office of Personnel, 2016[4]).
- **United Kingdom:** The Public Interest Disclosure Act 1998, which protects those who make certain protected disclosures from detrimental treatment by their employer, is equally applicable to staff at the state level as it is to those working within SOEs. It is best practice in the United Kingdom for organisations in the public and private sector to have their own internal whistleblowing policies. For example, UK Government Investments has its own reporting policy applicable to its staff and

expects the Board of its SOEs to regularly update their own policies. In addition, the UK Government has produced guidance for employers to understand the framework, implementation, and benefits of reporting systems (UK Department for Businnes Innovation and Skills, 2015[5]).

3.4. Final commentary on the implementation of select provisions of the ACI Guidelines

Box 3.2. ACI Guidelines provisions: protecting state ownership entities' integrity and decision making

II.2. High standards of conduct should be applied to the state, setting an example for conduct in SOEs and exhibiting integrity to the public as the ultimate owner. To this end, representatives of the ownership entity and others responsible for exercising ownership on behalf of the state should:

I. Be subject to conflict of interest rules that sufficiently address conflicts that may arise directly in the governance of particular SOEs or portfolios of SOEs, or that may arise as a result of activities conducted by the SOE or matters relating to the sector in which the SOE operates.

II. Be subject to provisions on handling sensitive information to mitigate risks of insider trading.

III. Have clear rules and procedures for reporting concerns about real or encouraged illegal or irregular practices that come to their notice in the performance of their ownership functions.

III.2. The state should clearly specify SOE objectives and avoid redefining these objectives in a non-transparent manner. The state's broad mandates and objectives for SOEs should be revised only in cases where there has been a fundamental change of mission.

III.5. ii. Ownership arrangements should be conducive to integrity, which implies: Separating ownership from other government functions to minimise conflict of interest, and opportunities for political intervention (non-strategic or operational in nature) and other undue influence by the state, serving politicians or politically connected third parties in SOEs. Where ownership functions are vested in ministries with other functions related to SOEs, adequate measures should be taken to separate the two.

3.4.1. Commentary on recommendation II.2:

All countries participating in the study reported that representatives charged with exercising ownership on behalf of the state are subject to conflict of interest rules, except two. All countries reported that representatives charged with exercising ownership on behalf of the state are subject to rules on handling sensitive information.

It appears moreover that countries offer those responsible for exercising ownership on behalf of the state the opportunity to report concerns about real or encouraged illegal or irregular practices through existing public sector reporting channels (which may reside with anti-corruption, ombudsman, or similar bodies), though the percentage of cases reported through these channels could not be determined. Countries may consider the approach of the UK, where government entities (including the ownership entity) are encouraged to establish their own reporting policy and can access guidance prepared by the government to understand and implement the law relating to whistleblowing.

While largely meeting the letter of the recommendations, countries should continue to strive towards meeting international standards on improving a culture of integrity as well as accountability, as in many countries individuals are still fearful of using reporting channels where they exist.

3.4.2. Commentary on recommendation III.2:

States are commonly involved in setting SOE objectives, and it appears that most countries do have clear records of individual SOE objectives (letters, agreements, etc.), though the specificity varies with some setting higher-level overall mandates and others providing more prescriptive financial and non-financial targets.

There is substantially less information available or provided by state owners on the procedures for modifying SOE objectives. In countries where the executive management (and board) are able to revise objectives, the state owner should be informed in a way that allows them to react. Conversely, changes by the state owner should be well communicated to SOEs. The availability of objectives (original or revised) to the public is unclear, but this appears to change.

3.4.3. Commentary on recommendation III.5.i:

One of the greatest strides in countries' alignment with the SOE guidelines has come with the adoption of a more centralised model of shareholding. One OECD study showed that more than half of the assessed countries have centralised functions within one entity – whether as a fully centralised entity (38% of total) or giving powers to a co-ordinating agency (19%) (OECD, 2021[1]). This should, when well executed, mean that a sizeable number of countries have taken the steps necessary to mitigate conflicts of interest of the state owner that can lead to or be representative of influence in SOEs (for instance where ministers have agreements for kickbacks for preferential treatment afforded to SOEs under their watch). Future work might look to assess whether countries that have centralised ownership within a Ministry of Finance have adequately separated them from market regulation. This leaves almost half of the sample countries operating under other ownership models where such separation is naturally harder to come by. This report did not assess whether countries whose ministries have ownership functions related to SOEs have taken adequate measures to separate that function from others within ministries or other entities.

References

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Notes

[1] The term “ownership entity” is used, while recognising that the countries herein have different ownership models and may have multiple public entities involved in oversight.

[2] The ACI Guidelines integrate principles of the Recommendation on Public Integrity specifically to the state as owner by requiring that the legal and regulatory framework provides, at a minimum (II.2.i-iv): 1. transparent, merit-based human resource management, with integrity being among criteria for hiring, promotion, remuneration, and dismissal of officials of ownership entities; 2. instruments to manage and prevent conflicts of interest that arise in the governance of SOEs or portfolios of SOEs, as a result of SOE activities or related to their sector(s) of operation; 3. provisions on handling sensitive information by officials of ownership entities; 4. easily accessible and secure reporting channels, and; 5. protection of whistleblowers for officials of ownership entities.

4 Protecting the integrity and autonomy of SOE decision makers

As established in the SOE Guidelines and elaborated upon in the ACI Guidelines, it is a prime responsibility of the state to ensure that boards have the necessary authority, diversity, competencies, and objectivity to autonomously carry out their function with integrity. This chapter focuses on national practices in protecting the integrity and autonomy of SOE decision makers that can help to mitigate the risk of undue influence in SOEs.

The board plays a central role in the governance of SOEs. It should take overall responsibility for the performance of the firm and oversee executive management. The board should act as the main interlocutor with ownership entities, and other state representatives where such engagement is permitted, providing a buffer between the state and the CEO and other members of executive management. The board should be expected to promote a corporate culture of integrity, setting the tone from the top of the company.

Professionalising boards has been a focal point of many SOE-related forms around the world over the last decade. Despite progress, the board remains susceptible to undue influence owing to its power as the ultimate decision-maker and overseer of operational matters of the company – including on the risky and lucrative opportunities of the company. Faults in the board can be representative or a predictor of broader issues in the ownership and governance of SOEs, including corruption. OECD's data and evidence from real corruption cases has shown how board members can be pressured, initiate and, simultaneously or independently, turn a blind eye from perceived and real corruption. At the same time, most concluded cases of foreign bribery became known through self-reporting by the company and often thanks to the board (OECD, 2017[1]).

Similarly, executive management are key decision-makers of the company and execute the strategic plans and operations of the company. The CEO and their management team can wield a considerable degree of influence, evidently within the company, but potentially in the sector or economy more broadly when in charge of monopolies or in sectors of strategic interest to the state (e.g. oil and gas). OECD's report showed that senior management were said to be involved in 25% of the irregularities or corrupt acts that SOE respondents had witnessed in their company in recent years (OECD, 2018[2]). The employees they are meant to oversee were perceived to be involved in 69% of irregularities or corrupt acts. Concluded cases of corruption have also shown how undue influence in the appointments or activities of executive management can facilitate or represent nefarious activities. All four executives referenced in the United States' Department of Justice Non-Prosecution Agreement with Petróleo Brasileiro S.A. (Petrobras) were "appointed to his position under the influence of a political party", and the one manager cited in the Agreement was subordinate to one of the politically appointed executives (United States Department of Justice, 2018[3]).

The ACI Guidelines work as a companion to the SOE Guidelines, making clear the expectations for board's professionalism and integrity and, albeit to a lesser extent, that of executive management. The below sub-sections explore select national practices in protecting the autonomy and integrity of boards and executive management to limit the opportunities for undue influence in SOE operations.

4.1. Integrity and autonomy of SOE boards

4.1.1. Board composition and state representation on boards

It is a prime responsibility of the state to ensure that boards have the necessary authority, diversity, competencies, and objectivity to autonomously carry out their function with integrity. Board composition is very important to its professionalism and autonomy. The OECD's survey of 367 SOE leaders around the world showed that respondents in companies with a higher average proportion of independent board members (and a lower proportion of political or other state figures) foresaw a lower risk of undue influence in decision-making and of influence in appointments (OECD, 2018[2]). Contrarily, a high concentration of state representatives on an SOE board can tilt the balance and risk the board prioritising interests other than those in the best interest of the enterprise. In one country, there is a party membership fee or "party taxation" whereby political party members are appointed to higher position in SOEs and pay a part of their revenues to the party's funds. Indeed, corruption risks owning to board ineffectiveness of a lack of integrity can and often are closely linked to both patronage and political party financing. State representation on boards can also be linked to electoral cycles, whereby incoming national or sub-national governments

replace boards or members with 'their own'. At minimum, this makes it challenging for board effectiveness and to benefit on institutional memory. At worst, it is representative of nefarious acts or intentions to use SOEs for illicit purposes.

The ACI Guidelines promote composing boards in a way that facilitates integrity. This means limiting, or in more advanced practices banning, state representation on SOE boards. It also means having an adequate presence of independent board members (that is, non-state and non-executive). Table 4.1 provides an overview of allowances for independent membership on SOE boards for 37 jurisdictions. In addition, Table 4.2 outlines which type of state representatives are legally permitted to sit on boards. While legally possible, it does not mean that it is a common practice.

Table 4.1. Representation of independent board members

Are SOEs required to appoint independent board members?	Countries
Yes, with specifications	Australia (full board), Brazil (at least 25%), Bulgaria (min 1/3), Colombia (min 25%), the Czech Republic (majority), Finland (majority), France (1/3), Greece (min 2), India (1/3), Japan,[1] Korea (at least half for public corporations and quasi- governmental institutions where assets > USD 1.8 billion), Latvia (at least half), Lithuania (at least half), Morocco (1/4), Norway (majority), the Slovak Republic, Spain (50% target), Sweden (90%), United Kingdom (majority).
Yes	Austria (almost all), Belgium, Canada, China, Croatia (no formal definition), Denmark (almost all), Germany (almost all), Hungary, the Netherlands, New Zealand (almost all), Peru, Poland, South Africa (economically important/listed), Switzerland.
No	Argentina (not common), Chile (not required, but common), Malaysia, Mexico, Türkiye.

Note: [1] – In Japan, boards are majority independent in the case of Japan Tobacco Inc., Tokyo Metro, Hokkaido Railway Company, Shikoku Railway Company, Japan Freight Railway Company, Narita International Airport Company, New Kansai International Airport Com.
Source: column 1: (OECD, 2021[4]), Ownership and Governance of State-Owned Enterprises: a compendium of national practices; column 2: Questionnaire responses.

