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Joint Economic Research  
Program for Kazakhstan

## **INTERNATIONAL EXPERIENCE IN GOVERNANCE OF STATE OWNED ENTERPRISES AND PARASTATALS**

June 2016

*This document was prepared by:*

**CFRR**   
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## ABBREVIATIONS

|                |  |
|----------------|--|
| <b>CEO</b>     | Chief Executive Officer  |
| <b>CFRR</b>    | World Bank Centre for Financial Reporting Reform   |
| <b>CODELCO</b> | Chilean National Copper Corporation  |
| <b>EPE</b>     | Spanish Public enterprises that are not corporations   |
| <b>EPIC</b>    | French industrial and commercial establishment (Etablissement Public Industriel et Commercial)                   |
| <b>GBE</b>     | Australian Government Business Enterprise  |
| <b>GDP</b>     | Gross Domestic Product   |
| <b>GOK</b>     | Government of the Republic of Kazakhstan   |
| <b>IGAE</b>    | Financial Controller at the Spanish Ministry of Finance (Intervención General de la Administración del Estado)   |
| <b>ILO</b>     | International Labor Organization   |
| <b>IMF</b>     | International Monetary Fund  |
| <b>JSC</b>     | Joint Stock Company  |
| <b>KA</b>      | Kazagro, Kazakhstan National Management Holding Joint Stock Company  |
| <b>LLP</b>     | Limited Liability Partnership  |
| <b>MNE</b>     | Ministry of National Economy of the Republic of Kazakhstan   |
| <b>NDPB</b>    | British Non-departmental Public body   |
| <b>OAG</b>     | Norwegian Office of the Auditor General  |
| <b>OECD</b>    | Organisation for Economic Co-operation and Development   |
| <b>PLC</b>     | Public Limited Company   |
| <b>SEPI</b>    | Spanish State Industrial Holding Company (Sociedad Estatal de Participaciones Industriales)                      |
| <b>SK</b>      | Samruk-Kazyna, Kazakhstan Joint Stock Company Sovereign Wealth Fund  |
| <b>SOE</b>     | State-Owned Enterprise   |
| <b>SMS</b>     | Spanish Public corporations (Sociedades Mercantiles).  |
| <b>SNA</b>     | United Nations System of National Accounts   |
| <b>WHO</b>     | World Health Organization  |
| <b>ZBO</b>     | The Netherlands non-departmental public body/ autonomous administrative authority (zelfstandige bestuursorganen) |

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## Preface

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This report is a result of research and analytical work. It covers the areas of research requested by the GOK/MNE and include: (i) the rationale for state ownership; (ii) legal forms and objectives of SOEs and parastatals; (iii) establishing, maintaining, liquidating and divesting of SOEs and parastatals; (iv) the state's role and responsibilities as an owner; (v) governance structures of parastatals and SOEs; (vi) disclosure and transparency, including audit arrangements; (vii) SOEs in the market place – including funding and price regulation; and (viii) the role of governing bodies in SOEs and parastatals. The report is not a comprehensive diagnostic comparing standards and practices in Kazakhstan with relevant international benchmarks. It instead outlines some current practices in Kazakhstan and indicates areas for further consideration by policy makers which may help improve the structure of public ownership.

# 1. OVERVIEW

## 1.1 Background to and scope of this report

1. Research on the international experience of governance of state-owned enterprises (SOEs) and parastatals was conducted by the World Bank's Centre for Financial Reporting Reform (CFRR), at the request of the Ministry of National Economy of the Republic of Kazakhstan (MNE) under the Joint Economic Research Program. The objective is to support the MNE assess current and potential future legislation and practices in the governance of public assets. The Government of Kazakhstan is already looking to improve SOE ownership and the management of parastatals. It is now seeking to expand this effort of improve efficiency, and to formulate strategy for establishing, capitalizing, managing and disposing of such entities. This work may serve as a basis for further collaboration between the World Bank and MNE to adapt policy considerations to country circumstances.
2. Using the experience of OECD countries and other leading economies of the world, the report summarizes the global experience of governance arrangements for SOEs and forms of parastatals based on the legal entity's focus and area of activities. The analysis draws on internationally recognized standards, guidelines and practices, and the latest available research produced by the World Bank and others. The report does not seek to be a comprehensive study of all issues typically covered by international benchmarks, including OECD guidelines. At the request of the MNE, it focuses only on specific areas of governance of state-owned enterprises (SOEs) and parastatals (called government operated entities in Kazakhstan)<sup>1</sup>. Unless stated otherwise, the report does not cover entities which are part of general government.
3. The report uses examples from many OECD countries and leading global economies. SOEs and parastatals have evolved in very different ways and there are wide variations in national approaches and treatment, which can make it hard even to identify those entities to be classified as public sector entities, including SOEs. Given this wide variation in country circumstances the research seeks to identify general trends, point to widely held principles, and highlight good illustrative examples of governance in SOEs or parastatals around the world.
4. The report is not a comprehensive diagnostic comparing standards and practices in Kazakhstan with relevant international benchmarks. It instead outlines current practice in Kazakhstan and indicates areas for further consideration by policy makers which may help

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<sup>1</sup> A company, agency, or intergovernmental organization, that possesses political clout and is separate from the government, but whose activities serve the state, either directly or indirectly. Parastatals generally enjoy operational autonomy and operate with their own or separate budget from the general government.



improve the structure of public ownership. The areas of research requested by the MNE and addressed in this report include: (i) the rationale for state ownership; (ii) legal forms and objectives of SOEs and parastatals; (iii) establishing, maintaining, liquidating and divesting of SOEs and parastatals; (iv) the state's role and responsibilities as an owner; (iv) governance structures of parastatals and SOEs; (v) disclosure and transparency, including audit arrangements; (vi) SOEs in the market place – including funding and price regulation; and (vii) the role of governing bodies in SOEs and parastatals.

## 1.2 SOEs and parastatals in Kazakhstan

5. In Kazakhstan, the form of state ownership of assets differs depending on the legal form of the institution. Parastatals, and some state enterprises without a corporate legal form are currently owned outright by the state and financing is based on budget allocations and financing plans. The state also has controlling shares in corporate SOEs but they are financed and operated along more commercial lines.
6. In Kazakhstan, over 24,000 national and municipal SOEs and parastatals are currently in operation. These entities are active in numerous sectors, from producing goods and conducting other commercial tasks, to delivering essential public services to the citizens such as utilities, health, education, transportation, finance and natural resources. They have different legal forms, the GOK can establish and own legal entities in the form of joint stock companies, limited liability companies and parastatals (state bodies and state enterprises). State enterprises are created, reorganized and liquidated by Government decision; central state bodies by the decision of the Government or the President. The state-owned segment of the economy continues to be dominated by three major holding companies, namely Samruk-Kazyna, Baiterek Holding and Kazagro (including their over 600 subsidiaries) whose combined assets account for about 50 percent of GDP. Other SOEs organized under various legal forms are owned and managed through central or local governments and their number is significant. Most SOEs in Kazakhstan are not yet corporatized. This makes it challenging to reform their operations, motivate management and staff, attract investment, and seize opportunities otherwise available to private sector. Their performance is often lower than that in domestic private-sector companies. Over the last twenty-five years, Kazakhstan has performed major divestments of SOEs during several waves of privatization. A recently approved extended list of entities subject to privatization during 2016-2020 includes a further 666 SOEs of various legal forms.

### **1.3 Rationale for state ownership**

7. OECD guidelines advocate for a clear rationale for the state's ownership of economic activities, with regular reviews to ensure the rationale remains relevant and appropriate. This is a relatively new area and only a few countries (including Norway, Chile and Hungary) have developed a strong open rationale. Some elements of rationale for state ownership in Kazakhstan are set out (for example in relevant articles of the law on entrepreneurship or law on state property), but policy makers, GOK/MNE, may consider a comprehensive approach to include all of the elements recommended for OECD countries, and undertake periodic reviews.

### **1.4 Legal forms and objectives of SOEs and parastatals**

8. SOEs and parastatals exist in various legal forms in different jurisdictions. Legal form is primarily determined by the body that initiates the creation of SOE or parastatal, dependent on the type of enterprise envisaged, its mission, ownership structure, its role in public administration and other factors. Each country defines its SOE categories differently, using criteria including the state's participation in the company's capital, its effective control, and the entity's mission. There is a clear trend in corporatization of entities that perform economic activities, or at least introducing some private sector governance arrangements in parastatals.

### **1.5 Establishing, maintaining, liquidating and divesting of SOEs and parastatals**

9. In most of the OECD jurisdictions procedures to create, reorganize, liquidate or divest public sector entities are set in the law or through Government decision. Legislation that approves the creation of a public legal entity usually governs reorganization, liquidation, divestment or dissolution of such entities. Changes are usually triggered by regular reviews assessing whether entities are achieving or failing against their original charter and whether their scope and intended purpose remain valid. In Kazakhstan parastatals and SOEs are created, reorganized and liquidated by the decision of the Government in case of "state enterprises", and in case of central state bodies by the decision of the Government or the President of Kazakhstan. Over the last 25 years, Kazakhstan has performed major divestments of SOEs through several waves of privatization.

## 1.6 The state's role and responsibilities as an owner

10. The trend internationally is towards less state interference in SOE operations, instead creating a strong and centralized ownership function and giving SOE management operational autonomy but placing them under the oversight of a board of directors and making them accountable.
11. Normally, entities that undertake economic activities have a corporatized legal form in OECD countries. Where the state decides to be present in areas of economic activities, it is typically done through corporate entities. The state owns equity in these entities and exercises control over them by appointing relevant governance structures. Even in cases of non-economic activities, such as healthcare, many countries establish public corporations or similar legal forms of corporate nature.
12. More decentralization of public services and privatization of SOEs and entities of public law is gradually leading to diminution of central wage setting. Many OECD countries face significant differences in compensation and benefits levels between public and private sector entities. In quasi-governmental (parastatal) sectors wages are usually set at a national level while in the case of SOEs this is largely done at sectoral or company level. Governments are limiting the amount of annual remuneration for SOEs Chief Executive Officers with a tendency towards a gradual transition to “performance linked pay” principles in both SOEs and parastatals.
13. There are several dividend models used globally to determine SOEs pay out levels and mechanisms. In most economies the state sets a dividend policy and implements it through negotiation with the SOEs' board. A fundamental principle is that dividends are paid only to the extent it doesn't hamper the SOEs' ability to meet its capital needs and financial obligations. SOEs' board and management should have a clear sense of the expected dividend amount, retaining a degree of flexibility for crisis situations and market fluctuations.

## 1.7 Governance structures of parastatals and SOEs

14. In most of the OECD countries there is a trend to emulate private sector practices when it comes to the governance of SOEs and parastatals. For example, while the process of appointment and authorities of the boards, as well as other arrangements, may vary from country to country, they play a central function in governance of public service providers in such areas as healthcare and education; among others, this is the case for such countries as Australia, Belgium, the Czech Republic, Estonia, Norway, the Netherlands, New Zealand and the United Kingdom. Another important aspect is independence of boards and competences of their members: normally high level officials are not acting as board members and

nomination process takes into account competences and issues of independence (especially in cases when the state is regulator of a sector and owner of an entity in the same sector). Kazakhstan is following the trend for governments to seek to improve performance of parastatals by emulating good private sector governance practices. Boards should be empowered to effectively advise to and oversee management and carefully composed to ensure an appropriate mix of knowledge and experience with only limited government representation.

## **1.8 Audit as a key element of disclosure and transparency**

15. Transparency and disclosure requirements have undergone significant reforms in recent years in Kazakhstan. A further step in this direction could be the preparation and publication of aggregate reports including information about performance, situation and prospects of the SOEs sector as a whole, as recommended by OECD guidelines.
16. In OECD countries, the SOEs' financial statements are in most cases audited by an external audit firm. In some cases, the independent audit is conducted by the country's Supreme Audit Institution (SAI), especially in case of parastatals. Governments may also implement external control procedures, in addition to the independent external audit. In the case of parastatals, SAIs normally have the authority to perform performance audits in addition to the audit of the financial statements.

## **1.9 SOEs in the market place**

17. The state is normally liable for the conduct of a body of the state or its empowered agent. In most OECD countries, SOEs are subject to the same laws and regulations on insolvency and bankruptcy as private sector companies. Although SOEs are separate legal entities that offer limited liability to their owners, the government may have certain social obligations for an SOE's activities. In most cases, governments may be able to manage social obligations at a lower cost than would be the case for an unlimited liability. Governments usually minimize their fiscal risks and also ensure fair competition on the market by imposing limitations on direct borrowings by SOEs and obtaining guarantees from the state. The existing practice in Kazakhstan of vicarious liability of the state for acts of parastatals, and limited liability for the acts of SOEs, is broadly comparable with most OECD countries.
18. Sources of financing of public services varies among EU and OECD countries. Some services are fully funded by national budgets (including public grants or taxes) but many public services are co-funded by users (including telecommunications, broadcasting or production

of electricity). It is important for the state to compensate SOEs for fulfilling public policy objectives, and SOEs need to separately account for such activities from regular business. In many OECD countries, authorities subsidize important public services offered by parastatals or SOEs. These are typically identified and either entities are able to cover them by cross subsidizing from other profitable activities, or the authorities compensate funding for important services to be offered to population.

