

# Professionalising Boards of Directors of State-Owned Enterprises

Stocktaking of National Practices

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## *Foreword*

This report provides an overview of national practices to professionalise boards of directors by examining relevant legislation, policies and practices applicable to state-owned enterprises (SOEs) in a sample of OECD countries and developing and emerging economies. This report has been prepared as the result of the work of the OECD Global Network on Corporate Governance of State-Owned Enterprises, which provides a forum for policy makers, practitioners and experts from all over the world to identify common challenges related to state-owned enterprise (SOE) ownership and governance, share good practices and develop recommendations for effective reform.

The report is based on a questionnaire developed by the OECD Secretariat and circulated to the countries participating in the second meeting of the OECD Global Network on Corporate Governance of State-Owned Enterprises on 23-24 May 2017 in Dubai in the United Arab Emirates, which was hosted by the Hawkamah Institute for Corporate Governance with the financial support from the Ministry of Strategy and Finance of Korea. Questionnaire responses have been discussed in a “peer review” mode in the context of the meeting. Nine countries volunteered to provide self-reported information: People’s Republic of China (hereafter China), Egypt, India, Korea, Malaysia, Morocco, Sweden, Thailand and Viet Nam. It has been enriched by discussions emanating out of Network consultations and earlier OECD research in this area (OECD, 2013). The report was prepared by Chung-a Park of the Corporate Affairs Division of the OECD Directorate for Financial and Enterprise Affairs with contributions from Hans Christiansen and Sara Sultan.

The report is structured as follows. Part I provides a brief overview of internationally recommended practices for ownership entities in the area of SOE board practices – introducing key relevant policy tenets of the newly revised *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (“SOE Guidelines”). Part II takes stock of policy, legal and regulatory measures for organising and professionalising board practices within the SOE sectors in the surveyed countries. It consists of two sections examining respectively (1) board nomination and appointment practices at the level of the state and (2) practices for enhancing board efficiency and performance at the enterprise level focusing on board evaluation, remuneration incentives, board induction and training. Each section describes related national practices in detail, and where applicable highlights examples of good practice.

Part III highlights common challenges to ensuring an effective legal and regulatory framework for organising and professionalising board practices by SOEs. It proposes key policy issues for consideration, including: defining responsibilities of boards of directors through centralisation and professionalisation of the ownership function; professionalising board nomination frameworks; improving disclosure related to board nomination and election processes; and, strengthening the role of SOEs in enhancing board efficiency and performance. The OECD will use this stocktaking report to continue to promote good governance of SOEs through policy dialogue with OECD and non-OECD countries.



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## List of abbreviations

AGM	Annual General Meeting
CPSE	Central Public Sector Enterprise (India)
DCP	Director's Certification Program (Thailand)
DEPP	Department of Public Enterprises and Privatisation (Morocco)
DPE	Department of Public Enterprises (India)
EEP	Public Enterprises and Establishments (Établissements et Entreprises Publics, Morocco)
GLC	Government-Linked Company (Malaysia)
GLIC	Government-Linked Investment Company (Malaysia)
IOD	Institute of Directors (Egypt)
KIPF	Korea Institute of Public Finance (Korea)
MCGG	Malaysian Code of Corporate Governance ( Malaysia)
MINDA	Malaysian Directors Academy (Malaysia)
MOF	Ministry of Finance (Malaysia)
MOF Inc.	Ministry of Finance Incorporated (Malaysia)
MOSF	Ministry of Strategy and Finance (Korea)
MOU	Memorandum of Understanding
OECD	Organisation for Economic Co-operation and Development
PE	Public Business Sector Enterprises (Egypt)
PSE	Public Sector Enterprise (India)
SASAC	State-owned Assets Supervision and Administration Commission of the State Council (China)
SCIC	State Capital Business and Investment Corporation (Viet Nam)
SCOPE	Standing Conference of Public Enterprises (India)
SEBI	Securities and Exchange Board of India (India)
SEPO	State Enterprise Policy Office (Thailand)
SOE	State-owned enterprise
SOD	Statement of Directions (Thailand)

## *Part I*

# Internationally recommended practices on SOE board practices

## Introduction

### Importance of organising and professionalising board practices

Boards play a central function in corporate governance and performance of state-owned enterprises. The board has an ultimate responsibility, including through its fiduciary duty, for developing corporate strategies and overseeing SOE performance. In this capacity, the board acts fundamentally as an intermediary between the state as a shareholder, and the company and its executive management. This role is no less important in state-owned enterprises than in private companies. According to the OECD recommendations, the board should be charged with a duty to act in the interests of both of the state and the company.

With an increasingly prevalent practice of “commercialisation” of SOEs in recent decades and growing expectations for improved performance, many governments have made efforts to professionalise boards of directors and sought to make boards perform better by ensuring their independence and shielding them from ad hoc political intervention. Governments have taken a number of steps to implement the three-layered approach in line with their company laws to improve the efficiency and performance of boards of state-owned enterprises. In an increasing number of countries, SOE boards have evolved from oversight bodies entrusted with compliance toward driving performance and establishing corporate strategy.

However, still, assuring a strong, autonomous role for SOE boards of directors is an issue that most countries grapple with. In some countries, SOE boards are not adequately empowered to play such a role, due to direct ministerial appointments of executive management and/or ad-hoc and informal means of instructions and communication. In others, board members may not be qualified to fill this role, for instance because of recruitment problems linked to board fees. This could potentially have a negative impact on the performance of boards. More remains to be done to improve board performance and efficiency by implementing the aspirational standards of governance and accountability established by the internationally-agreed standard *OECD Guidelines on Corporate Governance of State-Owned Enterprises (“SOE Guidelines”)*.

Every SOE operates within a specific legal, institutional and economic context, and any attempt to improve its governance needs to be tailored to those circumstances. SOEs are subject to varying degrees of enforcement and restrictions depending on their regulatory environment as well as the sector in which they operate. Nevertheless, there are key messages and lessons on SOE governance reform, both general and focused on SOE board practices, which countries can garner from the “SOE Guidelines”.

In 2015, the SOE Guidelines, which have served as a global benchmark for countries introducing governance reforms in the state-owned sector since their inception in 2005, were revised. A large number of emerging economies participated in the revision process and made significant contributions. The SOE Guidelines are founded on the principle that SOEs should be as transparent towards the general public as a publicly listed corporation is expected to be towards its shareholders. The Guidelines recommend that countries increase their efforts to improve transparency and accountability within the SOE sector: on the state of the financial structure and conditions in order to contribute to the evaluation of the SOEs; and of activities that have an impact on the economic performance of SOEs themselves as well as the national economy. In this context, the Guidelines provide recommendations specific to ameliorating board practices at both the level of the state and the company level, to enhance accountability for SOE performance (Box 1).

### Box 1. Select SOE Guidelines' provisions on the responsibilities of the boards of SOEs

The OECD Guidelines on Corporate Governance of State-Owned Enterprises (SOE Guidelines) outline good practice standards for the boards of state-owned enterprises (SOEs). The text of Chapter VII on responsibilities of the boards of SOEs is as below.

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

- A. The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the enterprise's performance. The role of SOE boards should be clearly defined in legislation, preferably according to company law. The board should be fully accountable to the owners, act in the best interest of the enterprise and treat all shareholders equitably.
- B. SOE boards should effectively carry out their functions of setting strategy and supervising management, based on broad mandates and objectives set by the government. They should have the power to appoint and remove the CEO. They should set executive remuneration levels that are in the long term interest of the enterprise.
- C. SOE board composition should allow the exercise of objective and independent judgement. All board members, including any public officials, should be nominated based on qualifications and have equivalent legal responsibilities.
- D. Independent board members, where applicable, should be free of any material interests or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgement.
- E. Mechanisms should be implemented to avoid conflicts of interest preventing board members from objectively carrying out their board duties and to limit political interference in board processes.
- F. The Chair should assume responsibility for boardroom efficiency and, when necessary in co-ordination with other board members, act as the liaison for communications with the state ownership entity. Good practice calls for the Chair to be separate from the CEO.
- G. If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence.
- H. SOE boards should consider setting up specialised committees, composed of independent and qualified members, to support the full board in performing its functions, particularly in respect to audit, risk management and remuneration. The establishment of specialised committees should improve boardroom efficiency and should not detract from the responsibility of the full board.
- I. SOE boards should, under the Chair's oversight, carry out an annual, well-structured evaluation to appraise their performance and efficiency.
- J. SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent corporate organ.