Table 4.2. State and independent representation on SOE boards

Country	Independent board members	State representatives		
		Sitting politicians in Legislative Branch permitted	Sitting politicians in Executive Branch permitted	Civil or public servants permitted
Argentina	Not common	No	Yes	Yes
Brazil	Yes (at least 25%)	No	Yes[1]	Yes
Chile[2]	Not required, but common practice	No	No	No
Colombia	Yes (at least 25%)	No	No	Yes
Croatia	Yes (but no formal definition)	No	No	Yes
Czech Republic	Yes (majority)	Yes	Yes[3]	Yes
Finland	Yes (majority)	No	No	Yes
France	Yes (1/3)	No	No	Yes
Greece	Yes (min 2)	No	No	Yes
Hungary	Yes	No	No	Yes
Japan[4]	Yes (majority)	No	No	No
Korea	Yes (at least half)[5]	No	No	No
Latvia	Yes (at least half)	No	No	Yes
Lithuania	Yes (at least half)	No	No	Yes[6]
Mexico	No	No	Yes	Yes
Netherlands	Yes	No	No	Yes (not common)
Norway	Yes (majority)	No	No	No

Country	Independent board members	State representatives		
		Sitting politicians in Legislative Branch permitted	Sitting politicians in Executive Branch permitted	Civil or public servants permitted
Slovak Republic	Yes (majority)	No	Yes	Yes
South Africa	Yes (economically important and listed)	No	No	Yes
Spain	Yes (50% target)	Yes	No	Yes
Sweden[7]	Yes (90%)	No formal limitation, but not appointed	No formal limitation, but not appointed	Yes (only investment directors)
Switzerland	Yes	No	No	Yes[8]
Türkiye	No	No	Yes	Yes
Totals	**19/23**	**3/23**	**6/23**	**19/23**

Notes:
1 – The Law on SOEs (No. 13 303/2016) does not explicitly prohibit sitting politicians in the executive branch from sitting on boards, but it does prohibit appointment of Ministers or Secretaries of State, Municipal Secretaries, those with high advisory positions in government, and heads of political parties as well as sitting politicians of the legislature, as noted in Table 4.2.
2 – Information for Chile corresponds to SOEs under the ownership of SEP.
3 – In the Czech Republic, limitations on members of Government will not allow them to perform certain activities that contradict the performance of their function. As it is the duty of the candidate for public office not to cause legal disputes through unnecessary accumulation of duties, they must choose the preferred function and resign from the other.
4 – In Japan, boards are majority independent in the case of Japan Tobacco Inc., Tokyo Metro, Hokkaido Railway Company, Shikoku Railway Company, Japan Freight Railway Company, Narita International Airport Company and New Kansai International Airport Com. Regarding state participation, the responses in the table refer to only to three SOEs: Japan Tobacco Inc., Nippon Telegraph and Telephone Corporation and Japan Post.
5 – (Korea) refers to public corporations / quasi- governmental institutions assets > USD 1.8 billion.
6 – In Lithuania, civil servants may serve on SOE boards if their duties are not related to regulation of the industry in which the SOE operates.
7- In Sweden, sitting politicians in the executive or legislative branches are not formally prohibited from sitting on boards, but it does not happen in practice.
8 – The Swiss Confederation will only appoint such representatives, if the interests of the Swiss Confederation cannot be safeguarded to the necessary extent (e.g. in case of restructuring). Where such representatives are appointed, the same rules regarding remunerations apply. If such a representative is a civil servant or a direct state representative, who earns a salary of the Swiss Confederation, no remuneration is paid.
Source: column 1: OECD (2021[4]), Ownership and Governance of State-Owned Enterprises: a compendium of national practices; other columns: 2021 Questionnaire responses, https://www.oecd.org/corporate/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices-2021.pdf.

Most countries require the presence of independent board members, with some setting minimums (in terms of numbers or proportion) and thereby aligning closely with the ACI Guidelines' request to require an adequate presence of independent board members. While some countries apply an outright ban to any state representative sitting on SOE boards (**Australia, Chile, Denmark, Italy, Korea, New Zealand, the Netherlands**), civil servants commonly serve on boards in most other countries. Former politicians are generally permitted on boards too, with some countries implementing "cooling off periods" to manage potential conflicts of interest or transfer of sensitive information. In the **Netherlands**, there is currently a proposal to introduce a cooling off period of two years, in which former members of parliament must ask the advice of an independent committee before they accept any new position. Finally, a small number of countries allow sitting politicians to serve on SOE boards – whether from the legislative branch (**Czech Republic** and **Spain**) or the executive branch (**Argentina, Brazil**, the **Slovak Republic** and **Türkiye**) – but they may be subject to specific criteria or circumstance. For instance, **Brazil** prohibits from boards: "representatives of a regulatory body to which the state-owned or the state-controlled enterprises are subject, Ministers of State, Secretaries of State, Municipal Secretaries, holders of a position without a permanent relationship with civil service or of a special nature, executive or high advisory position in the government, statutory head of a political party and a person holding a term in the Legislative Power of any entity of the federation, even if on a leave from office". In **Sweden** there are no formal limitations on sitting politicians, but in practice they are not appointed.

While such information can be used to understand board compositions within a country in principle, each individual country context would warrant a specific assessment to better understand the degree of public sector or political influence on boards in a way that is beyond the scope of this report. As just one example, **Viet Nam**, that did not participate in this study, claim to have a ban on state representatives sitting on boards. While this seems to align with best practice on paper, it is not aligned in practice: they simply do not classify representatives of the ownership co-ordination body as 'civil servants'. A second example comes from **Croatia**'s recent past, where the term "independent board member" referred only to non-executive representatives but included members representing the state, though pending legislation will bring Croatia's definition for "independence" more in line with that used by the OECD.

4.1.2. Board qualifications and criteria

Recommendations on appointment criteria for board positions are found in the SOE Guidelines. The ACI Guidelines add to this good practice by additionally suggesting that board members are "**selected on the basis of personal integrity and professional qualifications, using a clear, consistent and predetermined set of criteria for the board as a whole, for individual board positions and for the chair, and subject to transparent procedures that should include diversity, background checks and, as appropriate, mechanisms aimed at preventing future potential conflicts of interest (e.g. use of asset declarations)**" (IV.9.v).

This could be best facilitated by mandating that this criterion be taken into consideration when SOE board members are selected. To further promote its practical implementation, the state through its ownership entity or its anti-corruption institution or both can provide guidance on how personal integrity can be effectively evaluated, and what checks can be made by, for instance, consulting with national registers of officials held liable for corruption. It could also be considered a good criterion for appointment of top management and other members of the executive management of the SOE, and thus the state could encourage SOE boards to use similar rules and procedures within the company.

A recent OECD study showed that just over half of surveyed governments (55%) reported having established minimum qualification criteria for board members. The other 45% did not. Criteria most commonly relate to candidates' education and professional backgrounds and are developed to promote more balanced board composition and streamline the assessment process (OECD, 2021[4]). However, some countries establish criteria that help to get personal integrity as well. Multiple examples are provided below:

- **Brazil**: Brazilian SOEs are required through the "SOE Statute" (Law 13.303/2016) to establish Committees of Eligibility (nomination committees). This committee is mandated to issue a formal opinion on the compliance of appointments for management positions, members of the boards and fiscal counsel with regards to the requirements and prohibitions contained in the Law concerning these nominations (OECD, 2021[4]).
- **Canada**: The process by which members are appointed to the boards of SOEs (Crown corporations) aims to ensure both independence of the board and to equip the board with sufficient capacity to assess and address corruption and integrity risks. Crown corporation board members are appointed by the Governor in Council (Governor General on the advice of the Queen's Privy Council, as represented by Cabinet) following an open, transparent, and merit-based selection process. Board profiles are developed by the Crown corporations and validated by the Privy Council Office to ensure they accurately reflect the appointment process and/or the relevant appointment provisions. Board profiles ensure an appropriate range of skill sets and qualifications required in a particular organisation. Compliance with the Conflict of Interest Act is a condition of employment. The board is required to have an independent audit committee that reports to the board, with mandatory level of financial literacy. The Privy Council Office and other agencies

provide ongoing support to appointees on questions that arise from board members of an ethical nature (OECD, 2021[4]).

- **Chile**: The regulations for the appointment of directors of SEP's related companies requires a professional or technical title of a career lasting at least four years, in addition to work experience in management positions or senior executives of at least three years. People convicted of the crimes of embezzlement of public funds, tax fraud, incompatible negotiation, bribery of public employees or illegal levy, have the penalty of permanent or temporary disqualification from holding positions in SOEs (OECD, 2021[4]).
- **Croatia**: In accordance with Article 38, paragraph 1 of the Credit Institutions Act, the president or member of the management board of a credit institution may be a person who meets the conditions of "good reputation", "appropriate professional knowledge, ability and experience necessary…", "not in a conflict of interest in relation to the credit institution, shareholders, members of the supervisory board, holders of key functions and senior management of the credit institution" and who, upon reasonable conclusion from previous experience, "will perform the duties of a member of the management board of a credit institution fairly and conscientiously" among others.
- **Finland**: Key criteria in proposing candidates for the boards include experience and expertise, assurance of the capacity for co-operation, gender diversity and diversity of competence. It is, of course, the owner(s) who elect(s) these members of boards. In this respect, every member should be aware of state owner's expectations on his/hers work on the board. All members of boards nominated by the state ownership entity are independent of the SOE in question; e.g. CEOs or any other officers of a SOE in question cannot be elected as members of the boards. Most of the board members should even be independent from the state as an owner. People appointed to boards are experienced board members with high proven ethical standards; should an unusual case occur with a doubt or concern of any corruption or any other illegality, the company could always recruit professional (legal) advisers to assist the board in assessing those issues in more detail (OECD, 2021[4]).
- **Israel**: The Israeli state ownership co-ordinating agency, the government Companies Agency (GCA) launched "The Directors Team" initiative aimed to transform the SOE Supervisory Board members' nomination process by creating a competitive public procedure for identifying high quality SOE Board members. The programme was launched in 2013 and has since been held in three rounds. As a result, 500 candidates with the highest scores on the various profiles were included in the pool of 500 recommended Supervisory Board members by the GCA, out of which each minister can choose to nominate Board members for the SOEs that he or she is responsible for. Once a minister nominates a candidate, the nomination has to be approved by a public committee, chaired by a retired judge (OECD, 2021[4]).
- **Latvia**: The Law on Governance of Capital Shares of a Public Person and Capital companies sets the reputation as one of criteria for appointment as board member. The main criterion for selection of candidates is the professionalism and appropriateness of their talents and qualities for taking particular position. An 'unimpeachable reputation' is one of criteria that is to be evaluated by the nomination committee – that is, there is no proof to the contrary and there is no cause for any justified doubt on unimpeachable reputation. There have been three nomination processes where some candidates were not progressed in the evaluation process because of doubt on unimpeachable reputation. In addition, there are minimum requirements for education and work experience both for Supervisory Board members and Management Board members.
- **Lithuania**: According to the Law on the Management, Use and Disposal of State and Municipal Assets all board members must comply with a various appointment criterion, including impeccable reputation, no relations that would cause a conflict of interest, the right to hold the relevant office has not been revoked or restricted, must not have been removed from the office due to improper performance of duties and holding a university degree. The other criteria regarding competences

and technical expertise are set by the appointing body (obligation to set special criteria in the public announcement).