19. The underlying principles for setting prices and charges for SOEs and parastatals should be: existence of clear methodologies, independent oversight (especially important for monopolies), separate accounting between competitive and noncompetitive activities under the same SOE (both to make sure that SOEs that are implementing public policies are fairly compensated by the State, and to avoid cross-subsidies that create a disadvantage for private sector competitors). It is important to distinguish between economic activities in different sectors. Prices in competitive sectors should be very much driven by the market, this is less appropriate for services that are offered by monopolies with a view that they can be liberalized (for example in some countries telecommunications), and services that are offered by parastatals or SOEs where the main purpose of pricing is cost recovery and sustainable investment. OECD countries typically set-up special agencies with a crucial role of price setting, especially for monopolies.
20. The areas for consideration by the GOK/MNE in further developing policies in governance of SOEs and parastatals are:
  - (1) **Defining the rationale for state ownership in a public policy document and introducing periodic reviews.** Such a policy document will set out a clear vision of the reasons for state ownership, types of ownership, and objectives of ownership in particular areas/sectors. This requires a comprehensive approach and can bring significant progress in increasing efficiency and attractiveness, while optimizing the use of public resources.
  - (2) **Changing the legal form of entities which are not corporate entities.** These might be reorganized into corporate entities (normally JSCs) if they operate in a non-competitive area, or liquidated. This can be addressed as part of changes to the law on state property. A policy of corporatizing entities which perform economic activities or entities which fulfill public policy objectives could be introduced and ways of introducing modern private sector oriented management and governance practices explored. Also, regular reviews can be considered for assessing whether entities are achieving or failing against their original charter and whether their scope and intended purpose remain valid;
  - (3) **Consolidating the state ownership function over SOEs, and improved coordination of ownership;**
  - (4) **Clarifying appropriate legal and financial considerations when formulating dividend policy and net income distribution.** The principle of paying dividends only if an SOE

can meet its capital needs and financial obligations should be respected. SOEs management should have a clear expectation of the dividend size, retaining some flexibility for crisis situations and market fluctuations;

- (5) **Further enhancing the role and accountability of the state in parastatals and SOEs** through introduction of key elements of corporate governance in those entities that are not incorporated, allowing them to adopt certain private sector governance and management practices; continue introducing private sector governance practices in parastatals and non-corporate entities can help improve performance and management. Policy makers could also further consider efforts to professionalize boards, address issues of competence and independence, as well as making boards accountable to the state as owner;
- (6) **Further enhancing transparency** by preparing and publishing aggregate reports for SOEs as recommended by OECD guidelines. Consideration may be also given to the growing international trend for all SOEs to be audited by independent auditors and to defining the role of the supreme audit institution in auditing SOEs and parastatals;
- (7) **Continue improving SOEs operations in the market place through optimizing state ownership and public services** by (i) ensuring even-handedness in competitive sectors where the private sector is present, so that private companies and SOEs operate under the same conditions based on market principles; (ii) set cost recovery prices in non-competitive sectors to ensure prices cover the necessary investment; (iii) link the financing of parastatals that do not charge service users to their meeting performance targets and delivering agreed results.

## 2. INTRODUCTION

21. The Government of the Republic of Kazakhstan (GOK) currently owns and operates over 24,000 national and municipal parastatals and state enterprises in numerous sectors and legal forms. These entities are engaged in both public services and economic activities, delivering essential services to the citizens in many sectors such as utilities, health, education, transportation, finance and natural resources.
22. Legal entities owned and operated by the Government include parastatals and state-owned enterprises (SOEs):
  - Parastatals mainly deliver public services and operate under an individual budget provided by the state;
  - SOEs are primarily engaged in commercial activities, sometimes charged with addressing certain social and economic needs, as determined by the state. SOEs are operating under two distinctive legal forms, i.e. joint stock companies and limited liability partnerships.
23. Many published studies have found that the performance of various public sector entities, as measured by indicators such as productivity and profitability, is significantly lower than in similar private-sector companies. Companies with government participation appear often to rely on budget funds, not taking full advantage of opportunities provided by corporate forms, such as joint stock company or limited liability partnership, and do not evolve along with their market-based peers.
24. The Government of Kazakhstan (GOK) undertook reforms in recent years to strategize their approach to SOE ownership and the management of government operated entities. The Government is currently looking to further improve the efficiency of parastatals and SOEs, and to formulate strategy for establishing, capitalizing, managing and disposing of entities with state participation. In September 2015, the Government endorsed a new approach towards public asset management and optimization of state ownership. As a next step, the Government is looking to introduce changes to the existing legislation in ownership and management of public entities and SOEs, based on international experience and including good international practices.
25. This report summarizes some of the good state ownership practices across the leading economies of the world, including from the Organisation for Economic Cooperation and Development (OECD) member-countries. GOK is working towards aligning their strategy and standards with those promulgated by OECD, including in SOE governance. GOK is working with the OECD under a recently signed partnership agreement, providing input to OECD research and participating as observers in OECD working group meetings dealing with changes in SOE governance principles.

26. This report was prepared by the World Bank's Centre for Financial Reporting Reform (CFRR) at the request of the Ministry of National Economy of the Republic of Kazakhstan (MNE) under the Joint Economic Research Program.
27. The Government of Kazakhstan is identifying options to reduce the number of state-owned entities and parastatals in the economy, optimize the structure of public assets management, eliminate existing duplication of activities among public sector entities, and establish clear criteria for selecting legal forms for SOEs and parastatals. To contribute to their analysis of policy options, the MNE requested input from the World Bank on international good practice and experience of governance arrangements for legal entities created and (or) controlled by governments. At the request of the MNE, the report focuses only on specific areas of governance of state-owned enterprises (SOEs) and parastatals (called government operated entities in Kazakhstan)<sup>2</sup>. Unless stated otherwise, the report does not cover entities which are part of general government.
28. The objective of this research is to analyze global experience in the field of legal forms of public legal entities and SOEs, and examine their governance arrangements based on the legal entity's focus and area of activities. This is expected to facilitate an objective assessment of the legislation and practices in governance arrangements of public assets, and will help identify possible ways of improving the structure of public ownership. At GOK (through MNE) request, the analysis draws on the experience of OECD countries and other leading economies of the world. The findings and policy considerations of this report were developed based on analysis of good internationally accepted standards, guidelines and practices, and the research (see the list of references), including on the practices of some OECD countries. This report uses the concepts of legal forms of entities and components of OECD Guidelines on Corporate Governance of State-Owned Enterprises<sup>3</sup> and, as requested by the MNE, research focused on the following specific areas:
- the rationale for state ownership;
  - legal forms and objectives of SOEs and parastatals;
  - establishing, maintaining, liquidating and divesting of SOEs and parastatals;
  - the state's role and responsibilities as an owner; (iv) governance structures of parastatals and SOEs;
  - disclosure and transparency, including audit arrangements;
  - SOEs in the market place – including funding and price regulation; and
  - the role of governing bodies in SOEs and parastatals

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<sup>2</sup> A company, agency, or intergovernmental organization, that possesses political clout and is separate from the government, but whose activities serve the state, either directly or indirectly. Parastatals generally enjoy operational autonomy and operate with their own or separate budget from the general government.

<sup>3</sup> <http://www.oecd.org/daf/ca/OECD-Guidelines-Corporate-Governance-SOEs-2015.pdf>



29. The report is not a comprehensive diagnostic comparing standards and practices in Kazakhstan with relevant international benchmarks. It instead outlines current practice in Kazakhstan and indicates areas for further consideration by policy makers which may help improve the structure of public ownership.
30. Each chapter focuses on specific areas indicated by GOK/MNE by referring to relevant OECD guidelines, summarizing international experience in specific area and briefly describing the relevant practices in Kazakhstan. The report uses examples from OECD countries and makes an attempt to select countries for specific examples which are particularly relevant to Kazakhstan context.

## 3. RATIONALE FOR STATE OWNERSHIP

### 3.1 Scope and goals of SOEs and parastatals activities

31. **Countries use different terminology to define the term “SOE” as a result of country specific economic, legal and cultural differences.** The term “SOE” is often used interchangeably with other terms that are commonly used in different countries, and sometimes even within the same English speaking country. Examples include government-owned corporations or government business enterprises in Australia, public sector enterprises or undertakings in India; state-run enterprises in Finland; parastatals in Kenya or state-owned companies in South Africa.
32. **SOEs are usually differentiated from various other public agencies, quasi-governmental organizations, or other parastatal organizations** in different countries that carry out public policy functions at arms’ length from government line departments and earn a significant share of their own revenues (World Bank, 2014a). Some SOEs play an important role in providing public policy functions. The New Zealand public sector map showing the broad state enterprise sector and other components of public is presented as a country specific example in Annex 1.
33. **There is no commonly agreed definition of what constitutes “economic” and “non-economic” activities, although classification of an entity as an SOE is usually based on this criterion.** Governments also differ in their definition of what constitutes a “valid” public policy function (OECD, 2012)<sup>4</sup>. In an attempt to establish a common language, the European Union introduced guidance on the criteria, defining a concept of “services of general economic interest” to clarify the distinction between “economic” and “non-economic” activities. The OECD also uses the term “economic” activity as an important part of defining SOEs.
34. **The OECD (2015a) states that “... any corporate entity recognized by national law as an enterprise, and in which the state exercises ownership, should be considered as an SOE.** This definition suggests execution of ownership rights as the only criterion to avoid ambiguity in the terminology used. Box 1 below gives an overview of definitions in use for SOEs and parastatal entities. Also, some countries have enterprises in which the state has significant influence (significant ownership but not a majority stake); for example in France these are considered quasi-SOEs. In addition, parastatals include entities with mixed commercial and non-commercial purposes, such as museums, theaters, etc.

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<sup>4</sup> OECD, 2012, Competitive Neutrality: Maintaining a level playing field between public and private business

### Box 1. Different definitions of SOEs and parastatals

The *OECD's Guidelines on Corporate Governance of State-Owned Enterprises*. "Countries differ with respect to the range of institutions that they consider state-owned enterprises. For the purposes of the Guidelines, any corporate entity recognized by national law as an enterprise, and in which the state exercises ownership, should be considered as an SOE. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover, statutory corporations, with their legal personality established through specific legislation, should be considered SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature".

Source: OECD, 2015a

*The World Bank's Corporate Governance of State-Owned Enterprises: A Toolkit* defines SOEs as enterprises "that are government owned or controlled and that generate the bulk of their revenues from selling goods and services on a commercial basis, even though they may be required to pursue specific policy goals or public service objectives at the same time".

Source: World Bank, 2014a

The *European Union's* EC directive No 80/723 defines a public enterprise (the term used is undertaking) as "any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it." Under the landmark case of Höfner and Elser, the European Court of Justice defined the concept of undertaking (that is, enterprise), as encompassing "every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed." The central question then becomes how to distinguish between economic and noneconomic activities.

In *South Korea*, the Korean Public Entity Management Act (2007) applies a two-pronged approach, first defining public institutions and then distinguishing among them based on quantitative criteria. Under the 2007 act, (1) a public entity is established by law and has received a financial contribution from government; or (2) more than half its revenue comes from government assistance; or (3) the government holds more than 50 percent of the shares of the entity (or 30 percent and maintains de facto control). Next, the Korean legal framework classifies a public entity as an SOE if it has more than 50 employees and generates at least 50 percent of its total revenues from its own activities. If its own revenue surpasses 85 percent of total revenues, then the SOE is further classified as a "commercial SOE." (Anything less is a "semi-commercial" SOE.)

35. **Similarly, the definition of quasi-governmental or other parastatal organizations / public institutions does not exist in a commonly used form across different jurisdictions.** Quasi-governmental or parastatal organizations generally cover a wide variety of entities operating in a public domain. Their legal forms as well as other characteristics vary widely (OECD, 2002). In the United Kingdom and some other countries, for example, the terms “quango” and “quago” are used to refer to hybrid entities. A quango is essentially a private organization that is assigned some, or many, of the attributes normally associated with the governmental sector. Quangos include non-governmental bodies and implicitly exclude government bodies. A quago is essentially a government organization that is assigned some, or many, of the attributes normally associated with the private sector (OECD, 2002). The worldwide statistical framework - the UN System of National Accounts (SNA), 2008 - uses a concept of non-profit institutions that includes, for instance, the units of non-profit service providers such as hospitals, schools and higher education institutions, as well as arts and culture organizations such as museums. It also acknowledges the existence of borderline cases when certain other types of organizations are likely to occupy a grey area between the non-profit sector and either the corporations (government market units) or government sectors, i.e. government non-market units such as departments and agencies (SNA, 2008).
36. **Although the definition of quasi-governmental organizations or other parastatal organizations /public institutions may differ from country to country, several common features can be highlighted.** Typically, these organizations are not part of the state administration, they enjoy some autonomy in decision making on issues of internal management and/or policies, and they operate at arm’s length from the government. These entities are usually public law bodies, staffed by civil servants and financed fully or partially by the state budget. In most cases they have their own legal personality, and ministerial control is often political in nature. Examples of organizations with their own personality include executive non-departmental public bodies (NDPB) in the United Kingdom, the *zelfstandige bestuursorganen* (ZBOs)<sup>5</sup> in the Netherlands, and the independent administrative institutions in Japan.
37. **In Kazakhstan, legal entities owned and operated by the Government include a number of various legal forms and pursue different goals.** These range from delivering essential public services, to producing goods, and conducting other commercial activities. Most state-owned entities are not incorporated at present, which makes it challenging to reform their operations, motivate management and staff, attract investment, and seize opportunities otherwise available to privately held businesses.
38. **The state-owned segment of the Kazakhstani economy continues to be dominated by three major holding companies** and associated companies, which total over 600 entities, with aggregate assets accounting for about 50 percent of GDP.<sup>6</sup> Other state-owned entities

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<sup>5</sup> Non-departmental public bodies/ autonomous administrative authorities.

<sup>6</sup> According to an estimate by the Ministry of National Economy.

organized under various legal forms are owned and managed through central or local governments.

**Table 1. Number of Government owned/ managed entities in Kazakhstan**

| Legal form and ownership  | Number of entities    |                       |
|---|-----------------------|-----------------------|
|   | As of January 1, 2014 | As of January 1, 2015 |
| JSCs and Ltds with state participation (without foreign capital) <sup>7</sup>   | 761                   | 772                   |
| Other non-commercial entities   | 14                    | 13                    |
| State enterprises, including  | 5 918                 | 6 207                 |
| <i>Central Government, non-commercial on operational management<sup>8</sup></i> | 148                   | 145                   |
| <i>Central Government, commercial on business management<sup>9</sup></i>        | 148                   | 149                   |
| <i>Local Governments, non-commercial on operational management</i>              | 4 603                 | 4 848                 |
| <i>Local Governments, commercial on business management</i>                     | 1 019                 | 1 065                 |
| State institutions, including   | 18 895                | 18 851                |
| <i>Central Government</i>   | 2 494                 | 2 536                 |
| <i>Local Government</i>   | 16 401                | 16 315                |
| <b>Total</b>  | <b>25 588</b>         | <b>25 843</b>         |

39. **The three major holding companies which operate the most valuable and strategic state-owned assets in Kazakhstan are:**

40. **Samruk-Kazyna** (SK), a major holding company operating based on private equity business model. It was founded as a sovereign wealth fund, and its main goal is to grow its portfolio's value. Although the main purpose of SK is business activities, its strategy contains some elements of implementing public policies. The recently implemented transformation strategy aims to retain and optimize existing assets and be involved in new business areas only if there is no private sector involvement or such involvement may stimulate SMEs development. The holding is a corporate entity, governed by a sole shareholder – the GOK/

<sup>7</sup> The major holding groups are included in this group, but not their subsidiaries (i.e. only direct participation included)

<sup>8</sup> These entities are funded by the state and have no commercial activity

<sup>9</sup> These entities are for commercial purposes and typically self-funded through commercial activities

Cabinet of Ministers. Its board is chaired by the Prime Minister. SK is not accountable directly to other state bodies, but the supreme audit institution has a mandate to audit state subsidies channeled through SK for specific activities and Government programs.