*Source:* OECD (2015), Guidelines on Corporate Governance of State-Owned Enterprises, OECD Publishing, Paris.



## *Part II*

# **Stocktaking of legal and regulatory framework on board practices of SOEs**

## **Boards of directors of state-owned enterprises: an overview of national practices**

This section takes stock of policy, legal and regulatory measures for professionalising SOE board practices of the countries that have contributed to the OECD questionnaire on board practices. It consists of two sub-sections examining national practices bearing on (1) board nomination and appointment practices at the level of the state; and (2) practices for enhancing board efficiency and performance at the enterprise level focusing on board evaluation, remuneration incentives, board induction and training. It also provides a brief overview of areas where “good practice” is developing vis-à-vis SOE boards of directors, using as a benchmark the OECD Guidelines for Corporate Governance of State-Owned Enterprises (“SOE Guidelines”). The analysis here is limited to practices related to non-executive directors in commercially oriented, non-listed SOEs. For jurisdictions with a two-tier board structure, the focus is on supervisory board members. The information included in this section draws upon self-reporting from nine countries that participated in the OECD survey on SOE board practices from March to July 2017.

## **General policy, legal and institutional measures for enhancing effectiveness of boards of directors of SOEs**

### ***Defining roles and responsibilities of boards of directors in support of board autonomy***

Good practice calls for the role of the board to be clearly defined and founded in legislation, in line with general company law. SOE boards should be assigned a clear mandate and have ultimate responsibility and autonomy for the company’s performance. It is also equally important that the government or its ownership unit sets objectives and communicates them to SOE boards to make the entire board aware of these objectives.

Most frequently, many of the roles and responsibilities of boards are defined by and communicated through company law requirements. The extent of these responsibilities depends on country but usually include strategic monitoring of the company and executive management performance, development and monitoring of the organisational strategy, consultation with shareholder ministries of the business objective and plan, and sometimes compliance-checking. However, the questionnaire responses from the participating authorities indicate that a majority of the governments do not have a clear distinction between the respective roles of the Board and the ownership function, which potentially hamper independence and autonomy of boards. In particular, in jurisdictions with rather decentralised state enterprise function, like Egypt, India, Malaysia, Morocco

and Viet Nam, the ownership entities 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. The practices of countries participating to this stocktaking exercise are described below.

### *Country Practices*

In China, the State-owned Assets Supervision and Administration Commission of the State Council of the People's Republic of China (SASAC)<sup>1</sup> has established the "Guidelines on further improving Corporate Governance of SOEs" and the "Guidelines on Pilot Programs for Central SOE Board of Directors" to enhance responsibility of board of directors along with corporatisation of SOEs. Since 2004, the SASAC has selected 83 central SOEs to take part in a pilot program for improving board governance and establishing standard boards. Also, SOEs are required to establish a supervisory board to govern board of directors and better protect the interests of the shareholders. Under the pilot program, the SASAC has issued regulations and guidelines on operation of central SOE boards of directors on the basis of the Company Law and Interim Regulations on Supervision and Administration of State-owned Assets of Enterprises. According to the laws and regulations, enterprises wholly owned by the state should safeguard the board of directors' responsibilities including making development strategies and supervising their implementation; setting up a management structure; communicating their decision to the SASAC; conducting performance evaluation; determining remuneration level of senior executives; developing and monitoring the enterprise's risk management system; reviewing internal audit report and appointing the person in charge of the internal audit unit; and addressing problems pointed out by the supervisory board. Furthermore, the Guidelines require the board to submit an annual report.

In Egypt, the Law 203 of 1991 oversees governance of the SOEs (Public Business Sector Enterprises in Egyptian vernacular). Also, the Guidelines for Corporate Governance in Egyptian SOEs issued in 2006 provide the framework for board governance and specify roles and responsibilities of board of directors related to strategy formulation and monitoring, compliance to laws and accounting standards. They were developed based on the G20/OECD Corporate Governance Principles and the OECD Guidelines on Corporate Governance of State-owned enterprises according to the questionnaire responses from the Egyptian authorities. Yet, it is not uncommon to find government holding companies<sup>2</sup> intervening in operational and day-to-day managerial decisions of their subsidiaries and affiliated companies.

In India, the Department of Public Enterprises (DPE)<sup>3</sup> under the Ministry of Heavy Industries and Public Enterprises has established the DPE Guidelines on Corporate Governance ("DPE Guidelines") which aims at helping the Central Public Sector

<sup>1</sup> The state ownership agency SASAC directly represents the state as shareholder in 110 of the central SOEs, which are essentially corporate groups with an extensive network of subsidiaries. Currently most of central SOEs at the group level are enterprises wholly owned by the state.

<sup>2</sup> SOEs in Egypt are structured as individual companies controlled by boards of directors and grouped under government holding companies that are arranged by industry.

<sup>3</sup> The DPE under the Ministry of Heavy Industries and Public Enterprises is a nodal department that is responsible for coordinating general policy matters and evaluating and monitoring the performance of SOEs (Central Public Sector Enterprises or CPSEs in Indian vernacular).

Enterprises (CPSEs) with embracing global business standards and improving their performance in a transparent and ethical way. The DPE has also set objectives for CPSEs and has introduced a policy (Maharatna/Navratna/Miniratna scheme in Indian vernacular) to delegate enhanced financial autonomy to select PSEs. The Memorandum of Understanding (MOU) system which is a mutually negotiated agreement between the management of the PSE and the Government of India has also been established. Nevertheless, the Indian authorities point out in their questionnaire responses that the DPE Guidelines make a room for public authorities to intervene with board decisions. The Guidelines indicate that “as long as it is in the larger interest of the public, it is legitimate for public authorities to directly influence board decisions”.

In Korea, in accordance with the Article 31 of the Act on the Management of Public Institutions<sup>4</sup>, CEOs of SOEs and public institutions are required to consult the board of directors when developing an initial draft of performance objectives and formalising the “management performance contracts” with the ownership entities (i.e. Ministry of Strategy and Finance (MOSEF) or relevant line ministries). Management performance contract specifies objectives that should be achieved during the CEO’s term of office concerning responsibilities, rights, remuneration, human resources and evaluation of the CEOs. The Article 32 of the Act also requires that the board of directors are informed of and evaluate various aspects of the company management that could potentially impact company performance, including management objectives, budget, management plan and settlement of accounts. However, it is important to note that it is the Ministry of Strategy and Finance who is overall in charge of approving the performance objectives and management performance contracts.

In Malaysia, SOEs other than the listed companies (generally categorised as Government Linked Companies<sup>5</sup>) are under the supervision of the Ministry of Finance (MOF) which has recently launched the board of directors guidelines for the Ministry of Finance Incorporated (MOF Inc.) companies. This stipulates an oversight control of the companies on corporate governance issues, appointment of directors, various committees and tender procedures. However, their accountability is arguably lax. Although SOE boards have an ultimate responsibility, the financial performance and performance efficiency are not tightly monitored by their shareholders. In practice, just a phone call from senior government officials can exert influence on any key decisions by the board, according to the questionnaire responses from the Malaysian authorities.

In Morocco, individual and collective responsibilities of board members are stipulated by the draft Law on the State governance and Financial control of Public Enterprises and Establishments (Établissements et Entreprises Publics: EEPs). In addition, the Moroccan

<sup>4</sup> Korea uses the term “public institutions” to refer to SOEs, which are thus designated based on the ratio of their self-generating revenue and the amount of government grants. Public institutions are further divided into three categories: (i) public corporations; (ii) quasi-governmental institutions; and (iii) non-classified public institutions.