- **Mexico**: Mexico has a National Digital Platform that registers public servants and individuals that have been sanctioned. Through this system, it is possible to prevent the appointment or hiring of public servants who were sanctioned according to a final resolution. The General Law on Administrative Responsibilities (Ley General de Responsabilidades Administrativas) establishes that the sanctions for public servants must be registered and imposes the obligation on all public bodies to consult the system and verify the status of the person prior to the hiring (OECD, 2021[4]).
- **New Zealand**: Section 5 of the State-Owned Enterprises Act 1986 provides that the directors of a State enterprise shall be persons who, in the opinion of those appointing them, will assist the State enterprise to achieve its principal objective. Section 151(2) of the Companies Act sets out who is disqualified but there are no prescribed qualifications for appointment. In supporting Ministers to make appointments, the Treasury currently advises candidates (see "What we look for" at treasury.govt.nz as follows: "Board directors are selected and appointed based on their skills and the needs of a particular entity's board. It is important that the board comprises a balance of skills and experience that matches the strategic direction and needs of the entity. The emphasis is on appointing the best qualified person for each position and achieving diversity on boards. A best-qualified Crown director is generally defined as the candidate whose skills and experience best meet the Ministers' assessment of the skill profile for the director vacancy. There are, however, some basic competencies that all directors must have, that include "common sense, integrity and a strong sense of ethics".
- **Switzerland**: The model profile for a board includes the following criteria, among others: Impeccable reputation and personal integrity, ability to work in a team and resolve conflicts, discretion, and independence from vested interests that prevent the formation of unbiased opinions.
- **Türkiye**: According to 3rd article of 3 numbered Presidential Decree, the directors of boards are required to have administrative and occupational proficiency regarding the activity area of SOEs. Additionally, SOEs are expected to be managed autonomously and according to the principles and conditions of economy (DL.233). Although there is not a clear statement for being sufficiently independent to adequately assess and address risks, this provision takes the necessary steps to ensure the criteria is fulfilled satisfactorily. Another qualification criteria requires having no criminal record which causes imprisonment for one or more years even if sentenced or pardoned. These crimes include embezzlement, extortion, bribery, theft, fraud, and forgery, abuse of trust, fraudulent bankruptcy, bid rigging and acting against the security of the state or the Constitutional order.

4.1.3. Board responsibilities and obligations in the interest of the firm

Ensuring SOE boards have integrity and autonomy needed to fulfil their functions relies largely on setting clear responsibilities and assigning the legal obligation to do so in a way that is in the best interest of the firm, where "the best interest of the firm" inherently includes the concept of adherence to the rule of law (and not only in the financial interest of the SOE).

Vagueness in the roles and responsibilities of the board can provide discretion that could ultimately be seen as an opportunity for political financing or enrichment. However, as the OECD's 2021 Compendium showed, "one-fourth of the reporting governments do not have a clear distinction between the respective roles of the board and the ownership function, which potentially hampers independence and autonomy of boards. In particular, in jurisdictions with a rather decentralised state enterprise function, the ownership entities or line ministries play a more direct role in strategic management, as well as in the appointment of the CEO and succession planning and executive remuneration and incentive schemes. According to good practice, most of these responsibilities should be exercised by the board" (OECD, 2021[4]).

Interference in SOEs can manifest when boards are bypassed or stripped of their responsibilities or ability to oversee management and the operations of the company. A handful of countries said their boards have a few channels for recourse if the decisions explicitly assigned to the board are taken by others. Namely, boards can resign in protest, take a case to court to challenge the merit of the decision or bring it to the attention of the media, or dismiss or aim to change representatives of executive management when relevant. In the **Netherlands**, decisions or responsibilities assumed by others that run contrary to the divisions of powers as laid down in the articles of association, are either null or voidable. Depending on the circumstances of the case, these protections also have external effects towards third parties. Should there be more discussion on the limits of powers invested in the board or shareholder, boards (or other actors within the company) can file a claim at the Enterprise Chamber (Ondernemingskamer) at the Amsterdam court of appeal.

Table 4.3 sheds more light on how countries classify board member actions to be in the best interest of the firm. It provides details on the legal obligations imposed on board members in participating countries. Countries commonly require board members to enact a duty of diligence, care and/or loyalty. Obligations of duty and loyalty to the company is an important prerequisite for professionalism and performance, but there are considerations to be made around the concept of 'loyalty' in the context of patronage and undue influence. There may be more competition for the 'loyalty' of board members owing to their proximity to the public and political spheres than private firms' face from shareholders. Known corruption cases have shown how board positions can both be used (i) as a reward for loyalty (political or otherwise), and (ii) as a means of incentivising illicit action when loyalty to others will continue to be financially profitable or otherwise beneficial for those currying favour. The concept of loyalty can and has been used to pressure individuals, as loyalty can also be invoked for an individuals' political leanings (or party) or towards the state owner particularly when, but not only when, the board member is a state representative. Loyalty can also be abused, whereby those in power demand loyalty in the best interest of the state, political party or personal or related party. Conflicts of interest management, explored in more detail below, is a key tool for companies to help ensure that board members retain a duty of care and loyalty to the company by managing competition for priorities. However, conflict of interest management is not the only tool. Countries may find it useful to make it clear that board members should also act with honesty or integrity, comply with laws, behave with respect, and maintain confidentiality when needed – for which prospective board members can be, and often are, vetted in the nominations process.

Table 4.3. Legal obligations of board members

Country	Provisions in law and supporting details
Argentina	Those who are public officials must comply with the regulations applicable to the public function, in relation to the presentation of Sworn Statements. Art. 256. Law No. 19.550 on the obligation of the Directors to establish a guarantee "The statute shall establish the guarantee that must be provided."
Brazil	Duty of diligence, duties to use powers to achieve corporate purposes, duty of loyalty, conflicts of interest compliance, duty to inform (Law No. 6.404/1976, Article 153).
Chile	Duty of diligence and care, loyalty, and confidentiality. Art. 41 to 43 Law No. 18.046 applies equally to public sector public companies created by law and SOEs.
Colombia	Duties of members of boards (and managers of directors) include: i) respect, comply with and enforce the Constitution, laws and statutes of the entity (Decree 128 of 1976: Defines the legal obligations of board members.)
Croatia	Companies Act (Zakon o trgovačkim društvima) Code of corporate governance of companies in which the Republic of Croatia has shares or stakes (Kodeks korporativnog upravljanja trgovačkim društvima u kojima Republika Hrvatska ima dionice ili udjele) Corporate Governance Code (Kodeks korporativnog upravljanja) - the bases of due attention and responsibility of the members of the Supervisory Board and the Management Board are prescribed in the Companies Act, and further elaborated in other codes/ documents. In credit institutions and the Law on Credit Institutions
Czech Republic	The board members have a duty of care. "(1) A person who accepts the office of a member of an elected body undertakes to discharge the office with the necessary loyalty as well as with the necessary knowledge and care. A person who is unable to act with due managerial care although he must have become aware thereof upon accepting or in the discharge of the office

Country	Provisions in law and supporting details
	and fails to draw conclusions for himself is presumed to act with negligence" Act No 89/2012 Coll., Civil Code, Sec. 159(1).
Estonia	Additionally to the universal obligations stemming from the commercial code the §§ 83 and 84 of State Assets Act are adding some obligations
Finland	Limited Liability Company Law lists the minimum task list for the Board and Management.
Greece	The general rules are set in Law 4548/2018 on SAs (art. 77-95). Furthermore: For HCAP art. 192 of law 4389/2016 provides for the control the BoD exercises upon its subsidiaries. For SOEs under Law 3429/2005, this law, the SOE's founding Law in conjunction with the Statutes and Law 4735/2020 provide for the qualifications of Board members, the number of the members and other details of the nomination and election processes.
Hungary	Relevant legal obligations include, but are not limited to keep the business secrets, with the exception of transactions covering common everyday needs, members of the Board of Directors and their relatives may not conclude, in their own name and on their own behalf, contracts falling within the scope of activities of the company, unless with the consent of the Sole Shareholder, etc. The legal obligations of the Board of Directors are set forth especially in the Hungarian Civil Code, the Articles of Association of the SOE's and the inner rules of the company, such as the Rules of Procedure of the Board of Directors.
Japan	NTT follows the provisions of laws and regulations such as the Companies Act, as well as private companies. In addition, penalties are defined when violating the provisions of the Companies Act, in the Act on Nippon Telegraph and Telephone Corporation. As with private enterprises, Japan Post Holdings Co., Ltd. will follow the provisions of laws and regulations, such as the Companies Act. In addition, the Postal Service Privatization Act and the Act on Japan Post Holdings Co., Ltd. stipulate penalties for violating the provisions of these acts.
Korea	Article 22 (Request for Removal, etc.) of the 'Act on the Management of Public Institutions' Article 35 (Liabilities of Directors and Auditors) of the 'Act on the Management of Public Institutions'
Latvia	1) Serve as good and careful manager in good faith; 2) are subject to Commercial law provisions regarding restrictions on transactions with related parties; 3) shall comply with the non-competition regulations of Commercial law; 4) must comply with the restrictions specified in the Law "On Prevention of Conflict of Interest in the Activities of State Officials" (Law on Governance of Capital Shares of a Public Person and Capital companies Sections 51 and 52)
Lithuania	Law on Companies: act for the benefit of the company and its shareholders, to comply with laws and other legal acts and to follow the company's articles of association. Civil Code of the Republic of Lithuania: to act honestly and prudently; to be loyal to the legal person and to observe confidentiality; to avoid the situation when his personal interests contradict or may contradict the interests of the legal person; not to confuse the property of the legal person with its personal property.
Mexico	As it was previously said, the legal obligations of the members of the boards are established, in general in the Federal Law of Entities and its regulation, and in particular in their statutes.
Netherlands	The key duties of a director are set out in the Dutch Civil Code (DCC): - The task of the board is to serve the corporate interest of the company, meaning the interests of the company and the enterprises affiliated with it, i.e. the interests of all stakeholders of the company. When the board acts contrary to the above, the relevant director(s) can be held liable. - The company and the persons who by virtue of law and the articles of associations are concerned with its organisation must conduct themselves in relation to each other in accordance with the requirements of reasonableness and fairness. The board should act reasonably and fairly in relation to other persons who are concerned with the company and its organisation. The company must furthermore treat its shareholders equally. A resolution of the board may be voidable if it is contrary to the principles of reasonableness and fairness. - The duty of each director towards the company is to properly perform the individual tasks allocated to them. When a director breaches their duty of proper performance, they may be held personally liable.
New Zealand	These are set out in sections 131 to 138B of the Companies Act 1993.
Norway	General fiduciary duty, consisting of a general loyalty duty and duty of care towards the company and its shareholders (hereunder minority shareholders): The duty is not codified in its general form, but follows from customary law. Further, the board members also have an uncodified general duty to equal treatment of shareholders and a duty not to let extraneous considerations influence company decisions. Although these general principles are uncodified, they are represented in specific clauses in company legislation, such as limited liability companies act § 6-17 concerning remuneration by others than the company, § 6-27 disqualification due to conflict of interests, § 8-6 gifts etc.
Slovak Republic	If the SOE is in the form of a joint-stock company, the Commercial Code, Accounting Act and other relevant general legal acts apply to this legal form. We do not have any knowledge of special procedures for SOEs by the State that would go above the level set by law. The Ministry of Justice does not have any SOE in its scope of authority.
South Africa	Compulsory adherence to PFMA and Companies Act
Spain	Duty of loyalty and duty to avoid conflict of interest (Spanish Corporate Enterprises Act, Art. 228 and 229 respectively). The