41. SK is going through significant transformation, including optimization of the group structure and a reduction in the number of subsidiaries from approx. 600 to approx. 300. The legal status of some subsidiaries will be revised to strengthen governance arrangements. A new Corporate Governance Code for SK was adopted in 2015, introducing many elements of good international practices and specific requirements to SK's future governance arrangements. It will apply to SK and its subsidiaries from 2017. The transformation will also lead to SK transitioning from its current operational holding status to become a portfolio investor. Some of the subsidiaries are planned to be offered for privatization.
42. **Baiterek Holding**, created in 2013, is focused on three priority areas: development projects, SMEs development, and social programs, such as housing and mortgage financing. Baiterek Holding includes 32 subsidiaries, and is owned by the Ministry of Investments and Development. The Baiterek board is also chaired by the Prime Minister. Baiterek operates under its own corporate governance code, approved at the end of 2014.
43. **Kazagro (KA)**, is a holding company oriented towards the development of agriculture and has 4 subsidiaries and 10 grand-subsidiaries. The sole shareholder is the Ministry of Agriculture, and the board is chaired by the Deputy Prime-Minister. KA has its own corporate governance code, approved in 2010.
44. **There is a significant number of other SOEs, which do not belong to the holding groups.** As indicated in Table 1 above, there are over 6,000 state enterprises and over 700 corporate enterprises owned by the state either through central or local governments. The number of entities owned by central Government is approximately 300. There is no data available to measure whether the size (assets/equity) of these entities is significant. Many of them are so called "communal property" (approx. 5,000 entities) that operate in the building / housing management sector. While these might be very small entities individually there are so many they might be collectively significant.
45. **In 2015 the GOK renewed its efforts to re-balance the state's role in the market and to foster a more competitive environment supporting private sector development.** The state's presence in the economy is currently estimated at approximately 29 percent. It is the country's policy objective to reduce this to 15 percent by 2020. Authorities are working to streamline the state's role in economic activities, and have launched an ambitious privatization program for 2014-2016. In April 2015, authorities also introduced a "yellow page rule" modelled on Singapore's experience, seeking to limit direct state participation in sectors where private operators are present. The international experience described above may help authorities further optimize SOEs and parastatals in Kazakhstan, based on how these are defined in some OECD countries.

## 3.2 Rationale for state ownership

46. **OECD guidelines advocate for a clear rationale for the state’s ownership of economic activities, with regular reviews to ensure the rationale remains relevant and appropriate.** Such a rationale should be included in the ownership policy and cover areas such as the ultimate purpose and rationale of state ownership, the role of the state in governance of SOEs, political accountability and periodic revision of the ownership policy, and rationale for owning individual SOEs. This section of the report will further summarize existing practices in this area in some OECD countries focusing on the question of the scope and objectives of activities of public legal entities (for what purpose and in what cases public legal entities are created, and types of activities), as well as legal entities with government participation. This is a relatively new area and only a few countries (including Norway, Chile and Hungary) have developed a strong open rationale.
47. **Each jurisdiction sets its own scope and goals for their SOEs and quasi-governmental sector entities, depending on governmental priorities, economic needs and fiscal powers.** There is no universal, globally recognized model or set of objectives for SOEs and quasi-governmental sector entities. However, some common elements exist which represent good practice. Inter alia, the OECD (2010) recommends that “Government(s) should develop and issue an ownership policy that defines the overall objectives of state ownership, the state’s role in the corporate governance of SOEs, and how it will implement its ownership policy<sup>10</sup>”. The same recommendation is included in the 2015 OECD corporate governance guidelines.
48. **In many OECD countries entities in public sector are classified as SOEs or other types of institutions depending on whether they pursue economic activities to maximize profits or fulfill specific policy objectives.** This is typically based on various philosophies regarding the need for state ownership. Parastatals are typically established to carry out well-defined public policy objectives. Public authorities impose specific requirements on these types of entities as the providers of the service in order to ensure that certain public interest objectives are met, for instance, in the matter of utilities, healthcare, transport and energy (CEEP, 2010). These obligations are set as objectives at the time of establishment of an entity and can be applied country wide, or at regional or municipal level. Box 2 below illustrates examples of how SOEs are differentiated in some OECD countries using criteria of economic versus public policy activities.

### Box 2. Key classification criteria of SOEs and parastatals in some OECD countries

**Hungary:** profit versus non-profit SOEs;

**Israel:** commercial or non-commercial SOEs;

<sup>10</sup> OECD 2010; Accountability and Transparency, A Guide for State Ownership.

**The Netherlands:** there is no formal criterion – all state-owned companies are expected to maximize profits;

**New Zealand:** profit maximizing state-owned companies as opposed to companies pursuing mixed objectives;

**Norway:** four categories of SOEs: (1) commercial, (2) commercial with the urgency to retain headquarters in Norway, (3) commercial with some non-commercial objectives, and (4) SOEs in accordance with sectoral policies;

**Slovenia:** strategic, important and portfolio assets.

49. **The OECD<sup>11</sup> suggests an ownership rationale, objectives, as well as procedures for review and update of ownership rationale as it evolves.** Its 2015 report also gives examples of procedures for SOE creation and termination. The report indicates that the development of ownership rationale over SOEs is still at an early stage in many countries.
50. **OECD (2015a) recommends that the ultimate purpose of state ownership of SOEs should be to maximize value for society, through an efficient allocation of the resources.** Box 3 provides examples of good practices with considered and articulated objectives in a sample of countries.

### **Box 3. State ownership objectives: Examples**

**Australia:** The government has a unified approach to the establishment of new business and non-business enterprises [in the state owned sector]. Under this approach a new public entity should only be set up in cases where it can be demonstrated that this is the most effective and appropriate means of carrying out the desired function (service delivery, stewardship of public assets, integrity, regulatory, quasi-judicial, and/or advisory).

The State-owned Enterprises Act (1992) states that “The principal objective of each State-owned company is to perform its functions for the public benefit by (a) operating its business and pursuing its undertaking as efficiently as possible consistent with prudent commercial practice; and (b) maximizing its contribution to the economy and well-being of the State.”

In relation to the commercially driven companies the recent guidelines from the Australian Government state that “A principal objective for each Government Business Enterprise is that it adds to its shareholder value” (Australian Department of Finance, 2015).

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<sup>11</sup> State-Owned Enterprise Governance, a stocktaking of government rationales for enterprise ownership. OECD, 2015b – a report into SOE ownership among 24 OECD member-countries.



**New Zealand:** The State-Owned Enterprises Act 1986 specifies that “the principal objective of every State enterprise shall be to operate as a successful business and, to this end, to be (a) as profitable and efficient as comparable businesses that are not owned by the Crown; (b) a good employer; and (c) an organization that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavoring to accommodate or encourage these when able to do so...”

**Slovenia:** The Ordinance on State Assets Management Strategy was developed by the Government and approved by the National Assembly/Parliament in 2015. The main goal of the State Assets Management Strategy is “to pursue a stable, balanced and sustainable economic development, thus providing for the stable long-term well-being of citizens of the Republic of Slovenia”, while pursuing the objectives of individual sectoral strategies. **The** objectives of individual companies differ according to the classification of these companies as SOEs with strategic assets, those with important assets, or those with portfolio assets.

**Sweden:** The State Ownership Policy, approved by the Government in 2015, pronounces that “The Government’s overall objective is creating value for the owners” and, where applicable, to ensure that specially commissioned public policy assignments are well performed. The Government believes in principle that the state should not own companies that are active in competitive commercial markets unless the company has a specific public service assignment that would be difficult to fulfill in any other way (OECD, 2015b).

*Source: Data prepared based on applicable legislation in each jurisdiction.*

51. **Governments choose to retain control over certain sectors and industries, often referred to as strategic sectors.** The rationale behind maintaining state participation in such industries vary from one country to another, but may be grouped into following categories:

- keeping control over natural monopolies,
- establishing specific regulations,
- dealing with political sensitivities or institutional constraints,
- maintaining infrastructure, such as railways and telecommunications,
- producing strategic goods and services (mail, weapons),
- extracting natural resources,
- providing access to energy,
- keeping grasp over other essential and social areas, i.e. broadcasting, merit goods (healthcare), demerit goods (alcohol) etc.

52. **Some OECD member-countries use legislation to explicitly express their SOE ownership rationale.** Tables 2 and 3 below summarize the expression of SOE ownership rationale and its legal basis across various jurisdictions. For example in Germany, Section 65 “Holdings in private-law enterprises” of the Federal Budget Code 1969 explicitly state the ownership rationale.

**Table 2. Examples of countries with explicit state ownership rationale<sup>12</sup>**

| <b>Explicit ownership rationale</b>                        | <b>Country</b>   |
|--|--|
| <b>Legislation</b>   | Estonia,<br>Germany,<br>Hungary,<br>Lithuania,<br>Poland |
| <b>Government decision</b>                                 | Chile,<br>Finland,<br>Norway,<br>Sweden,<br>Switzerland  |
| <b>Government policy statement</b>                         | Ireland,<br>the Netherlands                              |
| <b>Legislation and government decree</b>                   | the Czech Republic                                       |
| <b>Legislation, government decree and cabinet decision</b> | Portugal   |

**Table 3. Examples of countries with no explicit ownership rationale<sup>13</sup>**

| <b>Without explicit ownership rationale</b>                        | <b>Country</b>  |
|--|---|
| <b>SOE-specific statutory legislation, articles of association</b> | Canada,<br>Italy,<br>Japan                                |
| <b>Government’s overall legislative and policy framework</b>       | Mexico,<br>the Slovak<br>Republic,<br>Slovenia,<br>Turkey |

<sup>12</sup> Source: OECD, 2015b

<sup>13</sup> Ibid

| Without explicit ownership rationale | Country  |
|--------------------------------------|--|
| No formal ownership criteria         | Israel,<br>New Zealand,<br>the United<br>Kingdom |

53. **Examples reported by the OECD and by the World Bank suggest that it is becoming good practice to explicitly state the rationale for state ownership.** OECD countries governments have increasingly addressed the rationale for state ownership policy to improve SOE governance and performance, to strengthen the state’s ownership function and improve efficiency of resource allocation. The World Bank, through reviewing practices from several countries around the world, particularly advises on strengthening SOE corporate governance, including through clarification of ownership objectives by the state. Box 4 summarizes OECD and the World Bank study findings.

#### Box 4. Rationale for state ownership: Examples

**France:** The Guidelines for the State as Shareholder public on the State Holdings Agency (APE) list the following four objectives for ownership of economic entities: (1) ensure a sufficient level of control (...) in sectors particularly sensitive for sovereignty; (2) ensure the existence of resilient operators to meet the country’s fundamental needs; (3) support the development and strengthening of enterprises particularly in sectors playing a crucial role for national and European economic growth; (4) participate in the rescue of enterprises whose failure could have systemic consequences, in accordance with the European rules.

**Hungary:** The Privatization Act (Act XXXIX of 1995) states that assets may remain in long-term state ownership in: (1) national public utility service providers; (2) companies of strategic significance in the national economy; (3) companies carrying out defense or other special duties or services; and (4) cases when company shares are needed to guarantee state ownership or voting rights.

In **Mexico** the strategic areas<sup>14</sup> for state ownership are defined in Art. 28 of the Constitution. These are postal delivery, telegraphs, and radio telegraphy; petroleum and other hydrocarbons; basic petrochemicals; radioactive minerals and the generation of nuclear energy; electric power, and activities expressly provided by the laws enacted by the Congress of the Union. The state must secure the interests of the nation in satellite communications, and railroads are a priority for national development.

<sup>14</sup> That should not constitute monopolies.

**Norway:** The Government's objective is to maintain a diverse and value-creating ownership. These reasons justify state ownership in Norway being "... correction of market failures; maintaining of important companies head-office functions and key competences in Norway; management of common natural resources; sectorial policy and societal considerations (White paper presented by the Government to the Parliament [Meld. St. 27 (2013-2014)], A diverse and value creating ownership).

In line with the pronouncements of the white paper, SOEs in Norway are classified into four groups with different objectives for state ownership: (1) companies with commercial objectives; (2) companies with commercial objectives and national anchoring of their head office functions (i.e. develop Norwegian markets in Norway); (3) companies with commercial and other specifically defined objectives; (4) companies with sectorial policy objectives (State Ownership Report 2014).

In **Slovenia** the 2015 Law on State Assets Management Strategy requires the state to maintain or obtain at least a 50% shareholding + 1 share in companies classified as strategic. It also defines the following strategic assets:

- Enterprises carrying out key infrastructural duties:
  - network infrastructure of key electronic communications;
  - transport infrastructure (roads, railways);
  - natural monopolies (ports, etc.).
- Companies in economic activities which are important for stable and safe supply of resources and energy and public grid operators:
  - energy industry;
  - distribution of electricity and distribution and storage of other energy products (gas, oil);
  - water supply\* and other environmental services;
  - national operator of the port activity (Port of Koper).
- Companies rendering important public obligations (services of general economic interest):
  - public passenger transport;
  - maintenance and management of public infrastructure (roads, railways, distribution networks).
  - Companies increasing the competitiveness of the entire forest-wood value chain.

*Source: Data prepared based on applicable legislation in each jurisdiction.*

54. Although in Kazakhstan there are some elements of rationale for state ownership (for example in relevant articles of the law on entrepreneurship or article 134 of State property law), it does not cover all elements recommended for OECD countries, and these are not reviewed periodically.
55. **The Government of Kazakhstan may consider defining the rationale for state ownership in a public policy document and subject it to periodic reviews.** The main benefit of an ownership rationale is that it provides a framework for determining in a systematic and consistent way, the sectors and enterprises in which the State should acquire or retain ownership interests. The document should be based on Chapter I of OECD (2015a) guidelines and respective annotations. The World Bank's Toolkit on Corporate Governance of SOEs (2014)<sup>15</sup> may provide some guidance and also be relevant for consideration.

### 3.3 Maintaining state ownership in strategically important sectors

56. **Despite extensive privatization, governments continue to own and operate state owned enterprises in critical sectors such as finance, infrastructure, manufacturing, energy, and natural resources.** The World Bank (2014) experience suggest that the state-owned sectors in high-income countries, in major emerging market economies, and in many low- and middle-income countries have continued, and even expanded. In many countries, SOEs in strategic industries are increasingly viewed as tools for accelerated development and global expansion.
57. **Governments choose to retain control over certain sectors and industries, often referred to as strategic sectors.** The reasons behind maintaining state participation in such industries vary from one country to another, but may be grouped into the following categories:
- keeping control over natural monopolies,
  - establishing specific regulations,
  - dealing with political sensitivities or institutional constraints,
  - maintaining infrastructure, such as railways and telecommunications,
  - producing strategic goods and services (mail, weapons),
  - extracting natural resources,
  - providing access to energy,
  - keeping hold of other essential and social areas, i.e. broadcasting, merit goods (healthcare), demerit goods (alcohol) etc.