<sup>5</sup> Malaysia has a two tier system of SOEs. Firstly, Government Linked Companies (GLCs) refer to the total of 30 listed companies which represent about 35% of the stock market. The State controls around 30 – 40 % of the shares of each GLC. They are also mainly controlled by Government Linked Investment Companies (GLICs) which have strong links to the Government via the Ministry of Finance or relevant Ministries. There are five GLICs in total. Secondly, there are the Ministry of Finance Incorporated (MoF Inc) companies which can also be referred to as SOEs. There are about 44 companies of which the MoF has at least 99% of shareholdings. These are non-listed and are under direct control of the Finance Minister.

Code of Good Governance Practices of the Public Enterprises and Establishments, which is based on the principle of comply or explain, comprises a chapter concerning the roles and responsibilities of the board of directors, recognising the need for EEPs to be equipped with the mandate, competencies and objectivity that could facilitate the role of board of directors in setting strategy and supervising management. However, the questionnaire responses from the Moroccan authorities pointed out that there is an insufficient clarity concerning the roles and responsibilities of the bodies in charge of board governance related to guidance, management and control. They also highlighted that other challenges include irregular reporting on the work of EEPs; low quality of internal control tools, and non-systematic recourse to risk management and external auditing practices.

In Sweden, the framework for SOE board governance is clearly set out in the Companies Act, supported by the State's ownership policy and the expectation that SOEs are governed by the Swedish Code of Corporate Governance for listed companies. According to the Swedish authorities, the supervisory boards in Sweden are autonomous in defining strategies for the companies. The processes by which the government or its ownership unit set objectives and communicate them to SOE boards are explained at length in the 2015 Annual Report on State-Owned Enterprises issued by the Ministry of Innovation and Enterprises<sup>6</sup>. In this document, the government details its positions on key principles of governance and management, such as allocation of responsibility among owners, boards of directors and executive management. As financial and non-financial targets are communicated and decided by the Annual General Meeting (AGM), the entire board is made aware of these objectives.

In Thailand, the State Enterprise Policy Office (SEPO) as an ownership unit of the government sets objectives called "Statement of Direction (SOD)" for all SOEs in line with a policy for the government shareholders. The Statement stipulates that the entire board has a responsibility for these objectives and should be aware of them. The SOE boards of directors can also join the process of setting up the SOD. The SEPO has also developed the Guidelines on effective function of the SOE board of directors to specify their role and responsibilities. The Guidelines clearly state that SOE boards have a responsibility for the stewardship and performance of the company in order to comply with SOE's regulation, according to the questionnaire responses from the Thai authority.

In Viet Nam, the government has established important policies for enhancing the role of board of director of SOEs including the Decree 97/2015/NĐ-CP dated 19 October 2015 and the Decree 106/2015/NĐ-CP dated 23 October 2015. According to these Decrees, the objectives of SOE boards of directors are defined in charters of economic groups issued by the Prime Minister as well as charters of corporations and enterprises issued by line Ministers or Chairman of provincial committees. All charters require that SOE boards of directors or supervisory boards should be granted full responsibility for company's performance and autonomy to define strategies for the company in accordance with the objectives defined by the government. The Decrees also state that if a board member is found to have been unduly influenced by outside person(s) or institution(s), public authorities may implement and apply adequate disciplinary measurement. Nevertheless, in practice, the questionnaire responses from the Vietnamese authority indicate that public authorities often directly influence SOEs through state management function.

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<sup>6</sup> [www.government.se/reports/2016/09/annual-report-state-owned-enterprises-2015](http://www.government.se/reports/2016/09/annual-report-state-owned-enterprises-2015)

**Table 1. Legal framework for enhancing board practices in the SOE sector**

China	The state ownership agency SASAC has established the “Guidelines on further improving Corporate Governance of SOEs” and the “Guidelines on Pilot Programs on Central SOE Board of Directors” to enhance responsibility of board of directors along with corporatisation of SOEs. Also, under the pilot program, the SASAC has issued regulations and guidelines on establishment and operation of central SOE boards of directors on the basis of the Company Law and Interim Regulations on Supervision and Administration of State-owned Assets of Enterprises. The Company Law leaves most of issues related to corporate governance for central SOEs to the corporate charter, which sets rules for nomination and appointment of directors.
Egypt	The Public Sector Law 203 of 1991 oversees governance of SOEs (Public Business Sector Enterprises in Egyptian vernacular). Also, the Guidelines for Corporate Governance in Egyptian SOEs issued in 2006 provide the framework for board governance and specifies roles and responsibilities of the board of directors related to strategy formulation and monitoring, compliance to laws and accounting standards.
India	DPE Guidelines on corporate governance and provisions in Companies Act 2013 provide broad framework of SOE's governance.  Companies Act 2013. This law mandates that annual reports of companies should contain a separate section on Corporate Governance with details of compliance. SOEs are required to submit quarterly compliance report to their administrative ministries. It requires enhanced disclosures with respect to Board's Reports, Prospectus, AGM notice, Annual return, director's responsibility statement, Audit Committee constitution, Vigil mechanism etc. CPSEs are required to obtain a certificate from auditors/company secretary regarding compliance with these guidelines.
Korea	The Act on Management of Public Institutions provides legal and regulatory framework for national board practices including board composition, board nomination and appointment process.
Malaysia	No policy or legal measures specific to SOEs. In general, the GLCs comply strictly the abovementioned under the watchful eye of the regulators i.e. Stock Exchange, Securities Commission Central Bank, etc. For SOEs, they by and large conform to best corporate practices but with strong influence by the Ministers and public officials.
Morocco	The draft law on State Governance and Financial Control of Public Enterprises and Establishments (Établissements et Entreprises Publics: EEP) requires establishing a transparent and institutionalized mechanism for appointment of board members on the basis of competency and experience. It also provides for the establishment of specialized committees to be responsible for issues related to auditing and strategic orientations. In addition, the Moroccan Code of Good Governance Practices of the Public Enterprises and Establishments (EEP), which is based on the principle of comply or explain, comprises a chapter concerning the roles and responsibilities of the board of directors.
Sweden	The framework for state company management including the role and responsibility of SOE boards is clearly set out in the state's ownership policy of the Companies Act, supported by the Swedish Code of Corporate Governance. As of 2017 the state ownership policy is decided upon by the AGM.
Thailand	The State Enterprise Policy Office (SEPO) as an ownership unit of the government sets objectives called “Statement of Direction (SOD)” for SOE governance including board practices. The SEPO has also developed the Guidelines on effective function of the SOE board of directors to specify their role and responsibilities.
Viet Nam	Decree 97/2015/NĐCP dated 19 October 2015 and the Decree 106/2015/NĐCP dated 23 October 2015 specify the objectives and mandate of SOE boards of directors.

Source: Questionnaire responses submitted by government authorities

### ***Board nomination and appointment practices at the level of the state***

In virtually all countries, the nomination of SOE directors is a government responsibility. It is usually exercised by the relevant ministers, or through some form of inter-ministerial process. According to the degree to which the state has centralised its enterprise ownership function and the size of the state's ownership stake in an SOE, this may depend on individual ministers or the entire cabinet and/or executive powers. In exercising these powers, ministers should safeguard overall public interests rather than acting as private owners of companies.

In countries where the state enterprise ownership function is centralized for example through a dedicated state enterprise ownership unit – such as in China, Korea, Sweden and Thailand – this ownership unit has the direct responsibility for nominating members to SOE boards, whereby the decision often benefits from advisory functions. In countries where ownership is more decentralised like Egypt, India, Malaysia, Morocco, and Viet Nam the agency exercising a central state function and sectorial ministries often share responsibility for board nominations (Table 2). Line ministries exercise most of the powers but finance ministries sometimes oversee the process through some degree of coordination. In these cases, the OECD would recommend subjecting ministerial decisions concerning board nominations to some form of consensus by a wider group of ministers.