Country	Provisions in law and supporting details
	basic obligations related to duty of loyalty are: - Not exercise their power for any end purpose other than that for which they were granted. - Maintain the confidentiality of any information, data or records to which they may have access in the course of fulfilling their role - Refrain from participating in discussions and votes on agreements and decisions in which the director or a related person may have a direct or indirect conflict of interest - Adopt the necessary measures to avoid situations arising in which their interests, whether their own or of another party, may enter into conflict with the company's interests and their duties to the company. - Fulfil their roles under the principal of personal responsibility with freedom of opinion and judgement and independence with respect to third-party institutions and links
Sweden	Company law plus Code.
Switzerland	According to the Swiss Code of Obligations, members of the board of directors and third parties engaged in managing the company's business must perform their duties with all due diligence and safeguard the interests of the company in good faith. They must also afford the shareholders equal treatment in like circumstances (art. 717).
Türkiye	According to 9th article of DL.233, the duties and the authorities of the Board are stated hereunder: 1. To make the decisions to ensure the improvement of the Enterprise within the provisions of the related legislation, development plan and policy papers. 2. To determine the policy of operation and the terms and conditions of operation for the Enterprise, establishments and their subsidiaries that will enable them to operate productively and profitably. 3. To approve annual programs for the enterprise, establishment and their subsidiaries, balance sheets and year-end financial statements and the annual reports which have been prepared on basis of the annual and long-term operation programs and to present them to the related authorities. 4. To take decisions that will provide the co-ordination between the establishments and their subsidiaries. 5. To take decision Executive Committee decisions that might be applicable by the approval of the Board within 15 days from the date of receipt of the decision. 6. To appoint the personnel (head of departments, managers for establishments or similar positions) upon the proposal of the general director. 7. To follow up the operations of the general directorate. 8. To determine the codes of practices for the adaptation of the decisions made by the President on the purchasing and the using of the vehicles by the Enterprise. 9. To undertake the other duties assigned by legislation.

Source: 2021 Questionnaire responses.

4.1.4. Managing conflicts of interest

One of the most common concerns about integrity in SOEs regards real or perceived conflicts of interest that can exist at the board level, particularly but not only in the presence of politicians or public officials on boards whose other functions or relationships may present different or competing priorities. Unlike the board members of most private firms, board representatives of SOEs can wield a power and authority over the direction of a specific sector or even market or easily tap into the formal and informal networks of those who do.

Conflicts of interest at the board can be damaging because the accompanying power over operations, for instance to sign off on large contracts, can make it easier to direct or redirect operations in a way that serves political, personal, or related-party interests. There have been numerous cases of unresolved conflicts of interest that led to corruption in which SOE board members were involved. In other cases, board members were not directly involved but took no action to stop or report known or suspected violations of conflicts of interest provisions. On the flipside, other cases yet have been brought to the authorities by the board. The board has a critical role to play in ensuring there is no real or perceived competition to the individual acting in the best interest of the firm and in compliance with the law.

Conflict of interest rules are commonly applied to SOEs in two ways, which may not be mutually exclusive. First, public sector conflict of interest rules cover board members and executive managers of SOEs as falling into the category of positions exposed to heightened risks of corruption. Second, conflict of interest provisions can be incorporated into legislation regulating SOEs, whether statutory regulation or sector-

wide SOE legislation. Table 4.4 provides an overview of national approaches to regulating conflict of interest in SOEs – whether done through legislation for the public sector or company/SOE-specific law, and whether supported by good practice or other documentation.

Table 4.4. Conflict of interest rules applied to SOE boards

	Legislation predominantly for public sector (which may have application to SOEs)	Company law, SOE law or company-specific legislation	Good practice guidance or supporting documentation
Argentina	Law of Ethics in the Exercise of Public Function		Decree No. 201/2017 – Integrity in lawsuits against the State; Decree No. 202/2017 – Integrity in public procurement
Brazil	Law No.12.813/13	Same rules as listed	
Chile		Same rules as listed (Art. 44, Law No. 18.046)	SEP Code Chapters 3 "Conflict of interest" and Chapter 11 Code of conduct
Colombia	For public servants (Title IV Law 1953)	For certain SOEs required, others encouraged (Decree 1 510 of 2021)	
Croatia	Conflict of Interest Act	Companies Act	Code of Corporate Governance for SOEs; Corporate Governance Code
Czech Republic	Act No. 159/2006 Coll. on Conflicts of Interest.		
Estonia	State Assets Act § 80		
Finland		Limited Liability Company Law	Finnish Corporate Governance Code
France	For majority owned (law. n° 2013-907, 2013)	Commercial Code establishes controls to manage COI (Articles L. 225-38)	
Greece		Law 4548/2018 (SAs law), law 4389/2016 (on HCAP), Law 3429/2005 on SOEs provide for the general rules.	Individual SOE's law and Statutes provide for specific and/or additional requirements.
Hungary		Government Decree on the internal control system of publicly owned companies (339/2019. XII. 23.); and incorporated into articles of association	
Japan		Both Company Law where applicable and SOE-specific legislation	
Korea	The Act on the Prevention of Conflict of Interest for Public Officials		
Latvia	Law on Prevention of Conflict of Interest in Activities of Public Officials (applicable to majority owned SOEs).	Law on Governance of Capital Shares of a Public Person and Capital companies Section 52	
Lithuania	Law on the Adjustment of Public and Private Interest	Majority of SOEs have internal policies for COI management of board members and employees	
Mexico		Federal Law of Parastatal Entities; Mexican Petroleum law; Federal Electricity Commission law	
Netherlands		Dutch Corporate Governance Code	

	Legislation predominantly for public sector (which may have application to SOEs)	Company law, SOE law or company-specific legislation	Good practice guidance or supporting documentation
New Zealand		Companies Act 1993, Art. 193.	"Managing conflicts of interest: A guide for the public sector" also applies to SOEs, prepared by the Office of the Auditor-General
Norway		Private Limited Liability Companies Act (applicable to all SOEs that are private LLCs)	Norwegian Corporate Governance Code
Slovak Republic		For JSCs: Commercial Code, Accounting Act	
South Africa	The Public Funds Management Act (PFMA) prohibits boards from taking any actions that conflict with its duties, taking advantage of its position of authority for personal gain, or unjustly benefiting another person (Sections 38, 50 and 51).	The Commercial Act requires board members act in the company's interest with care, skill and diligence and disclose conflicts of interest (Section 76).	
Spain		Corporate Enterprises Act; Royal Decree 1/2010 on Companies; Securities Market Act (Spanish Royal Decree 1/2010, 2 July).	
Sweden		For all JSCs: Swedish Companies Act (Sw: Aktiebolagslag (2005:551), the Annual Accounts Act (Sw: Årsredovisningslagen (1995:1554)).	Swedish Corporate Governance Code
Switzerland		All SOEs have it in their company articles of incorporation and bylaws (ex. Post: Organisational bylaw; SBB's Code of Conduct, Code of Conduct for the BoD; Swisscom's: articles of incorporation, Art. 8; Organisational bylaw no. 2.6 and 6.3; Code of Conduct; Code of Conduct for BoD; etc.) The Swiss Code of Obligations addresses legal obligations of board members (Art. 717) and will address COI explicitly with a new Article 717a (entering into force 01 February 2023)	
Türkiye	Law on the Foundation of the Council of Ethics for the Public Service (N. 5176, 2004); and by-law concerning the Principles of Ethical Behaviour of the Public Servants (2005)		

Source: 2021 Questionnaire responses.

SOEs should be expected to set up mechanisms to comply with requirements surrounding conflicts of interest. The most common mechanism is a declaration of conflict of interest. The ACI Guidelines encourage that members of SOE boards and executive management to **"make declarations to the relevant bodies regarding their investments, activities, employment, and benefits from which a potential conflict of interest could arise. Potentially conflicting interests should be declared at the time of appointment and the declarations should be kept up to date during board tenure"** (IV.9.iv).

Asset declarations are an important tool for managing conflicts of interest at the board level, and the next version of this report will look into this in more detail. However, it should be seen as one of multiple tools to manage conflict of interest. Despite the great emphasis that companies (and states) place on declarations, it is not enough on its own. OECD's comparative and in-country work has shown that conflict of interest declarations have their drawbacks. They can be falsified, not kept up to date and not monitored by the receiving entity (which may be outside of the company).

In addition to declarations of conflicts of interest (relatedly, asset or income declarations), SOEs should have corporate controls that companies establish to manage potential or real conflicts of interest and that make it harder to unduly influence due procedure. In **France**, if the managing director, one of the deputy managing directors or one of the directors of the company is the owner, partner with unlimited liability, manager, director, member of the supervisory board or otherwise be in general a manager of a company, a decision must be subject to the prior authorisation of the Board of Directors wherein the directors directly or indirectly interested may not take part in the deliberations or in the vote relating to the said agreements (in accordance with Articles L.225-38 and following of the Commercial Code). This comes in addition to the requirement for SOEs subject to the Corporate Governance Code, that directors are required to declare to the company any situation of real or potential conflict of interest, which must be reflected in their internal regulations adopted by the Board. **Lithuania**'s Law on the Adjustment of Public and Private Interest requires board members and executives of SOEs (as well as other employees who are subject to the Law) to follow the provisions of withdrawal (e.g. withdrawal when official duties are connected with private interests) or principles of gifts or services (e.g. a person cannot accept gifts or services if it is related to the official position or official duties).