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<sup>15</sup> Available at <https://openknowledge.worldbank.org/handle/10986/20390>

58. **Strategic SOEs or parastatals may be defined and protected by local legislation.** In this case, any type of change introduced to the organization or operations of these entities must be approved by the highest legislative authority in a country. It is considered good practice to define strategic sectors and formulate the state’s involvement in such industries in the rationale for ownership. See Box 4. Rationale for state ownership for examples.
59. **Typical sectors of strategic importance across many OECD member jurisdictions include: extractives, energy, infrastructure including telecommunications & transport, utilities, healthcare, and military-related production.** State participation in these and other sectors varies from country to country, but the tendency is towards strengthening state ownership in those industries where consumers need to be protected from potential natural monopoly abuses, or governments have strategic interests. With recent technology developments, some countries are classifying high-tech industries as strategic sectors, establishing SOEs as vehicles for accelerated development and international expansion. Table 4 provides an overview of strategic sectors among selected economies.

**Table 4. Overview of strategic SOEs and sectors of the economy among some of the world’s economies<sup>16</sup>**

| <b>Australia</b>                 |                                     |
|----------------------------------|-------------------------------------|
| <b>Financial Services</b>        | -                                   |
| <b>Telecoms &amp; Mass media</b> | Telstra C.L.                        |
| <b>Extractives</b>               | -                                   |
| <b>Electricity</b>               | Snowy Hydro L.                      |
| <b>Railway</b>                   | Australian Rail Track C. L.         |
| <b>Air &amp; Transport</b>       | Airservices Australia               |
| <b>Post</b>                      | Austalian Postal C.                 |
| <b>Austria</b>                   |                                     |
| <b>Financial Services</b>        | Hypo Alpe-Adria-Bank International* |
| <b>Telecoms &amp; Mass media</b> | Telekom Austria AG                  |
| <b>Extractives</b>               | OMV AG                              |
| <b>Electricity</b>               | Verbundgesellschaft                 |
| <b>Railway</b>                   | Österreichische Bundesbahnen        |
| <b>Air &amp; Transport</b>       | Austrian Airlines AG                |
| <b>Post</b>                      | Österreichische Post AG             |

<sup>16</sup> The list is not exhaustive, other industries and companies of strategic importance exist in these jurisdiction.

| <b>Canada</b>                    |   |
|----------------------------------|---|
| <b>Financial Services</b>        | Business Development Bank of Canada;<br>Canada Mortgage and Housing Corporation |
| <b>Telecoms &amp; Mass media</b> | Canadian Broadcasting Corporation   |
| <b>Extractives</b>               | -   |
| <b>Electricity</b>               | -   |
| <b>Railway</b>                   | VIA Rail Inc  |
| <b>Air &amp; Transport</b>       | -   |
| <b>Post</b>                      | Canada Post Corporation   |
| <b>France</b>                    |   |
| <b>Financial Services</b>        | Banque Postale;<br>BPI;<br>Dexia  |
| <b>Telecoms &amp; Mass media</b> | France Televisions;<br>Radio France;<br>AFP                                     |
| <b>Extractives</b>               | Charbonnage de France;<br>EMC ( <i>Note. these are dormant entities</i> )       |
| <b>Electricity</b>               | EDF;<br>Engie   |
| <b>Railway</b>                   | SNCF  |
| <b>Air &amp; Transport</b>       | Aéroport de Paris   |
| <b>Post</b>                      | La Poste  |
| <b>Italy</b>                     |   |
| <b>Financial Services</b>        | Consap spa  |
| <b>Telecoms &amp; Mass media</b> | RAI holding   |
| <b>Extractives</b>               | ENI spa   |
| <b>Electricity</b>               | Enel spa  |
| <b>Railway</b>                   | Ferrovie dello Stato spa  |
| <b>Air &amp; Transport</b>       | Alitalia spa;<br>ENAV spa   |
| <b>Post</b>                      | Poste Italiane spa  |

| <b>Kazakhstan</b>                |   |
|----------------------------------|---|
| <b>Financial Services</b>        | JSC Development Bank of Kazakhstan  |
| <b>Telecoms &amp; Mass media</b> | JSC Kazakhtelecom;<br>JSC Kazsatnet   |
| <b>Extractives</b>               | JSC KazMunaiGas Exploration Production;<br>JSC KazMunaiGas                                |
| <b>Electricity</b>               | JSC Samruk -EnergO  |
| <b>Railway</b>                   | JSC Kazakhstan Temir Zholy  |
| <b>Air &amp; Transport</b>       | JSC International Airport Astana; other regional airports;<br>JSC Air Astana              |
| <b>Post</b>                      | JSC Kazpost   |
| <b>Norway</b>                    |   |
| <b>Financial Services</b>        | DNB ASA;<br>Argentum Fondsinvesteringer AS;<br>Kommunalbanken Norway AS                   |
| <b>Telecoms &amp; Mass media</b> | Telenor ASA   |
| <b>Extractives</b>               | Statoil ASA;<br>Petoro AS,<br>Norsk Hydro ASA   |
| <b>Electricity</b>               | Statnett SF;<br>Statkraft SF  |
| <b>Railway</b>                   | NSB AS  |
| <b>Air &amp; Transport</b>       | Avinor AS   |
| <b>Post</b>                      | Posten Norge AS   |
| <b>South Korea</b>               |   |
| <b>Financial Services</b>        | Industrial bank of Korea,<br>Korea development bank;<br>Korea first bank;<br>Kookmin bank |
| <b>Telecoms &amp; Mass media</b> | Korea broadcasting system   |
| <b>Extractives</b>               | Korea National Oil Corporation<br>Korea Gas Corporation<br>Korea oil pipeline             |
| <b>Electricity</b>               | Korea electric power Corporation  |
| <b>Railway</b>                   | -   |



|                                  |  |
|----------------------------------|--|
| <b>Air &amp; Transport</b>       | Korea airports Corporation   |
| <b>Post</b>                      | -  |
| <b>Switzerland</b>               |  |
| <b>Financial Services</b>        | Export Risk Guarantee (ERG),<br>SUVA   |
| <b>Telecoms &amp; Mass media</b> | Swisscom AG  |
| <b>Extractives</b>               | -  |
| <b>Electricity</b>               | -  |
| <b>Railway</b>                   | Schweiz.Bundesbahnen (SBB AG)  |
| <b>Air &amp; Transport</b>       | -  |
| <b>Post</b>                      | Die Schweiz. Post  |
| <b>United Kingdom</b>            |  |
| <b>Financial Services</b>        | Export Credit Guarantee Department;<br>Northern Rock (Asset Management)**;<br>Lloyds Banking Group (partial) |
| <b>Telecoms &amp; Mass media</b> | British Broadcasting Corporation;<br>Channel Four Television Corporation Ltd                                 |
| <b>Extractives</b>               | -  |
| <b>Electricity</b>               | British Energy;<br>UK Atomic Energy Authority;<br>British Nuclear Fuels plc                                  |
| <b>Railway</b>                   | London and Continental Railways;<br>Network Rail   |
| <b>Air &amp; Transport</b>       | Air travel trust;<br>National Air traffic Services ltd;<br>Various regional airports                         |
| <b>Post</b>                      | Royal Mail Group PLC   |

\* - Nationalized in 2009 by the Austrian Government to avoid the bank's collapse.

\*\* - Nationalized in 2008 by the British Government.

## 4. TYPES, LEGAL FORMS, ESTABLISHING, MAINTAINING, LIQUIDATING AND DIVESTING OF SOES AND PARASTATALS

### 4.1 Types and legal forms of SOEs and parastatals

60. **SOEs and parastatals exist in various legal forms in different jurisdictions.** Legal form is primarily determined by the body that initiates the creation of SOE or parastatal, dependent on the type of enterprise envisaged, its mission, ownership structure, its role in public administration and other factors. Each country defines its SOE categories differently, using criteria including the state's participation in the company's capital, its effective control, and the entity's mission. There is a clear trend in corporatization of entities that perform economic activities, or at least introducing some private sector governance arrangements in parastatals. Box 5 below presents a snapshot of legal forms used for SOEs and other entities with state interest across several jurisdictions. Detailed examples of public sector entities with legal personality in Norway, Spain, Switzerland and the United Kingdom are presented in **Annex 2**.

#### Box 5. Legal Forms of SOEs and parastatals

**Australia:** State of Victoria guidelines indicate that "...Incorporation provides a separate legal identity for the public entity, which protects the liability of members of the public entity to a greater extent than an unincorporated body, where members may be liable for the actions of other members. Incorporation is strongly recommended if the entity is to employ staff, and is necessary if the public entity is to:

- provide services to non-government parties;
- own or lease property or other assets;
- receive funding from direct budget allocation and/or other sources;
- enter into contracts;
- perform functions which expose it to potential legal challenge; and
- take legal action against others.

Incorporated public entities are used for a wide range of functions and have a number of legal forms, including a company or state owned enterprise. In general, a statutory authority is the most appropriate legal form for entities that are undertaking functions broader than the provision of advice. Unincorporated bodies can be used for activities

such as mediation, facilitation and dispute resolution.

In addition to statutory authorities and non-statutory advisory bodies, government has a number of other possible legal forms for public entities at its disposal, although the circumstances under which these are likely to be appropriate are limited. These include companies established under the Corporations Act, or incorporated associations...”

*Source: Victorian Public Sector Commission, 2013.*

**France:** With very few exceptions, French SOEs are either formed as JSCs or as “Public Entities of Commercial or Industrial nature” (EPIC under the French acronym), the former being preferred for competitive sectors and the latter for natural monopoly or infrastructure activities (e.g., transportation, defense and minting). EPICs have legal personality and are generally governed by private sector law. Historically, departments of the government were transformed into EPICs, and some of those EPICs (e.g., in the electricity and telecommunications sectors) were later transformed into JSCs. One of the very few exceptions is *Agence France Presse* which is a statutory body governed by a specific law, owing to the very specific and sensitive nature of its business.

*Source: Data prepared based on applicable legislation.*

**Ireland:** Depending on the objectives of SOEs (non-profit or profit), the entities can be established as a statutory corporation, public limited company, private limited company, or a corporate body established by Ministerial order under an enabling Act.

*Source: Data prepared based on applicable legislation.*

**Slovenia:** All SOEs are subject to the Companies Act, although they were established by a special law that determines their operation. The types of structures governed by Company Law in Slovenia are of two types: (i) partnership forms or (ii) companies limited by shares. A partnership can be an unlimited company, a limited partnership or sleeping partnership. A company limited by shares can be formed as a limited liability company, public limited company, a partnership limited by shares or European public limited-liability company in the European Union.

*Source: Data prepared based on applicable legislation.*

61. **SOEs and other entities with state interest, which were created as limited liability companies or corporations, are primarily governed by commercial law.** Generally speaking, SOEs that have adopted legal forms of private law (with amendments), such as incorporated companies with state ownership in Norway<sup>17</sup>, state-owned companies in Australia<sup>18</sup>, limited

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<sup>17</sup> Public Limited Liability Companies Act 1997

liability companies in Finland<sup>19</sup>, as well as all state-owned companies in Slovenia<sup>20</sup> are governed by commercial law. This applies particularly regarding their incorporation, corporate governance structure and powers of the board of directors, shareholders' rights, disclosure of financial and non-financial information, and liquidation procedures. In Brazil, for example, the Decree Law 200 of 1967 establishes the definition of SOEs—public enterprise and joint ventures— and states that both types should be regulated through private law. Companies that issue financial instruments at the national and international stock exchanges are governed by regulations issued by the relevant securities commissions in the markets in which they operate. Private law companies are also subject to public law, including budget laws, public procurement laws, and administrative procedure statutes.

62. **Some SOEs and entities of public law may be subject to a special SOE law which sets forth their objectives and regulates their incorporation, operations, control and oversight.** For example, in many countries SOEs that operate in key sectors of national economies, such as Statnett SF (the state electricity network company) under the Ministry of Oil and Energy in Norway, or the Australian Rail Track Corporation, are governed by special laws that legislate their inception and operations. Public law enterprises are often subject to other laws, such as budget laws, procurement laws, civil servants acts, etc. For instance, in Finland all the statutory corporations are governed by the Statutory Corporations Act adopted by the Parliament in 2002. See Box 6 for examples of special laws applicable to SOEs from the World Bank knowledge database that covers various jurisdictions.

#### **Box 6. Special laws applicable to SOEs**

**Colombia:** Government-owned public utility companies are regulated under Law 142 of 1994, which establishes the legal framework for public utility services and other provisions, and the listed entities have to comply with the relevant market regulations.

**Ecuador:** SOEs are regulated under the recently passed Organic Law of State-Owned Enterprises.

**Mexico:** Decentralized bodies and companies with majority ownership by the government are regulated by two codes: the Organic Law of Federal Public Administration and the Federal Law of Parastatal Entities.

**South Korea:** Government-owned companies and government invested companies are all subject to the Act on the Management of Public Institutions.

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<sup>18</sup> Corporations Act 2001

<sup>19</sup> Companies Act, also known as osakeyhtiölaki (first posted in 1978 and reformed in its entirety in September 2006). It applies to public and private companies.

<sup>20</sup> Companies Act (ZGD-1) 2006

**Serbia:** All unincorporated SOEs operate under the Law on Public Enterprises, while also being subject to the Company law.

**Some countries may also legislate individual laws for major SOEs that operate in key sectors of their economies. For example:**

**Chile:** Rules related to the corporate governance of the National Copper Corporation (CODELCO) are included in a relatively new law that modifies the Organic Statute of the National Copper Corporation. CODELCO is registered with and subject to the supervision of the Chilean Superintendence of Securities and Insurance. Such supervision is on the same terms as publicly traded companies, notwithstanding the provisions in the Decree Law which created the Chilean Copper Commission.

**Mexico:** Mexican Oil (PEMEX) is regulated under the Mexican Oil Law.

**Panama:** The Law which structures the Panama Canal Authority also provides for its governance.

*Source: World Bank (2014a, 2014b)*

63. **The GOK is considering restructuring the legal form of entities which are not corporate entities.** The Government can currently only establish and be shareholder of legal entities in the form of joint stock companies, limited liability companies or parastatals (state bodies and state enterprises).<sup>21</sup> As part of changes to the law on state property, a decision is expected on whether entities might be either privatized (in line with the so called “yellow pages rule”, which aims to reduce state participation if the private sector operates in the same industry); retained but reorganized into corporate entities (if they operate in a non-competitive area); or liquidated.

## 4.2 Criteria that determine the legal form of parastatals and SOEs

64. **There is no single model of criteria used to establish a public body in a specific legal form.** However, some common elements underlie good practice in this area. Generally, the primary function of the entity should determine its legal form. The degree of required ministerial control should also be considered in selecting the appropriate legal form. A SOE is usually the most appropriate form if the public body is to operate on a commercial basis or is transitioning from a non- or quasi-commercial basis to a fully commercial entity.