The *SOE Guidelines* recommend that the recruitment process should be based on eligibility rules and appropriate vetting mechanisms (i.e. nomination committees) prior to the ultimate decision of ministers. Where SOEs have minority non-state investors, their adequate board representation should also be ensured. The board nomination decision should be facilitated by the consistent policy framework that enables boards to play a role in identifying potential members with appropriate expertise and knowledge. The policy framework entails setting clear minimum qualification criteria for board nominations; vetting mechanisms for ministerial board nominations; establishing nomination committees or taking a tailored nomination approach; and ensuring shareholders' right to elect board members.

### ***Qualification criteria for board nominations***

All the participating countries except Egypt reported that they have established minimum qualification criteria for selecting and nominating board members. These criteria commonly relate to candidates' education, professional backgrounds and expertise. They are developed in order to promote more balanced board composition and streamline the assessment process. However, in some cases, the gap between policies and practices are found due to somewhat lax accountability in state ownership function. An overview of reported country practices are provided below.

### ***Country practices***

In China, according to the Regulations on State-owned Assets of Enterprises, directors are required to have professional knowledge and competency. Having a “good character” is also one of the required qualifications.

In Egypt, there is currently an absence of a well-defined legal and regulatory framework that specifies selection criteria and nomination process of the board of directors. A recent Ministerial Decree pointed out that diversification of board profiles is needed to improve board performance. It is reported that there are an insufficient number of the members with background in finance, law, marketing or management.

In India, qualification criteria is developed by the line ministry overseeing the SOE in consultation with the concerned SOE and it usually varies with the functional role of the concerned Director. In addition to education and relevant expertise, the DPE guidelines lay down maximum age as 65 years for independent directors. It can be relaxed on a case-by-case basis by the government, according to the questionnaire responses by the Indian authority.

In Korea, the Article 30 of the “Act on the Management of Public Institutions” states that candidates with good knowledge, experience, and competent ability necessary for performing his/her duties can be nominated as a director or auditor of the SOE.

In Malaysia, Malaysian Directors Academy (MINDA) is mandated to develop and establish a Directors Registry from which Nomination Committees are encouraged to select potential board members. Leadership experience, national and regional background are included in the criteria. At present, most of the SOE board members are retired professionals or public officials from the MOF or relevant line ministries. Candidates are identified mainly through networking and word of mouth.

In Morocco, the draft Law on the State Governance and Financial control of Public Enterprises and Establishments (Établissements et Entreprises Publics: EEPs) requires establishing a transparent and institutionalized mechanism for appointment of board members on the basis of predetermined selection criteria. Also, according to the Moroccan Code of Good Governance Practices of the Public Enterprises and Establishments, the board of directors of SOEs are required to be selected based on their professional competency and expertise, particularly in the technical, economic and financial fields relevant to the profile of the organisation.

In Sweden, the starting point for all board nominations is the need for specific expertise, relevant to the concrete board vacancy. To be considered for election to the board, a generally high level of expertise is required in areas like corporate governance, business operations, financial issues and other relevant fields. Furthermore, integrity and the ability to see to the company’s best interests are required.

In Thailand, the SEPO is charged with developing a profile of board skills called “Skill Matrix” to identify its skills needs and potential members with appropriate knowledge, competencies and expertise, as indicated by the questionnaire responses by Thai authority. The qualification criteria to be considered for the pool include age, educational qualifications, relevant work experience and Thai nationality.

In Viet Nam, the Decree 97/2015/NĐ-CP dated 19/10/2015 and the Decree 106/2015/NĐ-CP dated 23/10/2015 provide guidelines and regulations on the board nomination criteria and an official nomination and appointment procedure. Specialty and management skill are a prerequisite qualification for board member nomination and the board is responsible for identifying its skills needs and communicating them to the relevant decision makers. The Prime Minister decides and promulgates general qualification criteria and the line ministries and provincial committees issue a detailed instruction regarding SOE business characteristics.

### ***Vetting and advising on ministerial board nominations***

In jurisdictions with a centralised ownership function, like China, Korea, Sweden and Thailand, a centralised ownership unit can act as a “clearing house” for applications to SOE boards. In China, non-executive (external) directors in central SOEs are directly nominated and appointed by the ownership agency SASAC in consultation with relevant departments including the line ministries, central SOEs and industrial associations at home and abroad. External directors are recruited either through direct appointment or through an open selection process. The board can recommend candidates for external directors and interested outsiders can recommend themselves as candidates.

In Korea, the Ministry of Strategy and Finance (state ownership unit) appoints board directors of SOEs based on the recommendation of the Committee for Recommendation

of Executive Officers and Board Members which is comprised of non-executive directors of the SOE (or quasi-governmental institution) and the members appointed by the board of directors.

In Sweden, while board nomination is formally a decision of the Ministry exercising central ownership powers it is also subject to a collective decision by the government whereby potential directors proposed by the ownership unit are subject to an approval by the minister and prime minister's office. Each nomination for a state-owned company is made in an agreement with both governing parties. Appointment decisions are then formally made in the annual general meeting (AGM) where board election takes place. Shareholder agreements should be in place for the nomination process in case there are outside shareholders.

In Thailand, line ministry and the SEPO propose the names of potential directors to an authority for approval according to the law. The process of developing the aforementioned Skill Matrix is also subject to a consensus among board, the line ministry, the SEPO and the State Enterprise Policy commissioner.

In Egypt, India, Malaysia, Morocco and Viet Nam nomination process depends on the size and significance of the SOEs. While larger companies are subject to a form of consensus by a wider group of ministers, the Cabinet or Prime Minister, other companies just require an approval of the relevant Minister or line ministries.

In Egypt, the Minister of Public Business Sector nominates and appoints the board of directors of public enterprises with input from the General Assemblies which collect and reviews applications from candidates.

In India, the PESB advises the Administrative Ministry and/or make recommendations on possible board candidates in line with the Companies Act and the Securities and Exchange Board of India (SEBI) regulations. Ultimately, nominations and appointments are subject to an approval of the Cabinet Committee.

In Morocco, the nomination and appointments of SOE board of directors is governed by law. The Council of the Government reviews applications and recommends candidates to the head of government for final decision on the basis of experiences and competencies related to the post to be filled. The decision usually takes into account multiannual plans and action plans presented by the SOEs. The board members of SOEs that are classified as "strategic" are formally appointed by the King after deliberation by the Council of Ministers.

In Viet Nam, all potential applicants should be suggested by the SOE boards and nominated by state authorities. In shareholder meetings, applicants who are nominated by ministers should be voted to SOE board. However, when undertaking restructuring processes or there is a lack of applicants, the Prime Minister, other ministers or relevant authorities are authorised to undertake a direct appointment to the board. When state authorities nominate a public official to the SOE board, he/she shall no longer act as an official. There is no wide advertisement for SOE board vacancy and no use of head hunter.