4.1.5. Reporting and protection of reporting persons

The ACI Guidelines ask the state owner to encourage "**appropriate channels for oversight and reporting at the enterprise level…**", including the establishment of clear rules and procedures for employees or other reporting persons to raise concerns to the board level (or designated individual or unit) about real or encouraged illegal or irregular practices in or concerning SOEs (including subsidiaries or business partners). Reporting "channels" can also be used to seek advice on integrity-related matters. These channels should be employed, for example, "**when representatives of government, including those of the ownership entity, give instructions that appear to be irregular"** (III.3). Similarly, if decisions belonging to the board are taken by another individual or body, board members should have such a channel to report it. The ACI Guidelines' Implementation Guide elaborates on the various models on how to make integrity and anti-corruption advice, or provide reporting opportunities, within an SOE.

"State-Owned Enterprises and Corruption: what are the risks and what can be done" showed that almost half of surveyed SOEs (213) reported to have online internal and external reporting mechanisms in place. On average, reports or claims are sent individuals within the company usually within compliance, risk or audit functions, and 60% of SOEs classify claims as confidential (30%, anonymous). As regards internal channels, most complaints flow to those in charge of risk, audit, or compliance, but almost 38% of SOEs have information channelled to the CEO or President, and 33% to the board. Despite these mechanisms being in place, more than one-third of SOEs felt that ineffective reporting channels were a challenge to their company's integrity. This highlights among other things the importance of allowing SOEs to access existing or specifically established external reporting channels, so board members have an alternative to reporting to peers or state representatives directly involved in ownership.

If corporate mechanisms for reporting cannot provide needed advice or sufficient protection for those willing to report irregularities, either an anti-corruption body (or similar) should in principle be the next place to seek such advice. Regardless of the approach that the state takes, the channels and relevant procedures of seeking advice and reporting should be made well known to the representatives of SOEs.

A challenge when it comes to whistleblower protection for SOEs is the fact that dedicated public sector whistleblower protection plans, where they exist, may not provide protection for employees or groups of individuals within an SOE corporate hierarchy. Indeed, employees of SOEs can often be excluded from laws regulating whistleblowing in the public service (OECD, 2016[5]). Thus, countries should enact strong and effective legal and institutional frameworks to protect reporting persons working in the private or public sector with no exceptions.

Countries should also encourage SOEs, including through company law or corporate governance codes to establish reporting channels. Table 4.5 provides a preliminary assessment of which countries require SOEs to establish reporting (whistleblowing) channels and shares details on related requirements, based on state owners' responses to the questionnaire underpinning this report and supplementary research. However, it does not reflect recent changes from the transposition of the EU Directive on the protection of persons who report breaches of Union law in EU countries, which requires that legal entities in the private and public sector establish channels and procedures for internal reporting and for follow-up. This may suggest that in these countries the state owner may not be aware of the requirement, or that there is not yet full transposition of the EU Directive.

Table 4.5. Reporting or complaints channels within SOEs

Country	Is the SOE required to establish a reporting / whistleblowing channel?	Self-reported details on reporting requirements/regulations in the country as applicable to SOE
Argentina	Not required	Those who have the character of public officials have the obligation to denounce by application of Decree No. 1162/2000. There is a Whistleblower Channel of the Anti-Corruption Office.
Brazil	Required	Decree No. 8945/2016 – Art.18 establishes that SOEs must have a whistleblowing channel to receive internal and external reports relating to Code of Conduct and Integrity and other internal ethical and mandatory standards non-compliance reports.
Chile	Not required	Complaints are made or transferred to the Office of the Comptroller General and/or to the State Defence Council and/or to the General Prosecutor Office, if it is estimated that the conduct claimed may constitute a crime
Colombia	Required	General Directorate of SOE´s created a programme of ethic communication channels that includes: adopting a Code of Ethics, having an Ethics Committee, establishing at least the 3 standard channels for receiving complaints that are mandatory, establishing the process for receiving reports, and establishing parameters of confidentiality, anonymity, and non-retaliation, among others.
Croatia	Required	The Law on the Protection of Reporters of Irregularities (Zakon o zaštiti prijavitelja nepravilnosti) covers the procedure for reporting irregularities, the rights of persons reporting irregularities, the obligations of public authorities and legal and natural persons regarding the reporting of irregularities, as well as other issues important for the reporting of irregularities and the protection of whistleblowers
Czech Republic	Not required	Each state-owned company sets its own method voluntarily, which is composed into an internal directive. Reports of corrupt practices are managed under the responsibility of the Ministry of Justice and is handled by the Government Council for the Co-ordination of the Fight against Corruption.
Estonia	Not required	SOEs are not required to establish a reporting channel, but there exists a universal whistleblowing channel available to all: https://www.korruptsioon.ee/en
Finland	Required	A whistleblowing channel is required by law.
France	Required	Law No. 2016-1691 ("Sapin II Law"), and Decree No. 2017-564 of April 2017 requires legal entities governed by public or private law or State administrations to put in place a procedure for collecting reports. In addition, companies and public establishments of an industrial and commercial nature (EPIC) employing at least five hundred employees, or belonging to a group of companies whose parent company has its head office in France and whose workforce includes at least 500 employees, and whose turnover or consolidated turnover is greater than 100 million euros, to set up "an internal alert system intended to allow the collection of reports from employees relating to the existence of conduct or situations contrary to the company's

Country	Is the SOE required to establish a reporting / whistleblowing channel?	Self-reported details on reporting requirements/regulations in the country as applicable to SOE
		code of conduct" as part of their mechanism for the prevention and detection of acts of corruption (Art. 17 II 2°, Sapin II law). As part of the anti-corruption alerts of Article 17, the French Anti-corruption Agency (AFA) has published recommendations interpreting the provisions of the law (see § 251 to 284).
Greece	Not required	The procedures are set in the SAs Law 4548/2018, the Civil Service Code (Law 3528/2007) and the Criminal Procedure Code (Article 45B), or in specific anticorruption provisions (e.g. Law 4813/2021). The company's internal regulation may provide for such mechanisms.
Hungary	Required	According to the Governmental Regulation 339/2018 on Internal Control System of SOEs, SOEs shall ensure that there is a proper system that allows reporting and investigating integrity related actions.
Japan	Not required	Whistleblower Protection Act (2004). One SOE (JT) establishes a consultation and reporting contact which is independent of executive line and is handled by Audit & Supervisory Board members, besides a contact handled by the division in charge of legal affairs and compliance. An Audit & Supervisory Board member who receives a consultation or a report investigates its content, and JT carries out necessary measures and tries to prevent the recurrence.
Latvia	Required	Defined in Whistleblowing Law. There are also requirements set out in the Cabinet Regulations Regarding the Basic Requirements for an Internal Control System for the Prevention of Corruption and Conflict of Interest in an Institution of a Public Person, as well as the Guidelines on the essential requirements of the internal control system to prevent the risk of corruption and conflict of interest in an institution of a Public person.
Lithuania	Required	Board members and executives (including other employees) can report corruption related claims through various channels. Law on the Protection of Whistleblowers sets three main channels: • Internal channels. According to the Law, it is mandatory for all SOEs to establish internal channel or such channel must be established in shareholding entity. • Directly to the Prosecutor General's Office. • Publicly. According to the Law person may be recognised as a whistleblower by the competent authority (the Prosecutor General's Office) and become a subject of protection principles set in the Law
Mexico	Not required	In the event of becoming aware of any act of corruption occurring in the entity, the internal control body must be informed. If the committed act or absence of it is a crime it must be inform to the prosecutor, and it will be investigated in accordance with the criminal laws.
New Zealand	Not required	Currently, whistleblower protection in public organisations is granted by the Protected Disclosures Act 2000 No 7 (as of 07 August 2020), Public Act Contents, which is being replaced by the Protected Disclosures (Protection of Whistleblowers) Bill 294-2 (2020), Government Bill Commentary.
Netherlands	Required	The Whistleblowers Act (*Wet Huis voor klokkenluiders*) is in force, and there is a pending legislative proposal, the Whistleblowers Protection Act (*Wet bescherming klokkenluiders*), to change the current Dutch Whistleblowers Act in accordance with the EU Directive (2019/1937).
Norway	Not required (but widely implemented)	The Norwegian working environment code § 1-6 provides any employee the right and obligation to notify of criticisable conditions, including corruption-related claims/complaints. An employee may for instance notify any leader, members of the working environment committee, to a public supervisory authority or any other public authority. The Norwegian State does not explicitly require that all SOEs have mechanisms and channels to report corruption-related concerns but rather indirectly expects that the SOEs lead the field regarding responsible business conduct.
Portugal	Required	Public officials in Portugal are provided protection through the General Labour law in Public Function through the Act of Law 35/2014, and through Article 20 of Law no.25/2008 of 5 June, and Article 4 of Law no. 19/2008. Under Article 4 of Law 19/2008, workers of the public administration and state-owned companies who report offences cannot be "harmed", including through "non-voluntary transfer"
Slovak Republic	Required	There exists the Act no. 54/2019 Coll. on the protection of whistleblowers and amendment of certain laws ("Act on protection of whistleblowers"), as well as the Act No. 307/2014 Coll on Certain aspects of whistleblowing. If the SOE is in the form of a joint-stock company, the Commercial Code and the Accounting Act also apply.
Slovenia	Required	Chapter III of Slovenia's Integrity and Prevention of Corruption Act is dedicated to the protection of public and private sector employees who, reasonably and in good faith, report

Country	Is the SOE required to establish a reporting / whistleblowing channel?	Self-reported details on reporting requirements/regulations in the country as applicable to SOE
		suspicions of any form of illegal or unethical behaviour. Slovenia's Corruption Prevention Commission (CPC) is responsible for the implementation of the law, which contains provisions on confidentiality, internal and external disclosure channels, a range of remedies for retaliation, fines for those who retaliate or disclose the identity of the whistleblower, and independent assistance from the CPC. The Slovene Sovereign Holdings Act also requires state-owned enterprises (SOEs) to establish whistleblowing mechanisms and protection measures. The OECD's Working Group on Bribery commended Slovenia on its whistleblower protection provisions and recommended that it raise awareness in the private sector and among SOEs of the protections provided.
South Africa	Required	The Protected Disclosures Act 2000 is a single dedicated whistleblower protection law that applies to both public and private sector employees, protecting whistleblowers from being subjected to "occupational detriment". Moreover, the Companies Act Article 159(7) provides that SOEs must directly or indirectly establish and maintain a system to receive disclosures.
Spain	Not required	In Spain, there are specific provisions for whistleblowers in 2018 in the Spanish Data Protection Act (Organic Law 3/2018). The law states that companies and public administrators may have reporting systems in place for whistleblowers' complaints. Many SOEs have whistleblower channels for handling internal company complaints, but it is not required.
Sweden	Required	The Whistleblowing Act (2021:89) requires, among other things, that private and public employers with 50 or more employees have internal whistleblowing functions. The mandatory introduction of whistleblowing functions will apply gradually depending on the size of the legal entity
Switzerland	Not required	Art. 22a LPers: if the LPers are not applicable because the employment relationships are governed by private law and not by public law, these SOEs are required to provide for appropriate regulations. The Swiss Federal Audit Office (SFAO) collects information from individuals and federal employees about suspicions of irregularities, corruption or other illegal acts within the Federal Administration or concerning a subsidy beneficiary.
Türkiye	Not required	12th article of By-Law concerning the Principles of Ethical Behaviour of the Public Servants enables public officials to report any issue to the competent authorities anonymously. As another mechanism, the Presidency's Communication Centre (CIMER) was established upon President's instruction in order to provide the quickest and most effective response to requests, complaints and applications.
Totals	**14/26**	

Source: The information for Portugal, Slovenia and South Africa come from OECD (2016[5]), Committing to Effective Whistleblower Protection, http://dx.doi.org/10.1787/9789264252639-en; all other fields come from the 2021 Questionnaire responses.