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<sup>21</sup> Under the Law on State Property and Privatization.

65. **In most cases legislation governing the creation of a public body, for instance an SOE, provides guidance on its distinctive features.** Criteria used to establish parastatals vary among jurisdictions. OECD (2015b) states that in France and the Netherlands there are no strict criteria that are applied to determine whether an independent agency (“*Agences*” or “*ZBO’s*”) should be created as a separate legal entity. While in Sweden, the agencies do not have unique legal personality and are an integral part of the state. However, some lessons could be learnt from the cases of countries that explicitly state the criteria used for establishment of public bodies, for instance, Australia and the United Kingdom. In the United Kingdom, all types of public bodies have their own distinctive features, but only few types have their own legal personality (for example, public corporations or executive NDPBs).
66. **Different approaches to assigning a common legal form to a public body reflects countries different historical, economic, cultural and political developments.** Each country is unique and even similar types of public services are provided by entities with different legal forms. For example, the World Health Organization (2011) found that public hospitals in European countries were structurally shifting towards more autonomous models of governance but using markedly different legal forms. These include “self-governing trusts” and “foundation trusts” in the United Kingdom; “joint-stock companies” and “foundations” in Estonia; “limited liability companies” and “joint-stock companies” in the Czech Republic, “public-stock corporations” in Sweden; “state enterprises” in Norway; “public enterprise entity hospitals/PEEHs” in Portugal; and “public healthcare companies” (*Empresa Pública Sanitaria*), “public healthcare foundations” (*Fundacións Pública Sanitaria*), “consortia” (*Consortio*), “foundations” (*Fundacións*) and “administrative concessions” (*Concesión Administrativa*) in Spain (WHO, 2011).
67. **Practices in some OECD countries includes publication of official guidelines or policy statements formally advising the criteria for assigning the legal form of an entity with state participation.** These guidelines outline the criteria to categorize a new entity into a specific legal form of a public body. Although these guidelines are not prescriptive; they serve as a basis for informed decision making and the exercise of judgement by policy practitioners. Box 7 presents examples of the guidelines used in Austria and the United Kingdom. The process for selecting legal forms and governance arrangements for public entities in Australia/State of Victoria is illustrated in Annex 3.
68. **In Kazakhstan, parastatals are legally<sup>22</sup> required to perform only certain type of public services, while SOEs registered in the legal form of JSCs and LLPs enjoy rather high degree of freedom in its’ activities.** The Law on State Property and Privatization provides a detailed list of types of activities that can be performed by parastatals. These criteria are subject to potential changes during the ongoing review of state ownership.

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<sup>22</sup> The Law on State Property and Privatization.

69. Experience demonstrates that the more competitive is the industry, the more likely the JSC form would be the right choice of legal form. This is also applicable to many non-competitive sectors. The advantages of JSC legal form is possibility to access capital markets through listings, and many countries improved SOEs governance by listing them on capital markets which normally have significant governance and transparency requirements.

**Box 7. Guidelines on criteria to categorize a new public sector entity into a specific legal form**

**Australia:** The Department of Finance of the Australian Government in its' *Governance Policy*<sup>23</sup> provides guidelines on criteria to be considered when creating a new, or reviewing an existing, Commonwealth/Federal body. Federal laws apply to the whole of Australia. In addition, each of the eight states and territories has an independent legislative power. Therefore, depending on the legal forms and governance arrangements existing in each state, specific guidance on the criteria is provided. For instance, the Victorian Public Sector Commission (2015) issues guidelines on *Legal Form and Governance Arrangements for Public Entities* that provide advice on the creation of a new body or revising a legal form or governance arrangements in an existing body in its jurisdiction. For instance, this includes the guidance that establishing a body as a corporate Commonwealth entity may be appropriate if most or all of the following factors are present:

- the body will operate commercially or entrepreneurially;
- a multi-member accountable authority will provide optimal governance for the body;
- there is a clear rationale for the assets of the body not to be owned or controlled by the Commonwealth directly; or
- the body requires a degree of independence from general policies of the Australian Government and direction by the executive government.

**The United Kingdom:** The guidelines on criteria can be found in the publication *Categories of Public Bodies: A Guide for Departments* issued by the Cabinet Office in December 2012.

For instance, an NDPB is defined as “a body which has a role in the process of national government but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm’s length from ministers”. There are four types of NDPBs: Executive NDPBs; Advisory NDPBs; Tribunal NDPBs; and Independent Monitoring Boards (IMBs) used for prisons, immigration removal centers, and immigration holding facilities. Key characteristics of Executive NDPBs include:

- they are usually established in bespoke legislation or under the Companies Act;

<sup>23</sup> [www.finance.gov.au/resource-management/governance/policy/](http://www.finance.gov.au/resource-management/governance/policy/)

- have their own legal personality;
- carry out a wide range of administrative, commercial, executive and regulatory or technical functions which are considered to be better delivered at arm's length from ministers;
- have a regional or national remit. Bodies which operate at a local or international level are rarely NDPBs.

Executive NDPBs may set up subsidiary bodies or companies.

### 4.3 Inception, reorganization and liquidation of parastatals and SOEs

70. **In most of the OECD jurisdictions procedures to create, reorganize, liquidate or divest public sector entities<sup>24</sup> are set in the law or through Government decision.** Regional and municipal level of governments within their powers replicate the procedures of the central government used to create, reorganize or liquidate public sector entities. Legislation that approves the creation of a public legal entity usually governs reorganization, liquidation, divestment or dissolution of such entities. Changes are usually triggered by regular reviews assessing whether entities are achieving or failing against their original charter and whether their scope and intended purpose remain valid.
71. In almost all cases the establishment, reorganization or liquidation of a public legal entity is proposed by the Minister responsible, for example in Slovenia<sup>25</sup>. Generally, depending on the legal form of the entity being created, a Government/Cabinet of Ministers decision is sufficient. Table 5 and Box 8 illustrate creation and divestment practices in a sample of countries.

**Table 5. Procedures for creation and divestment of SOEs and parastatals<sup>26</sup>**

| Creation, reorganization and liquidation of public sector entities | Country   |
|--|---|
| <b>Parliamentary approval of the legislation or a resolution*</b>  | Australia***<br>Finland <sup>27</sup> ***<br>Ireland****<br>the United Kingdom***** |

<sup>24</sup> Including SOEs.

<sup>25</sup> The Public Finance Act, 1999.

<sup>26</sup> Sources: Data prepared based on applicable legislation and OECD, 2015b.

<sup>27</sup> Also for sale of shareholdings in state-owned companies and associates.



| Creation, reorganization and liquidation of public sector entities | Country  |
|--|--|
| <b>Government decree</b>   | Australia**<br>Estonia<br>Finland**<br>Germany<br>Poland<br>Slovenia<br>Norway <sup>28</sup><br>Ireland*****<br>the United Kingdom |
| <b>Secondary legislation/Ministerial order</b>                     | Ireland*****   |

\* always required for all statutory type entities;

\*\* only for a state-owned company type with fully commercial objectives and without access to public finance;

\*\*\* for all cases, except (\*\*);

\*\*\*\* public companies registered under statute;

\*\*\*\*\* private companies registered under the Companies Act;

\*\*\*\*\* corporate bodies – a rare case;

\*\*\*\*\* most public corporations and NDPBs.

### Box 8. Creation, reorganization and liquidation of SOEs and parastatal sector entities

**Australia:** In the State of Victoria SOEs<sup>29</sup> can be created by an Order of the Governor in Council, following Cabinet approval. While this has some practical advantages in allowing SOEs to be established quickly, they will not benefit from the Parliamentary scrutiny that is required to establish other forms of statutory authorities. However, entities created in a legal form of “state-owned companies” are subject to substantial reporting and compliance obligations by virtue of their status as companies under the Corporations Act. Depending on the size of the entity being created, this can constitute a significant demand on the entity’s resources. Thus a state-owned company is only an appropriate legal form where the entity has full commercial objectives and where Parliamentary approval is not required.

**Germany:** In accordance with the Federal Budget Code<sup>30</sup> 1969, to create a new private law enterprise, or to increase or sell all or part of its holding in an enterprise, the federal

<sup>28</sup> In Norway, the term “government” has two meanings: (a) the Prime Minister and the ministers gathered together for meetings presided by the King, called Council of State (King in Council) and (b) the ministers gathered together for government conference, chaired by the Prime Minister.

<sup>29</sup> The State Owned Enterprises Act defines four types of State owned enterprise: state body, state business corporation, state owned company (a Corporations Act company declared as a State owned company under the State Owned Enterprises Act) and reorganising body.

<sup>30</sup> Bundeshaushaltsordnung

ministry responsible must submit a proposal for approval by the Federal Ministry of Finance and the federal ministry responsible for federal assets. The same process should be followed in case of any change in the charter capital or in the event of a change in the Federation's influence. Acquisition of more than one quarter of the shares of another enterprise, increases or sale all or part of such a shareholding by the majority owned private law enterprise, requires approval from the responsible federal ministry based on a prior consent from the Federal Ministry of Finance and the federal ministry responsible for federal assets.

**Finland:** Legislation is necessary only when a new SOE would have an impact on public finances, for example by receiving public subsidies for the provision of public services. Under the State Shareholdings and Ownership Steering Act 2007, the Parliament must approve the reduction of state ownership in an SOE. Privatizations are planned and negotiated by Finland's central ownership function, the Ownership Steering Department of the Prime Minister's Office. The final decision to dispose of state shares is made by the Cabinet of Ministers. However, the Parliament has to authorize the sale if the sale price is below the fair value of shares.

**Norway:** In accordance with the State-Owned Enterprises Act 1991, the resolution of the King in Council should take decisions to form a state-owned enterprise, and determine the Ministry responsible for the shareholding. A decision to dissolve the enterprise should also be approved by the King in Council. The enterprise general meeting has the power to decide on increases and decreases of the contributed capital.

In the **Netherlands** agencies and ZBOs are established in accordance with the Government Accounts Act 2001. Proposal is by the Ministers of Finance and Home Affairs, approval by the Council of Ministers and final approval by the Lower House of the Parliament. However, agencies are established by means of a resolution and ZBOs by means of legislation. The reason for this difference lies in the fact that the Parliament has to approve limited ministerial accountability in the ZBOs<sup>31</sup>. For example, the Dutch Healthcare Authority (NZa) is an autonomous administrative authority, falling under the Dutch Ministry of Health, Welfare and Sport. NZa duties and tasks are laid down in the enabling Act, i.e. the Healthcare Market Regulation Act of 2006.

**Netherlands:** *Reversing the status:* Prior to 2013 the Independent Post and Telecommunications Authority (OPTA) was a completely independent administrative authority with legal personality (ZBO), budget and personnel. It was created in 1997 by the Law on Telecommunication, Post and Cable TV Services. The Authority for Consumers and Markets (ACM) was established in 2013<sup>32</sup>, and absorbed OPTA in April 2013. ACM is

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<sup>31</sup> OECD, 2002.

<sup>32</sup> The Establishment Act on the Netherlands Authority for Consumers and Markets, 2013.

an independent administrative body without legal personality under the Ministry of Economic Affairs. It operates under the Autonomous Administrative Authorities Framework Act of 2006. The new independent regulator lost legal personality as Parliament decided that OPTA in the legal form of ZBO had limited accountability to the government.

## **United Kingdom:**

### Creation

It is government policy that new NDPBs are only established as an absolute last resort. Departments must, therefore, consider all possible delivery models when exploring options for delivering new services or functions. Any proposal for a new NDPB must be approved by Cabinet Office Ministers. Proposals must be supported by a proportionate, well structured, and costed business case. Cabinet Office Ministers, and where appropriate HM Treasury Ministers, must be formally consulted – and their express approval to the business case secured – before any decision is taken or announcement made regarding new NDPBs. The legislation or a resolution authorizing the creation of a new SOE must receive parliamentary approval.

### Liquidation

Parliament is usually informed when the Government plans to terminate its ownership in an SOE, particularly when the public body was established under an Act of Parliament (e.g. in the case of a trading fund). This includes a justification for the sale. Typically, the decision to privatize an SOE must satisfy the value-for-money assessment set out in the UK Treasury guidelines.

### Reorganization

An example of reorganization from the UK is the Ordnance Survey Trading Fund, the government agency responsible for the official, definitive topographic survey and mapping of Great Britain. Assets, liabilities and contracts (including its investments in group entities) were transferred to Ordnance Survey Limited on 1 April 2015. The Business Transfer Agreement was signed on 31 March 2015 by The Secretary of State for Business, Innovation and Skills, acting through Ordnance Survey Trading Fund and Ordnance Survey Limited. Ordnance Survey Limited is a company limited by shares wholly owned by the Secretary of State for Business, Innovation and Skills and a public corporation as defined in HM Treasury's Managing Public Money, and as classified by the Office of National Statistics. Ordnance Survey was set up as a Trading Fund pursuant to the Ordnance Survey Trading Fund Order 1999, and therefore legislation is required in order to wind up the Trading Fund. The Ordnance Survey Trading Fund (Revocation) Order was made on March 8, 2016 and the Trading Fund ceased to exist on March 31,

2016.

*Sources: UK Cabinet Office, 2012; Ordnance Survey Annual Report and Accounts 2014-2015; Finland State Shareholdings and Ownership Steering Act 2007; OECD, 2015b.*

**Sweden:** According to the Instrument of Government 1975<sup>33</sup> Parliament<sup>34</sup> has to authorize acquisition and disposition of state assets, including shares in a company. The Budget Act 2011 further states that the Government may not acquire shares in a company, or in any other way increase the central government share of voting power or ownership in a company, without the authority of Parliament. Parliament must also authorize provision of capital to a company. The Government may not, by sale or other means, reduce the central government share of ownership in companies in which central government has half or more than half the votes for all shares without parliamentary authority.

*Source: Data prepared based on applicable legislation*

72. **In some OECD countries, the official guidelines or policy statements formally advise the process for creation of an entity with state participation.** These guidelines also outline the approval process. Although they are not prescriptive, they serve as a basis for informed decision making and the exercise of judgement by policy practitioners. In most of the OECD member states reducing the SOEs share in the national economy<sup>35</sup> and parastatal sector/NDPBs is a government policy. For instance, in Australia and the United Kingdom a new parastatal body/NDPB should only be established as an absolute last resort. Any such proposal should be justified by a robust cost-benefit, risk and potential alternatives business case analysis.
73. **In the OECD jurisdictions reorganization<sup>36</sup>, divestment or dissolution of public sector entities is usually the result of regular review to assess whether they are achieving or failing against their original charter and whether their scope and intended purpose remain valid.<sup>37</sup>** In Australia, for example, Department of Finance governance policy states that the date for review or its termination should be based on the purpose of the organization and when key milestones are likely to be met. Termination and review dates should be not more than 10 years after the body's establishment or last review, and generally not more than

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<sup>33</sup> The Instrument of Government is the most basic of the four fundamental laws that make up the Constitution of Sweden.