Table 2. Nomination framework and process

	Responsibility for nomination	Required Qualifications	Guidelines/constraints on member characteristics
China	Non-executive (external) directors in central SOEs are directly nominated and appointed by the ownership agency SASAC in consultation with relevant departments including the line ministries, central SOEs and industrial associations at home and abroad.	According to the Regulations on State-owned Assets of Enterprises, directors are required to have professional knowledge and competency. Having a "good character" is also one of the required qualifications.	There are no specific requirements regarding gender, nationality or locality.
Egypt	The Minister of Public Business Sector nominates and appoints the board of directors of public enterprises with input from the General Assembly which collects and reviews applications from candidates.	There is an absence of a well-defined legal and regulatory framework that specifies selection criteria for the board of directors.	N.A.
India	The PESB advises the Administrative Ministry and/or make recommendations on possible board candidates in line with the Companies Act and the Securities and Exchange Board of India (SEBI) regulations. Ultimately, nominations and appointments are subject to an approval of the Cabinet Committee.	In addition to education and relevant expertise, the DPE guidelines lay down maximum age as 65 years for Independent Directors.	N.A.
Korea	Boards are divided into standing (executive) and non-standing (non-executive) board members. For the latter, the appointments are made by the Ministry of Finance and Strategy, which is a centralised ownership unit.	Formal qualifications are stipulated in the Act on the Public Institutions Management. It states that candidates with good knowledge, experience, and competent ability necessary for performing his/her duties can be nominated as a director or auditor of the SOE.	Factors such as vocation, sex and native hometown are all considered to achieve balance. "The Guidelines on Management of SOEs and Quasi-Governmental Institutions", which is based on the principle of comply or explain, recommend that the proportion of female board members be at least 30%.
Malaysia	"State leadership" is responsible, non-listed SOEs directors are appointed according to SOEs' articles of association. Vetting of independent director appointment rests with nomination committees of boards.	Leadership experience, national and regional background.	Encouraging board diversity, but also requirement to have mix of state, ex-officio, civil servants and employee representatives on boards.
Morocco	The Council of the Government reviews applications and recommends candidates to the Head of Government for final decision. The board members of EEPs that are classified as "strategic" are appointed directly by His Majesty the King after deliberation by the Council of Ministers.	Technical expertise and competency.	N.A.

	Responsibility for nomination	Required Qualifications	Guidelines/constraints on member characteristics
Thailand	Line ministry and the SEPO propose the names of potential directors to an authority for approval according to the law. The process of developing a Skill Matrix is also subject to a consensus among board, the line ministry, the SEPO and the State Enterprise Policy commissioner.	Educational qualifications, relevant work experience, age and Thai nationality.	N.A.
Sweden	Board nomination is formally a decision of the ownership Ministry, but is a collective decision by the Government Offices.	A high level of expertise is required in corporate governance, business operations, financial issues or other relevant areas. Furthermore, integrity and the ability to see to the company's best interests are required.	Gender target of 40%
Viet Nam	All potential applicants should be suggested by SOE board and appointed by state authorities. In shareholder meeting, applicants who are nominated by ministers should be voted to SOE board.	Specialty and management skill	N.A.

Source: Questionnaire responses submitted by national authorities; OECD (2017 forthcoming); OECD (2013)

### ***Establishing nomination committees or taking a more ad-hoc approach***

It is considered good practice for boards to take a tailored approach to identifying the right mix of skills, experience and personal characteristics, when looking to fill a vacancy on the board. For instance, the boards could seek expertise from management recruitment agencies (or head-hunters) and/or create a “directors’ pool” based on rigorous qualification criteria. China, Korea, Malaysia, Thailand and Sweden have taken measures in this direction.

In China, the SASAC has established a system of external directors pool which is subject to a qualification review on a regular basis. Candidates can join the external directors pool only after a review by the Professional Qualification Review Committee for External Directors. Whenever there is a board vacancy, the SASAC can select the director from the pool according to specific needs of the board. The board of directors can make suggestions to the SASAC on selection of external directors taking into account their experiences and expertise relevant to enterprise operation and management practices. Central SOEs in the pilot program of board of directors have a nomination committee along with other specialised board committees including the strategy committee, the remuneration and evaluation committee, and the audit and risk management committee.

In Korea, there are legal arrangements which aim at enhancing disclosure of nomination process. The Article 24 of the “the Act on the Management of Public Institutions” states that the recruitment of board of directors should be announced publicly on the Internet website of a concerned SOE as well as daily newspapers. The period of time allowed for application should be at least one week. Also, the

Recommendation Committee can rely on head-hunters or external consultants when inviting and searching candidates.

In Malaysia, the Chairman and members of the nomination committee usually identify and meet the potential candidate and go through an evaluation based on a Directors' pool. Subsequently, if approved, they are recommended to the Main Board. Vacancies are not advertised and recently, there is a growing use of head hunters.

In Thailand, vacancies are widely advertised and outsiders can apply for directorship. A nomination committee should be established to select qualified candidates from a Directors' Pool based on the Skill Matrix.

In case of Sweden, the board nomination process starts by a working group for each company analysing needs of expertise and producing requirement profiles on the basis of the company's operations, current situation and future challenges as well as the board's composition. Two head hunters should be employed by the ownership unit and carry out the recruitment processes. For each SOE there is an investment team and an input from each investment team and the chair is sought after. While no pool is used and the vacancies are not advertised, directors are drawn from Sweden and abroad.

Both the Moroccan and Egyptian governments are currently considering establishing specialised committees to enhance legal and regulatory framework for selection process of board members, internal audit process and external evaluations of SOE governance. For instance, one of the Ministerial Decrees that were launched in 2016 by the Egyptian Minister of Public Business Sector pointed out that the government holding companies should form a nomination committee along with other corporate governance-related committees including audit committee, remuneration committee and investment committee.

### ***Ensuring shareholders' right to elect board members***

The *SOE Guidelines* call for the relevant decision-making and advisory bodies to have a prior consultation with non-government shareholders concerning all board appointments. It is recommended that minority shareholders and employee representatives (where applicable) have access to nominate directors through cumulative voting or proportional allocation. However, there is no formal requirement for how this is done in the surveyed countries. In countries where there are listed state-owned enterprises, SOEs establish external nomination committees attached to their annual general meeting (AGM) of shareholders which ultimately has the right to appoint the board. In most cases non-state shareholders should take part to the committee. However, in some countries (as reported in case of India, Korea, Malaysia, Morocco and Thailand) board representation for non-governmental shareholder is not facilitated in practice.

### ***Board composition in support of board independence and autonomy***

The *SOE Guidelines* recommend that SOE boards of directors should be composed so that they can exercise independent<sup>7</sup> and objective judgment and the board can effectively

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7 Board "independence" should not be confused with "independent" directors. An independent and objective board is one that operates under a legal and regulatory framework that is subject to public governance and is designed based on board profiles. Independent directors (subject to national definitions) are individuals who are not directly representing any particular stakeholder interest in the company, but who are sought to bring certain skills and competencies to the board.

guide the SOE toward serving the interests of both the company and its shareholder. It is recommended to ensure transparency regarding the rules and principles guiding SOE board composition. This could include rules for the inclusion of ex-officio directors, public officials, civil servants, employee representatives and independent directors. This entails, for example, deciding on the number of State representatives to include on the board, as well as the types of skills and characteristics that are required from directors (See Table 3). With widespread commercialisation of SOEs, it is recommended to solicit more involvement of independent directors and persons with relevant professional and commercial experience. To avoid undue state intervention on the board and support board autonomy, it is a good practice to impose set terms (usually three to five years) for directorships.

A majority of the surveyed jurisdictions have a mix of directors representing the state, other individuals charged with pursuing the public interest and independent directors sitting on their SOE boards. State representation on the board is often practiced where SOEs have important public policy objectives. Large and/or commercially oriented SOEs in India, Korea, Thailand and Sweden may also be required to appoint a certain number of independent directors to the board, in compliance with the same or similar rules for private companies. However, in most of the surveyed countries, there are few formal legal arrangements (including through legal provisions or corporate bylaws) concerning employee representation and minority representation (See Table 3).

In Sweden, there is a legal and regulatory consensus that, ministers, state secretaries, or other direct representatives of, or parties closely related to, the executive power cannot be nominated to SOE boards. The Code on Corporate Governance – which applies to both private and state-owned companies – requires a majority of independent directors on boards. The composition of the board should ensure that a balance is achieved among background, area of expertise, experience and gender. One employee of the government offices (the investment director responsible for the company) is on each board of the majority of the non-listed SOEs with the responsibility of coordinating the ownership for every SOE. Also, under a specific Act, employee representatives may be represented on the boards of all companies in the country.

Other reporting jurisdictions also apply rules in terms of board composition. In China, board composition is stipulated in the corporate charter. Enterprises with majority state ownership are required to have external directors to a certain portion and should be elected at the shareholders meeting. At the same time, incumbent public officials or persons directly linked with the executive powers cannot be appointed as directors in central SOEs.