Based on the information available, it appears that 54% of participating governments require SOEs to establish internal channels for whistleblowing or reporting. In the majority of those that do not, SOE employees may access whistleblowing channels established by the state. In other countries, there are some procedures established whereby individuals can report suspected or real wrongdoing, but this may not amount to a formalised structure. In all cases, the existence of a whistleblower mechanism does not guarantee that good practice of protecting whistleblowers is adhered to.

Some countries have introduced incentives for individuals to come forward given the daunting undertaking and potential for loss and stigmatisation that can accompany reporting on colleagues and contacts. Incentives can take the form of tokens of recognition to financial rewards. While these are often considered as incentives, financial payments to whistleblowers can also provide financial support, for example living and legal expenses, following retaliation (OECD, 2016[5]).

4.2. Integrity and autonomy of SOE executive management

As promoted in the SOE Guidelines, "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" (VII.B). The ACI Guidelines add that "the state should express an expectation that the board apply high standards for hiring and conduct of top management and other members of the executive management, who should be appointed based on professional criteria. Special attention should be given to managing conflict of interest and, relatedly, movement of actors between public and private sectors (also known as "revolving door" practices)" (IV.10).

This sub-section offers a preliminary assessment of country practices in appointing and removing the CEO, and in boards' oversight of executive management, that will allow for future assessment of how certain practices can protect the integrity and autonomy of SOE executive management.

4.2.1. Appointing and removing the CEO

It bears repeating that it should be a board responsibility to appoint and remove the CEO because, in practice, this is often not the case. States continue to play a role of varying degrees. Table 4.6 explores the distribution of responsibilities between the board and the state in nominating, appointing or removing the CEO. In a handful of countries (**Argentina, Chile**, **Estonia**, **Finland**, **New Zealand**, **Norway, Sweden,** and **Switzerland**), the state has no role in the nomination, appointment or removal of the CEO. In others, the state may participate indirectly via General Shareholders' Meetings, or via representation on SOE boards making the decision. In a more involved manner, states may nominate individuals or offer candidates from a pool of pre-approved individuals, leaving approval to the board (or General Shareholders' Meeting). In other countries the state will be yet more involved, where the board may nominate but the state retains the ultimate decision on who will be appointed. A final approach finds the state may appointing the CEO after consultation with the board, or, where heads of state are involved in the appointment, making the decision without any consultation of the board. There are often exceptions to the general rule. Exceptions or rights of the state to directly appoint are often reserved for large state-owned groups or SOEs that are of special interest to the state.

Exceptions and direct appointments run contrary to the spirit of the SOE and ACI Guidelines, and countries should offer clear and valid justification for such approaches. When SOE boards and states share responsibility for the appointment of the CEO, care must be taken to ensure that the appropriate balance is struck and respected within the arrangement. Anecdotal evidence from OECD's country work has shown how requirements to at least consult or leave appointment decisions to the board are often flouted, or how boards never veto or refuse a nomination made by the state.

Table 4.6. CEO appointments: board or state responsibility?

Country	CEO appointment	Roles and responsibilities of the board in nominating, appointing, or removing the CEO?	Roles and responsibilities of the state in nominating, appointing, or removing the CEO?
Argentina	•	The board appoints and removes the CEO.	No role.
Brazil	□	For certain CEO appointments, the board must approve.	Certain national SOEs' CEO appointments are done directly by the President of Brazil.
Chile	•	The board selects, appoints, and removes the CEO.	No role.
Colombia	○		The State appoints the public officials that represent it in SOEs through the Committee of Nomination, Election and Evaluation of Performance of Managers of SOEs comprising officials of the Ministry of Finance (MHCP).
Croatia	□	In accordance with Article 244 para. 1. of the Companies Act, and based on an act of the Government of the Republic of Croatia, the Supervisory Board makes a decision on the election of the President and members of	For legal entities of special interest, in accordance with Articles 13 to 18 of the Decree on Conditions for Election and Appointment of Members of Supervisory Boards and Management Boards of Legal Entities of

Country	CEO appointment	Roles and responsibilities of the board in nominating, appointing, or removing the CEO?	Roles and responsibilities of the state in nominating, appointing, or removing the CEO?
		the Management Board. In accordance with Article 244 para. 2. of the Companies Act, the Supervisory Board may revoke its decision to appoint a member of the Management Board or its President when there is an important reason for it (e.g. gross breach of duty, inability to perform the company's duties properly or a vote of no confidence at the General Assembly of the company, unless it was done for obviously unfounded reasons). The revocation is valid until its invalidity is determined by a court decision. The recall of a member or the President of the Management Board does not affect the provisions of the contract they have concluded with the company.	Special Interest to the Republic of Croatia and the Manner of Their Election ("the Decree"), the CEO is appointed by the Government of the Republic following a public competition administered by the competent ministry.
Czech Republic	□	Depends on model. In one case, the Board is charged with nominating, appointing or removing the CEO. The board members are bound by duty of care, therefore are responsible for the nomination, appointment, and management of the SOE by the CEO.	In other cases, the State can appoint or nominate the CEO. For the members of the Board of Directors, a regular selection procedure precedes and, in every case, follows the assessment before the Personnel Nomination Committee by the Governmental Office, which was established by law and governed by its statute. The CEO is appointed by the same control body, but the State can influence choice of candidates for the members of the control board. However, it should be stressed that the board members are in any case bound by duty of care, therefore are required by law to manage the company in its interest.
Estonia	●	According to Commercial Code only the supervisory board has the right to nominate management board members (§ 309 of Commercial Code).	No role.
Finland	•	The Board nominates and removes the CEO	No role.
France	♦	Depends on model. In companies in which the State holds a stake, the managing director is appointed by the board of directors as in any other company. The State participates in the vote through its representative on the council. The individual is revoked by decision of the Board of Directors.	In accordance with the provisions of the Order of 20 August 2014 relating to the governance and capital transactions of companies with public shareholdings, in companies with a majority state ownership, the CEO is appointed by decree of the President of the Republic, on the proposal of the Board of Directors. The CEO's dismissal is also by decree.
Greece	□	HCAP portfolio: No role for the State for its subsidiaries. The CEO as part of the BoD members is selected by the BoD of HCAP (this selection is approved by HCAP's supervisory board for "direct subsidiaries" except HFSF). This decision should be validated by the General Assembly of each SOE. (art. 192 par. 2 e and art. 197 Law 4389/2016).	For SOEs under Law 3429/2005, according to Law 4735/2020, Chair, Vice – Chair and Executive Director are appointed for a three-year term with the possibility of renewal of a further period of three years. In particular, after a public call of expression of interest, a special Committee interviews the candidates and proposes to the minister the three (3) most suitable candidates for the position (articles 20-23 L.4735/20). The CEO is appointed in most cases by a joint decision of Finance Minister and the supervisory/line Minister for term according to each SOEs statutory or founding law (listed SOEs are exempted from this provision). For SOEs which are exempted from the above laws, the Board Members and the CEO are elected by the GSM and are appointed on fixed-term contracts according to each SOE's statute or founding law. Moreover, for a number of SOEs, the SOEs Committee of the Hellenic Parliament gives opinion to the Minister on the suitability of nominations for the chairmen and managing directors.
Japan	□	In certain SOEs, Presidents are elected by the board (Nippon Telegraph and Telephone Corporation, Japan Post and Japan Tobacco Inc.).	Other executive appointments must be approved by the Minister of Land, Infrastructure, Transport and Tourism (for "JR Hokkaido, Shikoku, Freight", Tokyo Metro, Kansai International Airport and Osaka International

Country	CEO appointment	Roles and responsibilities of the board in nominating, appointing, or removing the CEO?	Roles and responsibilities of the state in nominating, appointing, or removing the CEO?
			Airport, and Narita International Airport Corporation).
Korea	○	The Committee for Recommendation of Executive Officers is responsible for recommending candidates for executive officers of public enterprises (Act on the Management of Public Institutions Articles 25 and 26). The Committee is comprised of non-standing directors of the public enterprise and members appointed by the board of directors.	The President appoints the CEO of a public enterprise from among candidates recommended by the Committee for Recommendation of Executive Officers (Act on the Management of Public Institutions Article 29).
Lithuania	□	Depends on company form. SOEs which are limited liability companies follow common governance principles set in the Law on Companies, where appointment or dismissal of the CEO lies within responsibilities of the management board or the supervisory board if the management board has not been formed or the general meeting of shareholders if neither the management board nor the supervisory board has been formed.	In the case of statutory enterprises (state enterprise), appointment and dismissal of CEO is a sole responsibility of institution implementing the rights and obligations of the owner of the enterprise. In practice, the board may assist or provide opinion regarding appointment or dismissal of CEO, but the final decision is made by institution implementing the rights and obligations of the owner of the enterprise. In general, it is a decision of the minister of line ministry.
Netherlands	♦	While in most cases the shareholder appoints management board members, the supervisory board decides to allocate a specific function (CEO, CFO etc.) to the new member. In practice, it should be clear which position is vacant and for which position the supervisory board nominates someone.	Formally, in most cases a person is appointed to become a management board member by the shareholder.
New Zealand	●	Full responsibility.	No role.
Norway	●	According to Norwegian company law it is solely the board's responsibility to nominate, appoint and remove the CEO.	No role.
South Africa	○	The Board is responsible for recruitment, performance management and succession planning of the CEO.	The Memorandum of Incorporation provides for the Boards to undertake the full recruitment process and provide the Shareholder with three appointable candidates. The shareholder consults with Cabinet before approving the appointment
Spain	○		The State proposes the CEO and the chair in companies in which it has a majority shareholding, as well as the directors, corresponding to its shareholding, respecting the following: Principle 10: The board of directors should have the optimal size to facilitate its efficient functioning, the participation of all members and agile decision-making. Director selection policy should seek a balance of knowledge, experience, age and gender in the board's membership.
Sweden	●	Same as in any joint stock company. Full responsibility according to Company law.	No role (apart from nominating board members).
Switzerland	●	According to Art. 716 Code of Obligations the CEO and the members of Executive Management are elected by the Board of Directors.	No role (apart from nominating board members).
Türkiye	○		CEO is a chairman of the Board of Directors (BoD) and appointed by the President.