<sup>34</sup> The Riksdag.

<sup>35</sup> However, despite extensive privatization, governments continue to hold non-trivial, and often controlling, shareholdings (World Bank, 2014; OECD, 2009).

<sup>36</sup> See also Box 5 - EPIC in France for example of reorganization.

<sup>37</sup> Legislation usually also foresees additional reasons for dissolution of public sector entities, for example by a court decision.

five years for a body established to address short-term to medium-term policy issues<sup>38</sup>. In Germany, the Federal Budget Code 1969 requires the Government to examine and put forward a positive argument for companies to be retained in state ownership. The budget bill is approved for two fiscal years. Therefore, this process takes place every two years and the automatic commencement of privatization starts if the case for continuation of state ownership is not accepted in the Budget Act.

74. In Kazakhstan parastatals are created, reorganized and liquidated by the decision of the Government decision in case of state enterprises, and in case of central state bodies by the decision of the Government or the President of Kazakhstan. An area which the GOK/MNE may further explore is SOEs that are subsidiaries of SOEs. In some countries subsidiaries of SOEs may be created to bypass authorization of relevant authorities for creation of a new SOE.

#### 4.4 Terminating state participation in SOEs<sup>39</sup>

75. **In some OECD jurisdictions, practice includes regular review to assess whether SOEs are achieving or failing against their original charter and whether their scope and intended purpose remain valid. This can result in the divestment or dissolution of SOEs<sup>40</sup>.** Such reviews are often triggered by the Government privatization initiatives. For example, in **Germany**, the Federal Budget Code 1969 requires the Government to examine and put forward a positive argument for companies to be retained in state ownership. The budget bill is approved for two fiscal years. Therefore, this process takes place every two years and the automatic commencement of privatization starts if the case for continuation of state ownership is not accepted in the Budget Act. In Estonia, continuation of the state's SOEs ownership is assessed every year and an annual aggregate SOE report prepared by the Ministry of Finance is submitted to the Cabinet of Ministers for yearly review and approval.<sup>41</sup> In Norway, continuation of the SOEs ownership is assessed during the preparation of the Norway's ownership policy regularly presented by the Government to the Parliament. While there is no rule on the frequency for parliamentary review, the ownership policy has been updated four times in the last 12 years.<sup>42</sup> Box 9 presents divestment of government business units in Australia.

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<sup>38</sup> <http://www.finance.gov.au/resource-management/governance/policy/reviewing-bodies/>

<sup>39</sup> Also see Section 4.3 Inception, reorganization and liquidation of public institutions and SOEs.

<sup>40</sup> Legislation usually also foresees additional reasons for dissolution of public sector entities, for example by a court decision.

<sup>41</sup> OECD, 2015b.

<sup>42</sup> OECD, 2015b.

### Box 9. Divestment of GBEs in Australia

All public sector entities are subject to regular review under governance policy issued by the Department of Finance. The date for the review or a body sunset should be based on the purpose of the organization and when key milestones are likely to be met. Sunset and review dates should be not more than 10 years after the body's establishment or last review, and should generally not be more than five years for a body established to address short-term to medium-term policy issues.<sup>43</sup>

The Government faces a number of challenges in managing government business enterprises (GBEs). It is averse to commercial risk, and there is potential for conflicting objectives where the Government is balancing regulatory and policy responsibilities with shareholder responsibilities. Divestment can be a means of achieving a more efficient and productive economy. Accordingly, the Government has divested itself of certain commercial activities, such as Telstra<sup>44</sup> (telecommunication services).

Divestment of the Government's interest in GBEs is assessed on a case by case basis taking into account government policy considerations. The views of the entity are taken into account as part of the decision-making process.

*Source: Australian Department of Finance, 2015.*

76. **There may be other triggers for termination in addition to the results of regular performance review**, these include management notification, demand by a creditor, or recommended by the Supreme Audit Institution. For example, in Norway the King in Council may adopt a resolution to dissolve an enterprise following notification from the management board to the responsible Minister if the management board has reason to believe that the enterprise is unable to meet its obligations as they fall due. In addition, the King in Council may adopt a resolution to dissolve the enterprise if dissolution is demanded by a creditor.<sup>45</sup> Parliament has a vetting power on termination. In most of the OECD countries, a performance or financial audit report of an entity submitted by the Supreme Audit Institution to the Parliament may also provide some important areas for consideration. Please also see Section 7. Disclosure and Transparency for discussion of the role of Supreme Audit Institutions.
77. **Over the last twenty-five years, Kazakhstan has performed major divestments of SOEs during several waves of privatization.**<sup>46</sup> Although the Law on State Property and

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<sup>43</sup> <http://www.finance.gov.au/resource-management/governance/policy/reviewing-bodies/>

<sup>44</sup> Established under Telstra Corporations Act 1991.

<sup>45</sup> The Law on State-Owned Enterprises.

<sup>46</sup> The first wave of privatization took place in 1991-1992.

Privatization lists a number of ways to cease state ownership rights in property, privatization remains the major cause, especially in spite of the recently approved extended list of entities subject to privatization during 2016-2020. It includes 666 state owned entities of various legal forms.<sup>47</sup>

## 4.5 Alienation of state holdings in parastatals and SOEs

78. The most commonly used methods of alienation of state assets during privatization are primary offer<sup>48</sup>, secondary offer, assets sale<sup>49</sup>, capital-raising<sup>50</sup>, private placement. Lease/concession, exchangeable/convertible bond, accelerated book building (ABB), market follow-on<sup>51</sup>, firm commitment, mixed primary and secondary share IPO are less frequently used methods. This is as reported by Privatization Barometer (2015), which also suggests that the 42-month period between January 2012 and August 2015 saw governments around the world raise over \$812 billion (€644 billion) by alienation of state assets through privatizations. Other means of privatization may include auctions, vouchers, management or employee buyouts (MEBO), or even a merger with the aim to dilute state shareholding. Box 10 illustrates International Monetary Fund' observations in relation to application of the privatization methods in the OECD countries.

### Box 10. Methods of privatization and issues to consider

Preferred methods for privatization depend on the characteristics of the company to be privatized and the government's goals. Private placements, trade sales auctions and MEBO are more suitable if a SOE is small and a whole SOE is to be sold off within a short time period. However, if the SOE to be privatized is very large relative to the size of the markets and existing competitors, or the SOE is large and operates internationally, then an IPO is the preferred method of privatization. Either way, competitive bidding in the privatization process is considered desirable. Another advantage of an IPO, if retaining local control is a goal, is that ownership would likely be spread across a large group of different types of investors holding a relatively small stake each. If ABB is selected on efficiency grounds, then the role of external advisors and governments' efforts to maintain a level playing field become important. Privatization by the SOE itself, through capital-raising and assets sale to adjust its capital structure, is in line with the good international practice.

<sup>47</sup> Including several major national companies such as JSC Kazpost (national post service) and JSC Kazakhstan Temir Zholy (national railways).

<sup>48</sup> Also known as Initial Public Offering/IPO.

<sup>49</sup> Also known as "indirect privatization".

<sup>50</sup> Also known as "capital increase".

<sup>51</sup> Also known as "block trades"

Further considerations need to be made if privatization is targeted at certain groups of buyers. Pre-qualification of targeted buyers is key, and the government should fully disclose the criteria used to give preference to certain shareholders and the objectives they are expected to pursue after privatization.

*Source: IMF, 2014.*

79. **Optimizing the SOE sector is a common process around the world that can lead to much progress.** The World Bank lessons from past experiences suggest that a comprehensive approach is needed. Privatization of state owned entities should be accompanied by other reforms such as SOE restructuring and corporate governance reforms. Privatization alone will not solve SOE problems. Substantial evidence suggests that a comprehensive approach to privatization and public-private partnerships have brought SOEs big gains in both competitive and noncompetitive sectors. Where privatization is not a preferred policy option, SOEs can still be exposed to capital market discipline through partial listings. Removing barriers to entry and exit are also important, and governments should continue with broader reforms to develop the private sector.
80. **In OECD countries, parliamentary authorization is generally required before the privatization of state assets.** Box 11 below illustrates the regulations that govern the authorization of privatization and privatization practices in a sample of OECD countries.

#### **Box 11. Authorization of privatization**

**Germany:** In accordance with the Federal Budget Code 1969, the responsible federal ministry has to submit its proposal on sale of an enterprise or part of it, shareholdings in subsidiaries or associated enterprises, for approval by the Federal Ministry of Finance and the federal ministry responsible for federal assets. If shares in enterprises are of special importance and their sale is not provided for in the budget, they may be sold only with the prior consent of the Bundestag and the Bundesrat<sup>52</sup>, unless an exception is justified by compelling reasons. If such consent has not been obtained, the Bundestag and the Bundesrat shall be informed of the sale as soon as possible. Automatic commencement of privatization starts if the case for continuation of state ownership is not accepted in the Budget Act.

*Source: Data based on applicable legislation.*

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<sup>52</sup> The Federal Council.



**Sweden:** Instrument of Government 1975<sup>53</sup> states that the Parliament<sup>54</sup> has to authorize acquisition and disposition of state assets, including shares in a company. The Budget Act 2011 further states that without the authority of the Parliament, the Government may not, by sale or other means, reduce the central government share of ownership in companies in which central government has half or more than half the votes for all shares.

*Source: Data based on applicable legislation.*

**Finland:** Under the State Shareholdings and Ownership Steering Act 2007, the Parliament must approve the reduction of State ownership in an SOE. Privatizations are planned and negotiated by Finland's central ownership function, the Ownership Steering Department of the Prime Minister's Office. The final decision to dispose of state shares is made by the Cabinet of Ministers. However, the Parliament has to authorize the sale if the sale price is below the fair value of shares.

*Source: OECD, 2015b.*

**Italy:** Decree law 31 May 1994, No. 332 sets forth the procedure for privatizing Italian SOEs, including guidance on the type of sale (i.e. initial public offering, a public auction without flotation, or a direct agreement with one or more potential buyer). In each case of SOE termination, the Government debates why state ownership is no longer necessary to the national interest. Often, the rationale behind such privatizations is the belief that private ownership may increase the company's efficiency, ability to compete, and technological developments. For the Government, privatizations are also seen as a way to reduce the "public debt to GDP" ratio.

*Source: OECD, 2015b.*

The **Netherlands:** Larger equity holdings are mostly sold through the stock exchange, while smaller ones (state-owned enterprises) are transacted through tender procedures, or through bilateral negotiations. Asset sales are presented and discussed in the budget documents and in a yearly annual report on the management of state assets.

**Norway:** Privatization is covered by general rules on the sale of state assets. Privatizations are proposed by the Cabinet, and require authorization by the parliament. Share purchases are also authorized by the parliament. While there are no set procedures for privatizations, they must be authorized in the annual budget and are covered by general rules on the sale of state assets. Typically, the government contracts

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<sup>53</sup> The Instrument of Government is the most basic of the four fundamental laws that make up the Constitution of Sweden.

<sup>54</sup> The Riksdag.

the services of a financial consultant to advise on the best way to conduct the process in each specific case.

Sales of government assets must be authorized in the annual budget of Norway. This rule is based on paragraph 11 of the Constitution, which states that “*The King shall ensure that the properties and regalia of the State are utilized and administered in the manner determined by the Storting (parliament) and in the best interests of the general public*”, and further specified in a circular issued by the Ministry of Government Administration and Reform.

The proposed assets to be sold are described in the budget, and in the case of major assets they may also be separately identified in explanations to the financial statements and related reports. There is one major exception to the general rule, related to the replacement of equipment.

**Spain:** Under Law 33/2003 on the Assets of the Public Administrations, SEPI acts as the government’s executing agency for privatization. Based on the assessment of external consultants hired through a competitive bidding process, SEPI prepares proposals for the privatization of public enterprises and advises the government on the techniques and procedures to be followed. In certain sectors, the government can require the privatized enterprises to seek government authorization for certain operations and to follow an investment and employment plan. The Consulting Council for Privatization (*Consejo Consultivo de Privatizaciones*, [www.ccp.es](http://www.ccp.es)) provides a nonbinding report on the transparency, competitive conditions, and efficiency of the privatization process. SEPI also must seek the assessment of the Spanish antitrust authority (*Tribunal de Defensa de la Competencia*) and the European Union (EU) on the effect of the proposed sale on competition. The council of ministers has the final responsibility for choosing the sale method and deciding on the final agreement for each operation. Within a three-month period after the completion of a privatization operation, the General Controller and Accounting Directorate (IGAE) must conduct an audit of it.

*Sources: IMF, 2005, 2006, 2009.*

81. **Over the last twenty-five years, Kazakhstan has performed major divestments of SOEs during several waves of privatization.**<sup>55</sup> The Law on State Property and Privatization lists a number of means of ending state ownership rights in property. Privatization remains most significant, especially in light of the recently approved extended list of entities subject to privatization during 2016-2020 which includes 666 state owned entities of various legal

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<sup>55</sup> The first wave of privatization took place in 1991-1992.

forms.<sup>56</sup> However, it should be noted that all possible options of privatization and alternatives to privatization have to be considered by the Government. “Right sizing” the SOE sector requires a comprehensive approach.

## 4.6 Minimum initial capital requirements of SOEs and parastatals

82. **Governments establish and invest resources in parastatals and SOEs to enable the delivery of outputs to the community; these require initial capital contribution.** The initial contributed capital requirements of such entities is governed either by public law for unincorporated parastatals or by private law for incorporated entities. Capital is formed and maintained in different ways in each case.
83. **The Government is the owner of parastatals and SOEs on behalf of the state, and the value of this ownership interest is represented by equity.** Usually the state’s ownership interest in parastatals is recorded in the books of the designated authority. For example, in Australia this interest is on the books of the Central Holding Authority, while in the United Kingdom by the Secretary of State.
84. **Generally**, in most of the countries, equity<sup>57</sup> in parastatals includes:
  - Accumulated Funds - operating surpluses or deficits that accumulate over time;
  - Reserves - such as the Asset Revaluation Reserve which arises from the revaluation of non-current assets; and
  - Capital - contributions by Government (equity injections) less distributions to Government (equity withdrawals). Also known as contributed capital.
85. **Capital or contributed capital records the Government’s direct ownership interest in entities that it controls.** As the owner, the Government is interested in maintaining an appropriate level of investment in parastatals to ensure they are capable of delivering services (for example, outputs). The Government considers the nature and mix of assets and liabilities in each parastatal and may adjust these assets and liabilities as required. For example, the Government may alter the number and structure of parastatals through an administrative rearrangement, and in so doing alter the capital recorded in some or all of these entities.
86. **As a rule, there is no minimum initial contributed capital requirement for parastatals in the OECD countries.** The governments have to contribute an appropriate level of initial

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<sup>56</sup> Including several major national companies such as JSC Kazpost (national post service) and JSC Kazakhstan Temir Zholy (national railways).