In India, the DPE Guidelines – which are applicable to all PSEs – provide that outside professionals should be inducted on the Boards of CPSEs as non-executive non-official directors and that such directors should account for at least one third of the actual size of the Board. However, civil servants and officers assisting the Ministries exercising the Executive Powers can be appointed as Directors by the Government.

In Korea, more than a half of the directors should be non-executive or independent directors in the public corporations and quasi-governmental institutions of which asset size exceeds USD 1.8 billion (2 trillion won). As for smaller SOEs, more than a third of the total number of directors is required to be non-executive or independent ones. Relevant commercial or financial expertise is an essential requirement in all cases other than the selection of candidates from the state enterprise ownership entity. In addition, since 1999, public officials or civil servants cannot become members of SOE boards as

stipulated in the “Act on the Management of Public Institutions”. If it is less than three years since the person was removed from her/his office as a public official, she/he should not be qualified for a director of a SOE or quasi-governmental institution. Also, “The Guidelines on Management of SOEs and Quasi-Governmental Institutions” recommend that the proportion of female board members be at least 30%. There is currently no specific provision of laws or regulations stipulating the inclusion of employee representatives in the board of directors.

In Morocco, the draft Law on State Governance and Financial Control bearing on SOEs provides for inclusion of independent directors in the SOE board. It stipulates that a qualified candidate should not be holding any executive positions in the public institutions or public so that his or her sense of judgment is not affected. The Moroccan Code of Good Practice on SOEs recommends that SOEs recruit a target proportion of 25% of independent directors with technical expertise and competency. Also, the qualified candidate should not have been one of the auditors of the concerned institution in the last three years nor a member of the administrative body of the institution in the last twelve years. At the same time, he or she also should not be in a family relationship with a member of the management body or a member of the administrative body representing a dominant shareholder of the institution. No information was provided as to the level of implementation of the draft law and Code in SOEs.

In Thailand, the State Enterprises Act requires that independent directors make up at least a third of non-state board members. In Viet Nam, up to 80% of the SOE board can be made up of independent or non-executive directors. Also, the chief executive officer of an SOE cannot at the same time serve as chair of the board.

In Egypt and Malaysia, there are no formal requirements for non-listed SOEs to have a certain percentage of independent directors. In Egypt, while there is no formal requirement the Guidelines for Corporate Governance in Egyptian SOEs recommend that the board should preferably be neither from the public enterprise sector, nor from amongst the executive managers. In the case of Malaysia, most of the SOE board members are composed of former ministers, retired professionals or public officials mainly nominated by the Ministries.

### ***Board size***

Determining the ideal board size is also important to ensuring a well – functioning, effective and professional board. In this respect, many countries limit the number of board positions while promoting board diversity. The size of SOE boards depends on a number of factors, including an SOE’s size, risk profile, and areas of operation, which means there is no one-size-fits-all approach for determining board size in the public sector. That said, the boards of SOEs operating in the surveyed economies generally have between three and 15 members.

Table 3. Board composition and efficiency

	Independent directors (min/max)	State representatives on boards	Employee representatives on boards	Rules guiding board diversity
China	Yes but no formal requirement for the percentage	No	N.A.	No specific requirements regarding gender, nationality and locality.
Egypt	No formal requirement	No	Yes (sometimes)	N.A.
India	Yes (1/3)	Yes	No	N.A.
Korea	Yes (more than a half of the directors should be non- executive or independent directors in larger SOEs*).	No	No	Gender balance (30% target, indicative)
Malaysia	No formal requirement	Yes	No	Gender balance (30% target, indicative)
Morocco	Yes (1/4)	Yes	No	N.A.
Thailand	Yes (1/3 of non-state board members)	Yes	No	N.A.
Sweden	Yes (90 per cent)	No. Only Investment directors and no other government officials are on boards.	Yes (2 members, up to half)	Gender balance (40% target)
Viet Nam	Yes (around 80 percent)	Yes	Yes (sometimes)	N.A.

\* Public corporations and quasi-governmental institutions of which asset size exceeds USD 1.8 billion.

Sources: Questionnaire responses submitted by the authorities;

Gender balance on corporate boards, European Commission, 2015, [http://ec.europa.eu/justice/gender-equality/files/womenonboards/factsheet\\_women\\_on\\_boards\\_web\\_2015-10\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/womenonboards/factsheet_women_on_boards_web_2015-10_en.pdf);

Workers' voice in corporate governance – A European perspective, Economic Report Series, TUC, 2013 [https://www.tuc.org.uk/sites/default/files/workers-voice-in-corporate-governance\\_0.pdf](https://www.tuc.org.uk/sites/default/files/workers-voice-in-corporate-governance_0.pdf).

### ***Practices for enhancing board efficiency and performance at the enterprise level***

To enhance SOE board professionalism and performance, the *SOE Guidelines* have specified recommendations on remuneration and director training. On the former, the Guidelines recommend that remuneration schemes for SOE boards reflect market conditions to the extent that this is necessary to attract and retain qualified directors. On the latter, the Guidelines indicate that appointed directors receive a minimum level of training (i.e., induction training), so that SOE board members are well informed of their responsibilities and liabilities. Induction sessions should take place within the first month of an appointment and always before the first board meeting.

#### ***Board remuneration***

In most of the surveyed countries, the remuneration of SOE board members, compared with other firms, falls below market levels for the competencies and experience required. The questionnaire responses indicate that in deciding on board remuneration,

governments in general would like to minimize or avoid public controversy over excessive pay in the public sector. For example, some OECD countries have in recent years imposed some limits and restrictions on the remuneration and employment conditions of SOE directors and executives (OECD, 2017 forthcoming).

In Viet Nam, there are statutory or policy limits on remuneration for SOE boards. According to the Decree 51/2013/ND-CP, remuneration package for non – executive directors should strictly reflect the outcome of SOE business operation, management and supervision and there is a limit on remuneration levels. The state authorities should approve the remuneration fund based on SOE board submission and recommendation. For the time being, the state authorities in Viet Nam have no plan to review or reconsider the size of SOE remuneration funds.

In China, Egypt, India, Korea, Malaysia, Morocco, Sweden and Thailand, there are no statutory or policy limitations on board remuneration. In Sweden, board remuneration is decided by the Annual General Meeting and decisions are processed in the same way as board nominations. However, in practice, the level of board remuneration is considerably lower than that of listed companies.

In China, the ownership agency SASAC decides on the remuneration level of external directors. The remuneration of external directors is composed of basic annual remuneration, board meeting allowances, and board committee allowances. There are also mid-and-long term incentives and welfare benefits according to evaluation results.

In Egypt, the level of remuneration levels of board of directors of public enterprises is set rather in an arbitrary manner. The government holding companies would often order the affiliate companies to pay bonuses to their board of directors with no specific reason and even determine the amount of the bonus.

In India, while the Board does not have any role in deciding the overall remuneration level, it has a liberty to decide upon certain allowances for the board within the limit set in by the Pay Revision Committee.

In Korea, board sets remuneration in accordance with the establishment laws or by-laws according to the guidelines on remuneration determined by the Minister of Strategy and Finance. The questionnaire responses from the Korean authorities indicate that the remuneration level of non-executive directors is lower compared to other directors or non-executive directors in private business sectors since non-executive directors of SOEs and public institutions are considered to serve public interest. However, the remuneration of non-executive directors has risen considerably for the last 10 to 15 years to attract more professional candidates.

In Malaysia, Remuneration Committees can submit proposals as stipulated under terms of reference. In Morocco, remuneration of EEP board of directors, in particular for commercial EEPs, should be indexed to performance targets and predefined indicators, benchmarking the general remuneration level of the EEP sector. In Sweden, board remuneration is decided by the AGM and decisions are processed in the same way as board nominations. The level of board remuneration is considerably lower than in listed companies. In Thailand, remuneration level is subject to an approval by the Cabinet and SOE board remuneration differs by the size and complexity of SOEs.