Legend:
● = full board responsibility.
○ = full state responsibility.
♦ = mixed responsibilities in each SOE.
□ = different practices according to category of SOE.
Source: 2021 Questionnaire responses.

4.2.2. Board mechanisms for oversight of executive management

Most state owners participating in this study reported that SOE executive management are held to account namely through their (i) liabilities – at minimum, liability for losses to the company related to non-compliance or fraud – as well as for criminal liability; (ii) their management duties, including the duty of loyalty or to report, comply or disclose; and (iii) clear grounds for dismissal to assess potential or real irregularities.

Internal and external audits are also said to play a role in oversight insofar as they form part of the system of checks and balances notably through compliance audits, or assessment of the effectiveness of individual controls involving executive management.

As it is a board responsibility to supervise executive management, the board might consider more proactive means than relying on managements' adherence to the law and the existing checks and balances. At minimum, the board should ensure that information from internal checks and balances provides the board the information it needs to adequately oversee management. Boards might also use evaluations of management (as in Hungary) that includes metrics and assessments of not only performance but also conduct (Viet Nam), or relatedly to offer financial incentives (South Africa). Countries provided very few examples of additional practices, which could be explored in a later version of this report.

4.3. Final commentary on the implementation of select provisions of the ACI Guidelines

Box 4.1. ACI Guidelines provisions: Protection of boards' integrity and decision making

IV.5. iv. Encouraging the establishment of clear rules and procedures for employees or other reporting persons to report concerns to the board about real or encouraged illegal or irregular practices in or concerning SOEs (including subsidiaries or business partners). In the absence of timely remedial action or in the face of a reasonable risk of negative employment action, employees are encouraged to report to the competent authorities. They should be protected in law and practice against all types of unjustified treatments as a result of reporting concerns.

IV.9. It is a prime responsibility of the state to ensure that boards have the necessary authority, diversity, competencies, and objectivity to autonomously carry out their function with integrity. The corporate governance framework should ensure the board is accountable to the company and to the shareholders and, where legislated, subject to parliamentary control, recognising citizens as the ultimate shareholder. This includes, inter alia, that:

i. Politicians who are in a position to influence materially the operating conditions of SOEs should not serve on their boards. Civil servants and other public officials can serve on boards under the condition that qualification and conflict of interest requirements apply to them. A predetermined "cooling-off" period should as a general rule be applied to former politicians.
ii. An appropriate number of independent members – non-state and nonexecutive – should be on each board and sit on specialised board committees.
iii. Any collective and individual liabilities of board members should be clearly defined. All board members should have a legal obligation to act in the best interest of the enterprise, cognisant of the objectives of the shareholder. All board members should have to disclose any personal ownership they have in the SOE and follow the relevant insider trading regulation.

iv. Members of SOE boards and executive management should make declarations to the relevant bodies regarding their investments, activities, employment, and benefits from which a potential conflict of interest could arise.

v. Board members should be selected on the basis of personal integrity and professional qualifications, using a clear, consistent and predetermined set of criteria for the board as a whole, for individual board positions and for the chair, and subject to transparent procedures that should include diversity, background checks and, as appropriate, mechanisms aimed at preventing future potential conflicts of interest (e.g. use of asset declarations).

vi. Mechanisms should exist to manage conflicts of interest that may prevent board members from carrying out their duties in the company's interest, and to limit political interference in board processes. Potentially conflicting interests should be declared at the time of appointment and the declarations should be kept up to date during board tenure.

vii. Mechanisms to evaluate and maintain the effectiveness of board performance and independence should be in place. These may include, amongst others, limits on the term of any continuous appointment or the permitted number of reappointments to the board, as well as resources to enable the board to access independent information or expertise.

IV.10. The state should express an expectation that the board apply high standards for hiring and conduct of top management and other members of the executive management, who should be appointed based on professional criteria. Special attention should be given to managing conflict of interest and, relatedly, movement of actors between public and private sectors (also known as "revolving door" practices).

4.3.1. Commentary on recommendation IV.2. iv

The OECD's "State-Owned Enterprises and Corruption: what are the risks and what can be done" showed that almost half of 213 surveyed SOEs reported to have online internal and external reporting mechanisms in place. Despite these mechanisms being in place, more than one-third of SOEs felt that ineffective reporting channels were a challenge to their company's integrity. Based on the information provided by state ownership entities, this report estimates that in 54% of countries, SOEs are required to establish a reporting or whistleblowing channel. Thus, it appears that in about half of participating countries' SOEs have some form of mechanism to enable concerned SOE employees to come forward and it is expected that the number will increase with the transposition of the EU Directive underway.

At the same time, it appears that many countries rely on SOE access to universal whistleblowing channels, run for instance by the state, for sufficiency where internal reporting channels do not exist. However, theoretical access to a separate universal reporting channel should not replace, but complement, appropriate and trustworthy procedures within the company itself. Future monitoring activities of the ACI Guidelines could seek to track any evolutions in this area, as well as look into the protection for reporting persons within SOEs, which was not covered in this report.

4.3.2. Commentary on recommendation IV.9:

Taken together, participating countries have a range of mechanisms that can help to promote authority, diversity, competencies, and objectivity of boards. One of the strongest tools at the state's disposal and in use is the requirement for SOEs to have independent board members. Eighty-three percent of countries participating in this study require independent board members to sit on SOE boards of at least large companies. Similarly, a bigger OECD study found that 33 of 38 countries allowed for independent board members to sit on boards (87%) (OECD, 2021[4]). Future assessment could delve into individual country

uses of the term “independence” to uncover whether independence is assured in practice, considering various definitions and varied applications depending on the form of the SOE.

Generally, it appears that countries are largely following the spirit of the recommendation insofar as it aims to limit presence of politicians or at minimum hold them to equal standards. Participating countries in this study reported to allow or require the following representatives to sit on SOE boards of at least certain SOEs:

- All allow former politicians; a predetermined “cooling-off” period should as a general rule be applied to former politicians, and some countries reported having this in place, but information was not available to determine the percentage adhering to that standard
- 96% allow civil or public servants
- 26% allow for sitting members of the executive branch
- 13% allow for sitting members of the legislative branch.

It could not be determined whether those individuals still permitted on boards are in a position to materially influence operations or not. This would be on a more subjective basis. Moreover, respondents unanimously reported that all the state representatives are subject to the same requirements as other board members, but verification was outside of the scope of this report.

In terms of criteria for hiring, just over half of surveyed governments (55%) reported having established minimum qualification criteria for board members. The other 45% did not. Criteria most commonly relate to candidates’ education and professional backgrounds, and some countries have established criteria that help to elucidate personal integrity as well that brings them more in line with the ACI Guidelines. Countries are encouraged to consider establishing minimum qualification criteria where it doesn’t yet exist and adding those that allow board members to be appointed based on personal integrity and professional criteria in a consistent manner.

What is less clear is the effectiveness of this range of measures. All components of recommendation IV.9. need to work together – that is, independent board members should be sufficient counterweight to the presence of representatives of the state. All board members should have the opportunity to report wrongdoing that arises in the carry out of their duties – including knowing where a conflict is present or where an individual is neglecting their duty to act in the best interest of the company. Countries are invited to consider whether they are meeting the spirit of recommendation IV.9. by having a variety of mechanisms that provide assurance on the overall authority, diversity, competencies, and objectivity of boards.

4.3.3. Commentary on recommendation IV.10:

Together, the SOE and ACI Guidelines make boards responsible for appointing the CEO and adhering to high standards when hiring for that post and other members of executive management. The OECD has previously tracked implementation of the SOE guidelines’ provision on CEO appointments, showing that in the source study less than half (43%) allow for the board to appoint the CEO, at least for certain SOEs. Most countries see the state involved, at least to some degree either through shareholder meetings, approving board nominations or by direct appointment. It cannot be determined at this time whether executive management is held to a high standard and appointed based on clearly determined criteria. However, the variance in responsibility between the state owner and the board, even within some countries according to the form of SOE, makes it less likely that clear and consistent criteria are applied. The state owner wish to pay attention to ensuring that at least CEOs of SOEs under its ownership are being appointed based on consistent criteria.

Special attention should be given to managing conflict of interest and, relatedly, movement of actors between public and private sectors (also known as “revolving door” practices), more attention should be paid to inconsistencies that might arise in determining whether an individual is suitable for the post. The

report is unable to conclude on raises concern about a lack of criteria that would deem an individual "incompatible" for the job.

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5 Bringing transparency to ownership arrangements and communication

The ACI Guidelines seek to limit opportunities for instructions or dealings that fall outside of formal channels of communication by encouraging state owners to establish with whom, how and when communication should occur. This chapter focuses on national practices in establishing transparent ownership arrangements and communication that can help to mitigate the risk of undue influence in SOEs.

Globally, there seems to be a lack of information about the degree, or the existence, of state ownership in a company, as well as information about who owns and controls minor shares of an SOE or its subsidiaries and business partners. Such information is useful for potential bidders and suppliers, partners, civil society, and media among others for basic market functioning, as well as for increasing the likelihood that irregularities can be identified.

SOEs should not be exempt from sharing information about their ultimate beneficial owners, whether state or other, simply because they are state owned. Beneficial ownership transparency is spreading, with 110 countries, including in the European Union,[1] the United Kingdom, and the United States, now requiring beneficial ownership data from companies (Extractive Industries Transparency Initiative, 2021[1]). Transparency around who owns SOEs as well as who is responsible for their oversight (at the state level) can help empower individuals or groups to identify when potential irregularities are occurring (e.g. ownership stakes by a company owned by a related person that is not declared).

Bringing transparency around who ultimately owns and controls SOEs is most powerful when coupled with information about how and when ownership representatives can interact with SOE boards and executive management. The ACI Guidelines' suite of recommendations seeks to limit opportunities for instructions or dealings that are operational in nature to be handed down to SOEs through formal and informal channels of communication. Real corruption cases revolving around SOEs have shown how informal interactions and opaque dealings are used to apply pressure, threats or offers for favours and personal or related-party enrichment (financial or otherwise).

Transparency alone cannot reduce the risk of corruption in SOEs, particularly where informal relationships, *de facto* or 'shadow' control of SOE boards, or exploitation in contempt of the law is the norm. Yet bringing light to who is involved in an SOE ownership and control (and who is not), and who from the state is allowed to interact with SOE representatives (and who is not), will make it easier to see when something is awry.

5.1. Bringing transparency to ownership arrangements

The ACI Guidelines recommend that the state make available "publicly available information about the ownership structure, including linking the SOEs to the ownership entity responsible for said SOEs" (V.5.ii). A natural starting point would be to house this information in an annual aggregate report, which the OECD has long been promoting as a good practice. The OECD "SOE Compendium" showed how 59% of countries consistently produce an aggregate report (or similar) that covers all SOEs, while another 24% have some form of reporting at least for a portfolio of SOEs or on an ad-hoc basis, while 17% do not have any form of annual aggregate reporting in place (OECD, 2021[2]).