<sup>57</sup> In most cases equity is adjusted in only certain circumstances.

investment in a new entity to ensure that it is sufficient to start delivery of services. Usually the enabling legislation or the statutes of the new entity describe the initial capital formation. In most cases, it is the Minister of Finance or Treasurer who determines the amount of initial capital of the new body. For example, in **Australia** this is the authority of the Treasurer under the Financial Management and Accountability Act 1997.

87. **An increase in the Government's investment in a parastatal is referred to as a contribution by Government (acting as owner).** An example of a contribution by Government is a capital appropriation to a parastatal for the purchase of a new asset. A decrease in the Government's investment in a parastatal is referred to as a distribution to Government. An example of a distribution to Government is the transfer of a function or asset from a parastatal to the Government.
88. **In the public sector of the OECD countries, the unincorporated parastatal as the transferee often does not issue equity instruments or is not a party to a formal agreement establishing a financial interest in the net assets.** In that case, formal designation by the transferor or parent of the transferor that the transfer of assets / liabilities is to be added to the transferee's capital is necessary to identify contributions by owners. In these circumstances designation is the determining factor for classification as contribution by owners. Such designation reflects a policy decision by the Government.
89. **In most cases, the establishment of a new entity arises from a restructuring / reallocation of functions between the entities or departments** and is usually authorized by an act of Parliament or by decision of the Government. For example, see the case of the Authority for Consumers and Markets (ACM) in the Netherlands in Box 8 above. ACM was established in 2013 as a result of the merger of three other regulating authorities.
90. **The transfer of assets and liabilities to a public sector entity from another entity controlled directly or indirectly by the same government is, in substance, a transfer from that government.** Where a transferee classifies a transfer as a 'contribution by owners', the transferor must recognize a 'distribution to owners' (unless the transfer represents the acquisition of an ownership interest). All appropriations not designated as a contribution by owners (i.e. not designated as an 'equity appropriation') must be recognized as revenue on receipt.
91. **Minimum initial capital requirements and changes in capital of SOEs established under private law are usually regulated by a Companies Act or a similar law.** This also depends on the legal form of an entity. Shareholders have the right to increase the contributed capital if needed. The amount of minimum initial capital varies a lot among the OECD countries. For example, in **Finland** the minimum share capital of a private company shall be EUR 2,500 and that of a public company EUR 80,000<sup>58</sup>, in the Netherlands the authorized and issued share

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<sup>58</sup> The Limited Liability Companies Act 2006 (osakeyhtiölaki).

capital must amount to minimum capital of at least EUR 45,000<sup>59</sup>, In the Czech Republic the minimum authorized capital for establishing a limited liability company is equal to 1 Czech Crown<sup>60</sup>, in the United Kingdom<sup>61</sup> for a private company limited by guarantee the charter capital is limited to a nominal amount (normally, between £1 and £10), while for private companies limited by shares the charter capital is usually limited to a nominal value of £1. The Public Limited Company (plc) is permitted to offer shares for sale to the public. It must have issued shares to the public to a value of at least £50,000. In Norway an SOE should always have an amount of contributed capital which is appropriate to its activity<sup>62</sup>.

92. In Kazakhstan state bodies **do** not have a charter capital, while the minimum charter capital of economically controlled state enterprises is 10,000xMCI<sup>63</sup>. For operationally managed state enterprises the charter capital consists of property contributed for management.<sup>64</sup> The minimum charter capitals in JSCs<sup>65</sup> and LLPs<sup>66</sup> are 50,000xMCI and 100 MCI, respectively. The authorities may consider the experience of other countries in regulating initial investment in entities.

## 4.7 Remuneration and compensation at SOEs and parastatals

93. More decentralization of public services and privatization of SOEs and entities of public law is gradually leading to **diminution of central wage setting**. Many OECD countries face significant differences in compensation and benefits levels between public and private sector entities. In quasi-governmental (parastatal) sectors wages are usually set at a national level while in the case of SOEs this is largely done at sectoral or company level. Governments are limiting the amount of annual remuneration for SOEs Chief Executive Officers with a tendency towards a gradual transition to “performance linked pay” principles in both SOEs and parastatals.
94. **Compensation levels across public service employees tend to be centrally determined.** In many countries human resource management, including public sector wage setting, legally depend on economic factors rather than a legal form of an enterprise. However, it is common for the pay level for employees of public sector to be set by central governments.

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<sup>59</sup> The Dutch Civil Code Part 2. Open Corporations (public limited companies).

<sup>60</sup> Law on Business Corporations 2012.

<sup>61</sup> Companies Act 2006.

<sup>62</sup> Act on state-owned enterprises 1991.

<sup>63</sup> Monthly calculated indicator (MCI) for 2016 is KZT 2,121.

<sup>64</sup> The Law on State Property and Privatization.

<sup>65</sup> The Law on Joint Stock Companies

<sup>66</sup> The Law on Partnerships with Limited Liability and Additional Liability.

The most regulated sectors in this respect are education, health services, transport and utilities.

95. **The International Labor Organization (ILO) (2001) reports that there is a general trend in many countries towards the decentralization and privatization of SOEs and entities of public law, gradually leading to diminution of central wage setting.** Although these changes happen at a different pace, the element of wage setting remains centrally fixed across many jurisdictions. In health services, there is a trend towards reduction of allowances and performance related wage setting, as well as increasingly decentralized wage determination. In transport, decentralization in wage setting is increasing. Privatization and contracting out of the utilities results in the decrease of public sector share in this sector, leading to decentralization of wage setting. The most recent trend gaining momentum in the public sector is implementation of “performance related pay”. Box 12 illustrates a new government pay system in Finland.

#### **Box 12. Public sector<sup>67</sup> salary system in Finland**

The Act on Collective Agreements for State Civil Servants 1970 in Finland covers collective agreements on terms and conditions of service for civil servants, whereas the Collective Agreements Act 1946 is applied to personnel on an employment contract in public and private sectors. In many cases, collective agreements may substitute or add to the terms and conditions regulated in the legislation. Market negotiations are largely based on a tripartite system involving cooperation and negotiations among employer and employee organizations and the government to generate income policy settlements.

The new<sup>68</sup> government pay system replaced the earlier system based on pay-grading categories and a seniority principle. The new system is based on job evaluation and individual performance appraisal.

Although the government pay system is based on common principles, each government public sector unit has to tailor its own pay scheme. In the pay schemes, pay consists of a job-specific pay component based on the complexity of the job and an individual pay component based on the performance and competence of the employee. The job-specific pay component can range between 10 and 20 scales, depending on the pay system applied in each government public sector unit. The individual pay component can account for a maximum of 50% of the job-specific pay component, depending on the system, and is classified into around 5 to 15 performance levels.

Each government public sector unit applies its own appraisal system to evaluate job

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<sup>67</sup> In terms of public employment, a clear majority of public sector personnel work for municipalities which are responsible for basic public services, such as education, social and healthcare services.

<sup>68</sup> Mid 2000s.

complexity and personal performance. Job complexity is typically determined on the basis of the required level of occupational knowledge and skills, the degree of interaction and the amount of responsibility. Job performance is generally assessed according to professional competence, degree of productivity and collaboration skills. Each employee's job complexity and personal job performance are reviewed in performance and development meetings between employee and supervisor once a year. Separate performance bonuses may also be used, but they are rare.

*Source: European Foundation for the Improvement of Living and Working Conditions, 2013.*

96. **Decentralization and the privatization of public sector entities have had implications for human resources management practices in many countries.** Although devolution to local governments may introduce more flexibility and improve efficiency and quality of services, central governments are often reluctant to give up control over the total wage bill for public service (ILO, 2001). In many countries negotiations between governments and trade unions rise to the national level, even in jurisdictions with a decentralized wage setting system. Local authorities in countries with a decentralized public sector must respect the nationally negotiated standards, adjusting them if needed. For example, in New Zealand, government business enterprises are free to manage relations with their employees consistent with the Fair Work Act 2009 and Superannuation Benefits (Supervisory Mechanisms) Act 1990, while observing special arrangements with respect to any staff employed under Public Service Act 1999. **Table 6** illustrates the variety of current practices across several OECD member-countries.

**Table 6. Wage setting in the public sector<sup>69,70</sup>**

| Country   | Centralized wage setting                  | Decentralized wage setting | Note   |
|-----------|---|----------------------------|--|
| Australia | Set by the Government/<br>Authorized body | Local authorities*         | * Compliance with Commonwealth legislation, i.e. Fair Work Act 2009, Public Services Act 1999, Superannuation Benefits (Supervisory Mechanisms) Act 1990 and employee classification system for pay setting is required. |

<sup>69</sup> This table does not cover SOEs.

<sup>70</sup> Sources: Data prepared based on applicable legislation and practices; ILO, 2001.

| Country        | Centralized wage setting                   | Decentralized wage setting | Note  |
|----------------|--|----------------------------|---|
| Czech Republic | Set by the Government/<br>Authorized body  |                            | Collective and individual bargaining is very limited.   |
| Denmark        | Set by the Government/<br>Authorized body  | Local authorities*         | * For teachers the central level is supplemented by local allowances which constitute a sizeable proportion of pay.                         |
| France         | Set by the Government/<br>Authorized body  |                            | Despite collective bargaining the wage setting standards are very prescriptive and the Government takes a unilateral decision.              |
| Germany        | Set by the Government/<br>Authorized body* |                            | * Collective agreement. Few differences in terms and conditions of employment between individual subsectors.                                |
| Hungary        | Set by the Government/<br>Authorized body  |                            | Law sets the wage scale and the budget of the public sector institutions.   |
| Netherlands    | Set by the Government/<br>Authorized body  | Local authorities*         | * In secondary schools the subsidies from higher levels are readjusted as a function of the average age of staff in the school concerned.   |
| Norway         | Set by the Government/<br>Authorized body  |                            | Remain largely centralized, notwithstanding recent attempts to decentralization.  |
| Spain          | Set by the Government/<br>Authorized body  |                            | Based on social dialogue  |
| Sweden         | County councils                            |                            | The county councils and municipalities are part of an integrated central-local government system. Separate negotiations for each subsector. |



| Country        | Centralized wage setting             | Decentralized wage setting | Note   |
|----------------|--------------------------------------|----------------------------|--|
| United Kingdom | Teachers' salary is centrally fixed* | Local authorities          | * Exceptional case. In other cases the decentralization offers greater differentiation between individual components of the public sector. |

97. **Many OECD countries face significant differences in compensation and benefits levels between public and private sector entities.** In quasi-governmental sectors wages are usually set at a national level while in the case of SOEs this is largely done at sectoral or company level. For example, in Germany the budget bill<sup>71</sup> stipulates how many civil servants and other staff the Federal Chancellor may employ and establishes their salary levels. In Norway, the framework for the Civil service employment procedures is provided by the Civil Servants Act 1983. In contrast to state-owned companies<sup>72</sup>, civil service organizations<sup>73</sup> are regulated through the state budget, the state collective wage agreement<sup>74</sup>, the state pension scheme, the Freedom of Information Act and other administrative laws (Læg Reid et al., 2003). **Annex 4** provides additional examples of wage setting practices in SOEs and public sector entities in a sample of countries.
98. **The remuneration of the heads of SOEs and parastatals in most cases is regulated by the government.** For example, in Belgium/Flanders the Corporate Governance Decree<sup>75</sup> sets limit to the amount of annual remuneration of directors and/or personnel, which, in principle, is limited to that of the minister-president of the Flemish government (the so-called "minister-president norm"). In many OECD countries amount of annual SOEs CEO remuneration is either capped by legislation or have to be consulted with the government authorized body. Table 7 below briefly outlines the process a board must follow when setting (or changing) a chief executive's terms and conditions of employment in Australia and New Zealand. In France, cap on the remuneration of SOE CEOs may receive is set by a decree initially adopted in 1953 and amended in 2012.
99. **The existing practice of wage setting in parastatals and SOEs in Kazakhstan is broadly comparable with many OECD countries.** Wage setting in public sector entities in many countries is centralized. In Kazakhstan, wages are set by Government Order for non-

<sup>71</sup> laid down in the Federal Budget Code 1969.

<sup>72</sup> Hybrid companies established by special laws, Government owned companies, Government limited companies (100% state owned), Limited companies with the state as majority owner.

<sup>73</sup> Ministries, Directorates, Central agencies, Other public administration bodies, Central Agencies with extended authority, Government administrative enterprises, Financial institutions, funds.

<sup>74</sup> signed between the Ministry of Labour and Government administration and public sector trade union representatives.

<sup>75</sup> The Flemish Decree on Corporate Governance in the Flemish Public Sector 2013.

incorporated SOEs that are economically controlled state enterprises, and for operationally managed state enterprises – the line ministry approves payroll fund and the entity has certain flexibility in setting **wages**. Kazakhstan also follows the international trend of wage setting for SOEs in accordance with corporate policies and operational budgets; approved by the supervisory board in Limited Liability Partnerships, or the board of directors in Joint Stock Companies. This is an important development which allows entities some degree of decentralization in terms of wage setting. The gradual transition to “performance linked pay” in Kazakhstan’s public sector and SOEs follows the recent trend in OECD countries.

**Table7. Setting CEO remuneration in Australia and New Zealand<sup>76</sup>**

| Country     | Entity type   | Process for the board setting a chief executive's remuneration  |
|-------------|---|---|
| Australia   | Government business enterprises                             | The CEOs of government business enterprises are, with limited exceptions, covered by the Remuneration Tribunal’s Principal Executive Offices (PEO) Classification Structure. As such, the Board, where it is the employing body, may determine remuneration for the office, consistent with the PEO framework set by the Tribunal. The Tribunal may seek the views of Shareholder Minister(s) prior to agreeing to any new or changed arrangements to these packages.         |
| New Zealand | Statutory Crown entities (excluding District Health Boards) | Under Crown Entities Act 2004, Crown entities that employ a chief executive must consult with the State Services Commissioner before agreeing to any terms and conditions of employment for a chief executive. If the proposed terms and conditions are outside the Commissioner's guidance, the entity must consult the Responsible Minister. However, the entity's board has the final responsibility for setting its chief executive's terms and conditions. <sup>77</sup> |
| New Zealand | District Health Boards (DHBs)                               | Under the New Zealand Public Health and Disability Act 2000, DHBs must obtain the consent of the State Services Commissioner on their chief executive's terms and conditions. <sup>78</sup>   |

<sup>76</sup> Sources: Australian Department of Finance, 2015; New Zealand State Services Commission, 2014.