In particular, authorities from Thailand and Malaysia indicated in their questionnaire responses that remuneration levels have impacted the ability to attract candidates (e.g. from the private business sector) and the quality of non-executive boards. In Malaysia,

prior to 2005 and the GLC Transformation Program, the GLC board members were paid below market level and the quality was affected. However, since 2006, the remuneration level has become comparable with the private sector and therefore an increased number of competent professionals have come on board. The government conducts surveys on remuneration packages on a regular basis to establish a benchmark and listed companies are required to disclose their board remuneration. For GLCs, they are determined by their respective GLICs. In Thailand, the SEPO has recently hired an advisory to review these remuneration policies in the near future.

### ***Board evaluations***

Regular board evaluations are considered a good practice. Board evaluations help establish a comprehensive view of the board's overall functioning and identify any needs that could be addressed through future nominations. It serves to assess and improve the board performance and provide the Chair and ownership function with valuable information concerning possible changes to board composition. Evaluations may concern individual directors and/or the workings of the board as a whole. It is recommended that evaluation results feed back into the board nomination process.

Board evaluation practices in the participating countries vary from informal evaluations conducted by the Chair, to formal self-evaluations conducted by external experts and facilitators. The questionnaire responses by the state authorities indicate that administrations that run SOEs relatively close to general government tend to adopt top-down approaches through which the ownership function evaluates the board as a whole in light of corporate objectives. More commercial SOEs are more likely to rely on self-evaluations. They also indicate that assessment criteria for the board evaluation are generally both mechanistic (i.e. attendance, participation in board committees) and qualitative (i.e. contribution to the board's collective performance).

Among the surveyed countries, Sweden, Thailand, and Viet Nam formally request SOE boards to carry out annual evaluations of their performance. However, audit bodies in all the surveyed countries have no role in board evaluations. For instance, in Sweden, boards are mandated to carry out board evaluations according to the state ownership policy. The chair communicates the findings to the extent that they are relevant to the board nomination process. Internal evaluations are more common but external facilitators are often used to evaluate the board as a whole. Occasionally, evaluations focus on individual directors but there is no particular evaluation on the role of the chair.

Other participating countries undertake a top-down evaluation of individual SOE boards in an ad-hoc fashion. In China, the SASAC annually evaluates the boards and directors of central SOEs on the extent to which they have fulfilled their duties. When evaluating external directors, the SASAC can take the opinion of the board into consideration. The evaluation criteria include performance, conduct, expertise and attendance of board meetings. The evaluation outcome is communicated to the board and the boards with poor evaluation results are required to formulate improvement plans and implement the plan upon approval by their administration authority. The evaluation outcome serves as an important basis for position adjustment, tenure, training, re-appointment and remuneration. It is also recorded into a credit file of the external directors. External directors who break laws and regulations could get fired and should not be re-appointed.

In Egypt, the General Assemblies are responsible for undertaking evaluations of board of directors. The Law 203 of 1991 stipulates that the role of the General



Assemblies include evaluating the board of directors and determining the compensation, as well as dismissing them if needed. In India, while an evaluation of the Functional Members of the Board is carried out by the Administrative Ministry, there is no formal system of evaluation in place with respect to independent directors.

In Korea, there are no annual SOE board evaluations nor self-evaluation of board performance. According to the provision of the Article 36 of the Act on the Management of Public Institutions, the Minister of Strategy and Finance may, if deemed necessary, evaluate the performance of non-executive directors, auditor, or audit commissioner of an SOE or quasi-governmental institutions. After deliberation and resolution by the Steering Committee, the Minister of Strategy and Finance may remove those with poor performance. According to the provision of the Article 28 of the Act on the Management of Public Institutions, the evaluation can influence consecutive terms of non-executive directors.

In Malaysia, the MCCG and the Stock Exchange Guidelines recommend that evaluation take place once in every three years and the use of external facilitators to ensure objectivity and professionalism in an assessment process. It says that the assessment should be in two parts; one on board effectiveness and the other one on individual directors. The role of the chair is also included. At present, SOEs boards usually go through a peer review, which is not very effective, according to the questionnaire responses by the Malaysian authority. Normally competency gaps identified should be used to plan for training purposes.

In Morocco, according to the Moroccan Code of Good Practice on EEP Governance, the EEP's deliberative body must carry out an annual evaluation of its performance and assess the competencies of its board members in order to strengthen professionalism of EEPs. An external evaluation should be carried out at least every three years with an assistance of external consultants and the results of this evaluation should be communicated to all directors and presented in an annual report of the EEP. However, the actual practice of evaluating the board performance is still in its infancy as the first evaluation operations have just started at the level of a handful of EEPs.

A majority of the surveyed countries where there are systematic self-evaluations of performance by the board communicate the outcomes of these to the ownership entity. However, only India, Sweden and Viet Nam have a process whereby the results of the evaluation process can actually influence the nomination process by identifying necessary competencies and board member profiles, according to the questionnaire responses. In India, evaluation results are reflected in the Annual Performance Appraisal by the Administrative Ministry. In Sweden, the Chair's feedback can actually influence the board nomination process organised by the ownership entity. In Viet Nam, board members are required to send their self-evaluation to the line ministers who are charged with nomination and appointment. The evaluation results play an important role for re-nomination or discipline measurement.

Table 4. **Board evaluations**

	Top-down evaluation by ownership function	Have formal requirements to process and procedures been established?	Self-evaluation of performance by the board (formal/informal)	Are external facilitators involved?	Do the results of the evaluation process play a role in board nominations?
China	Yes	Yes	Informal	No	Yes
Egypt	No	No	Informal	No	Yes (informally)
India	No	Yes	Informal	No	Yes (informally)
Korea	Yes	No	Informal	No	Yes (informally)
Malaysia	No	No	Informal	Recommended. Not yet in practice	No
Morocco	No	Yes	Formal	Recommended. Not yet in practice.	No
Sweden	Yes (annual)	Yes	Formal	Yes (regularly in most companies)	Yes (informally, chair talks to owner)
Thailand	Yes	Yes	Formal	Yes	No
Viet Nam	Yes	Yes	Informal	No	Yes (informally)

Source: Questionnaire responses provided by the national authorities in 2017; OECD (2013); OECD (2017 forthcoming)

### ***Board induction and training***

One of the central recommendations from the *SOE Guidelines* is to provide induction and professional training of board members, particularly where public officials are nominated. While all the surveyed countries acknowledge the need to provide new directors with an induction in order to inform SOE board members of their responsibilities and liabilities the case for board training remains varied.

#### ***Board induction***

In all the surveyed countries board induction is formally provided to new directors, while the format differs among countries depending on the company and individual who is hired. Sometimes board induction is mandated and/or organised by the ownership function (China, Korea, Viet Nam) and in other cases it is arranged informally or organised in an ad-hoc manner by individual SOEs (India, Thailand, Sweden). In Egypt, Malaysia and Morocco, board induction is not widely practiced (See Table 5).

Table 5. National practices in board induction

	Mandated and/or organised by the ownership function	Arranged informally or organised in ad ad-hoc manner	Format of the induction process
China	•		Meeting with CEOs and relevant departments related to board work.
Egypt	N.A.	N.A.	N.A.
India		•	Meeting with the ownership entity and CEOs. The duration and format of the induction varies from company to company.
Korea	•		An interactive workshop complemented with relevant guiding documents
Malaysia	N.A.	N.A.	N.A.
Morocco	N.A.	N.A.	N.A.
Thailand		•	General information session or one-on-one meeting with the ownership entity and/or CEO. The duration and format of the induction varies from company to company.
Sweden		•	One-on-one meeting with the ownership entity in addition to on-site visits
Viet Nam	•		General information session or one-on-one meeting with the ownership entity and/or CEO. The duration and format of the induction varies from company to company.