The well-known standards espoused by the Financial Action Task Force ask that countries ensure there is adequate, accurate and timely information on the beneficial ownership and control of legal persons – in this case SOEs – that can be obtained or accessed in a timely fashion by competent authorities (recommendation 24 (FATF, 2022[3])). The ACI Guidelines suggest the practice of sharing information on ownership by "recording SOEs in beneficial ownership registers" (V.5.ii).

The ACI Guidelines call on adherents to clarify and make "publicly available the roles of other (non-ownership) state functions vis-à-vis SOEs that may interact, whether infrequently or frequently, with SOEs in the execution of their functions" – including, inter alia, regulatory agencies and audit or control institutions. While some ownership entities' annual aggregate reports make mention of other government entities involved in exercising ownership or overseeing SOEs, this does not amount to systematic disclosure. Typically, this information is limited to mentions of the role of the State Audit Office in auditing SOEs. There is room for state owners to provide more transparency around those entities which interact with SOEs, on their website or in their annual reports, for example.

Improving related disclosures – whether by the state or SOE – should be seen as a tool for the state to protect its assets from waste, mismanagement, and abuse, as well as for SOEs to better manage their own risks, domestically and abroad. This can be done in a few ways.

The practice of Estonia stands out, whereby the Ministry of Finance's website provides a one-stop-shop for information on 28 SOEs, including the share of the state, the purpose of their shareholding and the field of company activity, also linking each company to the competent oversight ministry. There were no other reported examples of this kind, and other state owners could consider adopting a similar practice. Information can be kept up to date if fed by information input into the type of data portals that state owners are increasingly using to monitor SOE performance. Some countries require individual ministries to list the SOEs that fall under their watch.

Box 5.1. Select country practices in disclosing information on SOE ownership

Croatia: Croatia adopted regulations to introduce the disclosure of beneficial owners, including those of SOEs. This is yet to be implemented in practice.

Finland: the website of the Prime Minister's Office provides a list of practical "Frequently asked questions" online to address public inquiries about SOEs. In response to the question "Which state-owned and associated companies are listed?" it lists the four listed companies in which the state has direct holdings, as well as those in which the "state holds interest indirectly through Solidium and 12 association companies".

Norway: information about wholly owned SOEs is published in the annual report. Partly owned SOEs, all classified as LLCs, are obliged by law to hold a register of shareholders. This register of shareholders shall be accessible to anyone upon request to the company. According to new regulation, a new public register of "real holder of rights" shall be established. This regulation provides rules for the identification of real holder of rights for all public limited liability companies (including SOEs) and, therein, a duty to provide information to make identification possible.

United Kingdom: SOEs that are UK private limited or unlisted public limited companies are required to maintain a register of 'persons with significant control' pursuant to Part 21A of the Companies Act 2006. Persons with significant control are individuals or registrable legal entities (RLE) which satisfy any of the following conditions: (i) an individual/ RLE who holds, directly or indirectly, more than 25% of the shares in a company; (ii) an individual/RLE who holds, directly or indirectly, more than 25% of the voting rights in a company; (iii) an individual/ RLE who holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of a company; (iv) an individual/RLE who has the right to exercise, or actually exercises, significant influence or control over a company; or (v) an individual/RLE who holds the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm which is not a legal entity, but would satisfy any of the first four tests if it were an individual/RLE.

Source: 2021 Questionnaire responses

Countries may require SOEs to disclose ownership information in annual aggregate reports (**Lithuania, Sweden**) or on their websites, though it can be inconsistent or presented coincidentally along with other information (e.g. percentage ownership stake listed only for SOEs that provided dividends to the state in the year prior). Others – including **Croatia**, **Estonia, Norway**, and the **United Kingdom** – apply beneficial ownership requirements to SOEs. A comparison across countries however shows that information about governments and others' stakes in SOEs is most easily found in media articles, wiki-style pages and academic assessments. Select country examples are provided in Box 5.1.

5.2. Bringing transparency to communications and interactions

A key tenet of the ACI guidelines is ensuring that ownership arrangements are conducive to integrity. One of the main reasons that states separate ownership and regulatory functions is to minimise conflict of interest and the opportunity for engagement between those drafting laws and those subject to it. Other separations should occur – for instance, ensuing that the Board is the primary point of contact for the ownership entity (not executive management). Engagement between the SOE (that is, primarily the board) and state owner should occur through an "**appropriate framework for communication that includes maintaining accurate records of communication between the ownership entity and SOEs**" (V.5.vi).

Interactions between non-board SOE representatives (e.g. executive management) and the state should be limited, unless otherwise agreed upon with the board, and should also be subject to the same framework, including of record-keeping. Records of communication can help to deter undue influence as well as facilitate investigations if the need arises (OECD, 2020[4]). The framework for communication and record keeping is the responsibility of both the company and the ownership entity. Exceptions could be made in instances where SOE representatives wish to report instances of suspected or real illicit activity directly to an entity of the state.

Most countries did not indicate, or were unable to clarify, the circumstances under which the SOE and state interact – let alone specifying whether those interactions were with the board or executive management. In some cases, countries reported a lot of flexibility in those interactions. The approach of the **Netherlands** stood out, as it was able to clearly point to moments of interactions, including those that are and are not recorded, and whether the interaction occurs with the supervisory board or executive management:

- There are quarterly meetings with the executive board (for these minutes are recorded in most cases). Depending on the SOE also supervisory board members attend. In general, minutes are recorded.
- There is an annual AGM, where both the executive board and supervisory board are present (minutes are recorded).
- Twice a year, there is a meeting between the shareholder and the non-executive board to discuss governance matters and the functioning of both the executive as well as the supervisory board. In general, minutes are recorded.
- Apart from the above, there are various informal contact moments between (non-managerial) civil servants and the SOEs (on different levels). These are not always recorded.
- While there is no formal limitation on the shareholding minister interacting with executive management, any meeting with the minister is prepared by civil servants and those preparations pass through all relevant management layers.

As highlighted in the ACI Guidelines' *Implementation Guide*, a set of rules could be established, for example, making it mandatory to keep the copies of the written correspondence, minutes of telephone discussions and meetings between the ownership entity and the SOE by both the ownership entity and the SOE and make them available to the competent authorities on request. The set of rules could include the particular circumstances for which certain rules do not apply (for instance, urgent or sensitive matters) or delegation of authority within the company to interact with state owners when individuals of the board are incapacitated, but any carve-outs should be limited and justified so as not to provide loopholes for inappropriate conversations to take place. While this alone is not a silver bullet for mitigating potentially damaging informal interactions, particularly where informalities are commonplace (e.g. excessive use of encrypted messaging platforms) and are required to facilitate corruption, it renders certain interactions as inappropriate, and provides a basis for authorities to assess noncompliance as if the case arises.

Country responses to the questionnaire provided very few examples of frameworks for communication. The OECD is aware that multiple countries use letters to communicate, as is done in Chile where all the recommendations, opinions or instructions of its ownership entity (SEP) to its SOEs are made through written documents (e.g. minutes of the SEP Council, official letters or Agreements). In addition, the Passive Transparency of Article 10 of Article One of Law No. 20.285 on access to public information is also applicable to the SEP; consequently, any person can request a copy of the minutes of the Council or of the official letters. In the United Kingdom, wholly owned SOEs in UKGI's portfolio enter into a framework document with UKGI and the related government department that sets out the broad corporate governance arrangements for the SOE. A standard framework document will include wording on the expected flow of information between UKGI, the relevant government department and the SOE, which could include access to information on financial performance against plans and budgets, achievements against targets, capital expenditure and investment decisions, and board appointments and remuneration. For SOEs that fall outside the UKGI portfolio, the relevant government department will enter into a framework document with the SOE in a similar manner.

5.3. Final commentary on the implementation of select provisions of the ACI Guidelines

Box 5.2. ACI Guidelines provisions: transparent ownership arrangements and communication

II.5. Ownership arrangements should be conducive to integrity, which implies:

i. Clarifying and making publicly available information about the ownership structure, including linking the SOEs to the ownership entity responsible for said SOEs. This could include, for instance, recording SOEs in beneficial ownership registers.

ii. Clarifying and making publicly available the roles of other (non-ownership) state functions vis-à-vis SOEs that may interact, whether infrequently or frequently, with SOEs in the execution of their functions – including, inter alia, regulatory agencies and audit or control institutions.

iii. Setting an appropriate framework for communication that includes maintaining accurate records of communication between the ownership entity and SOEs.

5.3.1. Commentary on recommendation II.5

There appears to be little information available on countries' ownership structure and the roles of non-ownership state functions in overseeing SOEs. While some such information is available in annual aggregate reports, or their online equivalents, this information is largely wanting. The state most commonly provides information on financial performance and value of SOEs, on total employment in SOEs and on the pursuit and fulfilment of public policy objectives. Moreover, the type of information included in reporting, and the number of SOEs covered, commonly depends on which public entity – whether a centralised ownership entity or a shareholding ministry – is in the practice of preparing and issuing aggregated information and how they do it. This means that in many countries, information can be inconsistent and unavailable for a swathe of SOEs, while in others there is no information at all. Countries are encouraged to implement ACI Guidelines' recommendation II.5.i and ii to improve the transparency around SOEs, encourage investment and business opportunities for SOEs and demonstrate, more broadly to the public, that there is predictability and sound organisation in the state's ownership.

There is also little information available about the communication between various representatives of the state and SOEs. This may mean that communication itself is informal and inconsistent, or simply that there

is no framework that countries can easily point to that captures the occasions for interaction (with whom, when and how). Countries are encouraged to implement ACI Guidelines' recommendation II.5.iii, creating a framework that clarifies the acceptable opportunities and forms or means of communication between the state owner and the board, and the state owner and executive management, as well as when interactions should be recorded. This framework would ideally be made publicly available.

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Note

[1] But see Judgment of the Court in Joined Cases C-37/20 Luxembourg Business Registers and C-601/20.

Corporate Governance

Safeguarding State-Owned Enterprises from Undue Influence

IMPLEMENTING THE OECD GUIDELINES ON ANTI-CORRUPTION AND INTEGRITY IN STATE-OWNED ENTERPRISES

State-owned enterprises (SOEs) remain vulnerable to being used as conduits for political finance, patronage, and personal or related-party enrichment. Lingering weaknesses in corporate governance and ownership arrangements can expose SOEs to such exploitation and undermine SOE efforts to uphold integrity. This report highlights these weaknesses and provides state owners with a better understanding of which activities are effective in insulating SOEs from undue influence. It also takes stock of how OECD member and participating countries are implementing relevant provisions of the OECD Guidelines on Anti-Corruption and Integrity in SOEs, serving as the first report on the implementation of the Guidelines since their adoption in 2019.

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