Source: Questionnaire responses submitted by national authorities

In the case of Sweden, the preferred form of induction consists of a one-on-one meeting between the director and ownership entity in addition to on-site visits as organised by the company. When nominated, a new director is required to meet with the ownership entity and have a discussion on its view on the SOE. Individual SOEs offer their own comprehensive induction programmes for new directors, including the aforementioned on-site visits.

In most other cases, newly appointed board members are invited to participate in a type of “orientation” complemented with relevant guiding documents. For instance, in Korea, the Ministry of Strategy and Finance (MOSF) and the Korea Institute of Public Finance (KIPF) invite the newly appointed non-executive directors to a workshop that discusses the role and duties of board of directors, and which provides an overview of the public institution management system and related laws and regulations. Written guidelines entitled “Manual for Job Performance of Non-Executive Directors of SOEs and Quasi-Governmental Institutions” are provided as supplementation information. In other surveyed countries the board induction process varies from providing general information sessions on duties and roles related to board work or through one-on-one meeting with the CEO.

### *Professional development training*

It is recommended by the *SOE Guidelines* that governments encourage on-going professional development particularly where technical or specific training may be necessary. Most countries participating in this exercise complement their induction sessions by encouraging on-going professional development for directors. These trainings focus on thematic areas where complementary training is needed or other areas that are relevant to the operation of the board. In Egypt, the government officials indicate that there is a lack of available training programmes for board members and consider this a problem to raise corporate governance standards in SOEs.

Table 6. National practices in professional development training

	“Off the Shelf” director training programmes provided by professional associations	In-house training programmes via the ownership entity	No professional development training provided
China	•		
Egypt			•
India		•	
Korea	•		
Malaysia	•		
Morocco	•		
Thailand	•		
Sweden	•		
Viet Nam		•	

Source: Questionnaire responses submitted by national authorities

#### *“Off the Shelf” director training programmes provided by professional associations*

It is notable that there is a growing tendency for ownership entities to work with professional associations to provide tailored training for SOE board directors. Specific training to SOE boards is often provided “off the shelf” by professional bodies and “centres of excellence” (such as institute of directors) and many times it is similar to what is offered for directors in private enterprises (China, Korea, Malaysia, Morocco, Sweden, Thailand).

In China, as stated in the Guidebook for External Directors issued by the SASAC, the SASAC and SOEs are required to provide professional training or financial support for the training of external directors. The SASAC organises professional training programs for external directors of central SOEs on various themes including code of conduct, corporate governance structure, macro-economic and finance issues and international best practices. SOEs also organise professional knowledge training for external directors, either directly or via “off the shelf” training offered by professional associations.

In Korea, while there is no director education and training that is commonly provided by individual SOEs, professional associations and directors' institutes provide tailored education courses for public institutions management professionals.

In Malaysia, new directors are required to attend board training within six months of appointment. Training programs focus on SOEs' oversight role, financial language in the boardroom and performance management. While some are organised and paid for by the Ministries, main costs are covered by the relevant companies. Specific trainings organised by institutes of directors are also tailored to board committees (such as audit, nomination, remuneration or risk).

In Morocco, the Moroccan SOE governance code stipulates that members of the governance body should "receive adequate training to facilitate their integration and participation in the work". The training covers various topics on the specificities of governance within SOEs including its strategy, its policies, its risks and the respective roles of the controlling State, strategist and shareholder; additional training is also provided in specific areas related to board committees. This is provided via professional associations in collaboration with the government.

In Sweden, there is no specific program organised by the ownership entity to train newly appointed SOE directors, as members are reportedly recruited based on their professional background. Individual SOE board members can voluntarily sign up for training programmes offered by institutes of directors. Trade unions can often provide training for employee representatives appointed to SOE boards, especially where such representatives have no prior board experience.

In Thailand, professional associations provide specific training programs for SOE board directors. In Thailand and Morocco, accreditation linked to director education and training can reportedly increase chances for renewal or reappointment to the board of an SOE.

#### *In-house training programmes via the ownership entity*

India and Viet Nam provide in-house training programmes via the ownership entity. In India, the Standing Conference of Public Enterprises (SCOPE), under the aegis of Department of Public Enterprises (DPE), hosts training programmes for directors and senior executives. In Viet Nam, the State Capital Business and Investment Corporation (SCIC) hosts training programmes and grants certification for SOE board members. However, it is only applied for SOEs controlled by the SCIC. SOE board committees are annually required to attend training courses and seminars on responsibilities of SOE board organised by state management agencies such as State Audit Agency, Ministry of Finance and line ministries.

## Part III

### Key takeaways and policy issues for consideration

*A key challenge is ensuring an effective legal and regulatory framework for enhancing effectiveness of board practices by state-owned enterprises*

SOE board practices differ significantly among the countries that have been reviewed in this report. The diversity reflects the institutional arrangements for SOE board practices within member countries, the different legislative, regulatory or policy requirements of the countries, the level of professionalization of SOE ownership practices, and to some extent the system of professional SOE boards reflects the prevailing practices in the general corporate sector. The processes applied by governments to nominate and appoint SOE board members are influenced by the degree to which the state has centralized and professionalised its enterprise ownership function, the size of the state's ownership stake in an SOE, and the balance between commercial and non-commercial priorities.

Assuring a strong, autonomous role for SOE boards of directors is an issue that most countries grapple with and more remains to be done to improve board performance and efficiency by implementing the aspirational standards of governance and accountability established by the *OECD Guidelines on Corporate Governance of State-Owned Enterprises*. The report finds that governments often lack an effective legal and regulatory framework to support independence and autonomy of SOE board members. In many countries, SOE boards are not adequately empowered to undertake such a role, hampered by direct ministerial appointments of executive management and/or are bypassed through informal channels of communication and instructions. The report also suggests that lack of disclosure about nomination and election process often hinders the performance of boards. According to these findings, policy makers could consider following issues when organising and professionalising boards of directors of SOEs.

#### Defining responsibilities of boards of directors through centralisation and professionalisation of the ownership function

Unclear distinction between the respective roles of the board and the ownership function can hinder the board from achieving key functions of establishing corporate strategy and overseeing management. Good practice calls for the role of the board to be clearly defined and founded in legislation, in line with general company law. Insofar as all SOEs have boards of directors, SOE boards should be assigned a clear mandate and have ultimate responsibility for the company's performance. It is also equally important that the government or its ownership unit sets objectives and communicates them to SOE boards to make the entire board aware of these objectives. In this respect, centralisation of the ownership function can

help reinforce and mobilise relevant competencies as it will require organising pools of experts on key matters such as board composition and board nomination.

### **Professionalising board nomination frameworks**

The nomination process should be rule-based and supervised by a state function on a whole-of-government basis. This could involve seeking expertise from external recruitment consultants, establishing databases of pools of directors and involving the incumbent board. Where SOEs have minority non-state investors, their adequate board representation should also be ensured through formal legal arrangements including through legal provisions or corporate bylaws that safeguard minority representation and the state's active engagement with shareholder agreements.

### **Improving disclosure related to board nomination and election processes**

Ensuring the recruitment of suitable and competent board members should be based on formal eligibility rules. This could include processes to advise or vet ministerial candidates for board appointment or actual or de facto nomination committees proposing candidates of the ultimate decision of ministers. Board composition can be further balanced and refined by limitations on the number of board positions board appointments/directorships and/or affirmative action targeting gender and minority groups. Strengthening requirements for independence of outside directors and improving disclosure related to board nomination and election processes could be useful in this regard. The methods could include public advertisement of recruitment. Additionally requiring disclosure of information on the identity and the number of boards candidates, and/or requiring disclosure of AGM voting percentage results can enhance transparency around board practices.

### **Strengthening the role of SOEs in improving board efficiency and performance**

According to the *SOE Guidelines*, key elements for enhancing board efficiency and performance include a Chair who can build an effective team by exercising leadership, a well-structured evaluation, competent board committees and training programmes that match the needs of each board. In addition, a clear remuneration policy for SOE boards can attract and motivate qualified professionals. In this context, SOEs are recommended to take the relevant measures to ensure board efficiency in their own business relationships.





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