<sup>77</sup> Refer CEA, s. 117.

<sup>78</sup> See Clause 44 (1), Schedule 3 of the Public Health and Disability Act 2000.

## 5. THE STATE'S ROLE AS AN OWNER

### 5.1 Managing parastatals and SOEs' property and exercising ownership rights

100. **This section outlines how assets are managed by state institutions and SOEs internationally**, focusing in particular on: (i) fulfillment of the public ownership right with respect to public legal entities (powers of government bodies for management of public property of public legal entities); and (ii) management of public legal entities property (who / what government body manages the property of public legal entities, what property (types of property) can be alienated independently by public legal entities).
101. **The trend internationally is towards less state interference in SOE operations, instead creating a strong and centralized ownership function and giving SOE management operational autonomy but placing them under the oversight of a board of directors and making them accountable.** In some countries, including OECD members, parastatals are often corporatized (e.g. not-for-profit corporations in Australia and the UK); this stimulates better performance through the application of modern management and governance practices. Although some countries still have non-corporate legal forms of entities in place, the general tendency is to corporatize them. Normally, entities that undertake economic activities have a corporatized legal form in OECD countries. Where the state decides to be present in areas of economic activities, it is typically done through corporate entities. The state owns equity in these entities and exercises control over them by appointing relevant governance structures. Even in cases of non-economic activities, such as healthcare, many countries establish public corporations or similar legal forms of corporate nature.
102. **In Kazakhstan, assets are currently owned either by the state (parastatals, defined in Kazakhstan as public institutions or state enterprises that do not have a corporate legal form) or by SOEs (corporate entities) in which the state has controlling shares.** Ownership depends on the legal form of the institution (see Table 8 below). The state is owner of parastatals and state enterprises, financing of state enterprises is of a more commercial nature than state institutions, where financing is based on budget allocations and financing plans.
103. **The State Enterprise form (including the variation with operational management practices in which the state retains ownership over assets) is not often used by OECD countries.** Where the state decides to be present in areas of economic activities, it is typically done through corporate entities. The state owns equity in these entities and exercises control over them by appointing relevant governance structures. Even in cases of non-economic activities, such as healthcare, many countries establish public corporations or similar legal

forms of corporate nature (Australia, Austria, the United Kingdom). Box 13 below illustrates an example.

**Table 8. Kazakhstan. Financing of state institutions and SOEs depending on legal form**

| Type of institution | Legal status  | Financing  |
|---------------------|---|--|
| State institutions  | Non-commercial state institution, manages assets given by the state on operational management; non-corporate legal form | Financed by the state through budgets / financing plans approved by respective authorized state body.                                    |
| State enterprises   | Commercial legal entity, manages assets given by the state on operational management; non-corporate legal form          | Financed through charter capital (initial contribution to equity), state orders and supply of goods and services, including to the state |
| JSCs, LLPs          | Can be commercial or non-commercial; corporate legal form   |  |

**Box 13. Australia: State of Victoria- when to incorporate**

Incorporation establishes a public entity as a ‘legal body’, with particular responsibilities and provisions. Incorporation is **necessary** if the public entity will:

- employ staff
- own or lease property or other assets
- receive funding from sources other than direct budget allocation
- enter into contracts
- perform functions which expose it to potential legal challenge or take legal action against others.

In general, statutory authorities governed by a Board are incorporated. Statutory unincorporated bodies are more likely to be used for activities such as mediation, facilitation, or dispute resolution.

A statutory authority is a public entity established under Victorian legislation. A statutory authority is generally established with a Board of governance but can also be an individual appointment, in the form of a commissioner or corporation sole. Examples of Victorian statutory authorities include:

- the Shrine of Remembrance Trust, established under the Shrine of Remembrance Act 1978
- public hospitals established under the Health Services Act 1988.

*Source: Victorian Public Sector Commission, 2013.*

104. **Such state enterprises in Kazakhstan have little autonomy as their assets are owned by the state directly and, as a consequence, they have limitations in fully applying private sector practices in managing their business.** There might be little flexibility to dispose of obsolete assets, for example, or acquire new ones. As a result, fulfilling strategic and business objectives may be challenging. In such entities, governance structures often need improvements as they are typically exercised through the appointment of a single manager or director.
105. **The Government could consider a policy of corporatizing entities which perform economic activities or entities which fulfill public policy objectives and explore ways of introducing modern private sector oriented management and governance practices.** Having types of entities where the state owns all assets may have been justified during a transition period. Modernizing and corporatizing their operations would now improve their ownership and governing structures. Property rights would be transferred to them entirely but the state would continue to keep control through equity ownership and influence entities policies in assets management through relevant governance structures.
106. **Additional areas for consideration to optimize the role of the state and improve accountability in SOEs and parastatals could include:**
- Consolidation of state ownership function over corporatized SOEs, and improve coordination of ownership;
  - Corporatize those state-owned entities which pursue economic activities;
  - Introduce key elements of corporate governance in those entities that are not incorporated, allowing them to adopt certain private sector practices.
107. **In addition, optimizing the SOEs sector can bring significant progress in increasing efficiency and attractiveness, while make the use of public resources more efficient.** As advised by the World Bank's Toolkit on Corporate Governance of SOEs (2014), it is considered good practice to classify the SOE portfolio according to each government's needs and strategies. SOEs may be divided into several categories, based on the government's intentions to: (i) retain (for strategic or other reasons), (ii) privatize, (iii) re-organize through restructuring, merger or consolidation, or (iv) liquidate nonviable enterprises. Substantial evidence suggests that privatization and public-private partnerships have brought SOEs big gains in both competitive and noncompetitive sectors.

## 5.2 Dividend policy and distribution of net income in parastatals and SOEs<sup>79</sup>

108. **There are several dividend models used globally to determine SOEs pay out levels and mechanisms. In most economies the state sets a dividend policy and implements it through negotiation with the SOEs' board.** A fundamental principle is that dividends are paid only to the extent it doesn't hamper the SOEs' ability to meet its capital needs and financial obligations. SOEs' board and management should have a clear sense of the expected dividend amount, retaining a degree of flexibility for crisis situations and market fluctuations.
109. **Receipt of dividends from SOEs may provide a significant revenue stream for the state budget.** In the current economic environment many countries are reviewing and strengthening their dividend policy for SOEs, aiming to increase the budget revenues and to maximize the use of SOEs capital.
110. **In Kazakhstan, dividend pay-outs by SOEs are regulated by the Law on State Property and the Government's Regulation on "Dividends on state-owned shares and income from state participation in public organizations".** These two documents establish the state's right to request dividends from the 3 major state-owned holding companies through special resolutions:
- Samruk-Kazyna dividends are to be announced and specified by the special resolution of the GOK. SK dividend policy is also reflected in their corporate governance code.
  - Kazagro is required by the above mentioned Regulation to accrue and pay out dividends of not less than ten percent of their net income specified by the special resolution of the GOK.
  - Baiterek Holding is exempt from paying dividends during 2013 - 2017 by the above mentioned Regulation, in order to finance projects and programs aimed at the economic development of the country.
  - Other SOEs dividends must be announced and requested by respective ownership entity either at central GOK level, or at the local government level for locally owned SOEs.
  - Unitary, or un-incorporated entities, are subject to partial income distribution under the Law on State Property. The proportion and timing of such income distribution is provided by the State Planning Department.
111. **Generally, the existing practices in net income and dividends distribution in Kazakhstan are in line with the observed practices among the OECD countries and other leading**

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<sup>79</sup> including national holdings, hereinafter in this section

**economies in the world.** Ongoing efforts by many governments to strengthen their dividend policy for SOEs indicate that there may be a need for the GOK to formulate a clear and transparent dividend policy that may be applied by SOEs over multi-year time spans and allow for income and cash flow planning.

112. **When considering and formulating the dividend policy and net income distribution, GOK will need to address certain legal and financial considerations.** For legal considerations, the fundamental rule is that dividends can only be paid out of profits without impairing entities' capital. For financial considerations, SOEs' management should have a clear expectation of the dividend size, remaining certain degree of flexibility for crisis situations and market fluctuations.

113. **Other factors to consider in establishing open and transparent dividend policy:**

- (i) Type of industry: industries that benefit from relative stability of earnings may enjoy a more consistent dividends policy than those with an uneven flow of income or subject to market volatility. For example, public utilities have a more stable income flow allowing them to adopt a relatively fixed dividend rate unlike extractive industries or industrial producers, which are dependent on commodity market prices.
- (ii) Age of a company: newly established enterprises/ entities need their earnings to re-invest into plant improvements or expansion, while established entities may afford distribution of their net income.
- (iii) Need for additional capital: the capital needs for business expansion or new investments/ projects influences the dividend policy greatly, and must be taken into account in assigning a dividend requirement.
- (iv) Business cycle: in good times prudent management creates sufficient reserves for a company to face potential market downturns or crisis situations. Dividend policy should account for potential effects of business cycles on SOEs' activities and provide flexibility for reserves accumulation.
- (v) Profit trends: SOEs past profit trends should be thoroughly examined to find out the average earning position of leading companies. The average earnings should be subjected to the trends of general economic conditions. If depression or downturn are approaching, only a conservative dividend policy can be regarded as prudent.

114. Box 14 **illustrates** approach to payment of dividends in a public utility company.

#### **Box 14. The Case of Vitens in the Netherlands**

Vitens is the largest drinking water supplier in the Netherlands, supplying more than 5.4 million people, over a third of the country's population. Vitens N.V. is a publicly held company (Naamloze vennootschap) and is wholly owned by local and regional governments. Annually the company pays flexible dividends that fall within a bandwidth

of at least 40% and at most 75% of net income. This range allows the provincial and municipal treasuries to benefit from an appropriate dividend payment and gives Vitens greater financial scope for investments in, for example, the water supply system.

*Source: Company website <http://www.vitens.nl/english/Pages/default.aspx>*

115. **There are several dividend models used globally to determine SOEs and national holdings pay out levels and mechanisms.** It must be noted that in most economies the state leads the dividend policy setting process, however, the dividend level is produced in negotiations with the entities boards. Other models also exist, as outlined in box 15 below.

#### **Box 15. Dividend Models**

##### **“Negotiation” Model**

This model is employed by many OCED member states. It generally includes the following steps: (i) a ratio or a dividend expectation is set for each SOE; (ii) SOE boards propose a dividend ratio target; and (iii) dividend level is negotiated between SOE board and SOE Ownership Entity.

**Canada:** Dividend policies are determined at the level of individual SOEs, based on their unique capital requirements and planned expenditures. In practice, dividend policies are developed by SOE boards, often in consultation with government bodies such as the Department of Finance and the Treasury Board Secretariat. Annual dividend levels are proposed by SOE management in the corporate plan for approval by the responsible minister and the Treasury Board Ministers. The government can by law prescribe, waive or change the level of dividend pay-out by SOEs.

**Finland:** SOE boards propose annual dividend levels at annual general meeting following informal discussions with the Ownership Steering Department in the Prime Minister’s Office.

**France:** in determining the desired level of dividends, the Government applies the following three key principles: (a) seeking a sustainable distribution level in light of the medium- and long-term financial outlook for the company, including investments needed for its growth and debt levels; (b) providing shareholders returns similar to those of main comparable companies, especially in regulated sectors with little income volatility; and (c) keeping the reinvestment risk under control. In practice the aggregate amount of dividends the French State has received from SOEs has been stable over the last 10 years at around EUR 4 bln.

**New Zealand:** SOE boards set and publish dividend policies, based on expectations of the



Crown Ownership Monitoring Unit (COMU), which include proposed capital investments, targeted profitability, and optimal capital structure. Exact dividend levels are discussed during annual meeting between SOE boards and COMU and published in the Statement of Corporate Intent.

**South Korea:** Government established guiding principles and procedures for determining dividend levels for SOEs require the following to be taken into account: (i) SOE financial performance, including capital level, debt/equity ratio, past dividend pay-outs and future investment needs; (ii) financial needs of the Government; and (iii) the pay-out ratios of private sector peers. Additionally, dividend pay-out levels take into account whether SOEs receive state budget support. Based on a process set forth by law, annual dividend levels are negotiated between SOE boards and the government, based on materials submitted by boards.

**Sweden:** Individual SOE boards set their target dividend levels based on the objective of maintaining an optimum capital structure, following governmental guidelines. SOEs determine their cost of capital, set profitability targets and based on these parameters produce a dividend policy. The dividend policy is usually expressed as a percentage of net profit for the year, generally as an interval of percentages. For the 2014 fiscal year, 23 state-owned companies contributed SEK 18.1 billion<sup>80</sup> to the state budget as dividends<sup>81</sup>.

#### Set percentage of net income

**Ireland:** The general dividend expectation of 30% of net income applies to commercial SOEs regardless of sector. In most cases, this expectation is not formal. Many SOEs receive an annual letter of expectation from the relevant shareholding ministry, which is elaborated in consultation with the ownership function, and wherein the dividend expectations take into account individual SOEs' capital expenditure needs, as well as the goals of increasing shareholder value and achieving adequate credit ratings.

**Lithuania:** The Government establishes an explicit dividend expectation to all SOEs as follows: SOEs are required to pay dividends of at least 7% of equity, but not exceeding 80% of company profits. Reductions in annual dividend pay-outs may be granted by the Government of Lithuania, for example for SOEs implementation of strategic projects. SOEs contributed EUR 74.3 million to the state budget for 2014 financial year<sup>82</sup>, with energy sector SOEs providing EUR 52.9 million out of total.

**Netherlands:** The Government has a general dividend expectation of 40% of SOEs net income, as established by the Government's ownership policy. In practice, dividend

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<sup>80</sup> Approximately US\$2.17 billion.

<sup>81</sup> 2014 Annual report state-owned companies. [www.regeringen.se](http://www.regeringen.se)

<sup>82</sup> 2014 Annual SOE Report. [http://vkc.turtas.lt/static/uploads/VKC\\_2014\\_EN.pdf](http://vkc.turtas.lt/static/uploads/VKC_2014_EN.pdf)

levels are negotiated annually between SOEs boards and the Ministry of Finance, taking into account the pay-out ratios of comparable firms, the SOE's future investment needs and the achievement of the target credit rating. However, in 2014 only nine of the 26 SOEs<sup>83</sup> distributed 40% of their profit as dividend to the shareholders.

**Norway:** The Ministry responsible for SOE ownership communicates long term dividend expectations to SOE boards, generally expressed as a percentage of income after minority interests. The expectations take into consideration a number of factors relating to: the company's actual and projected performance; industry-specific considerations; as well as additional factors such as the state's preference for stable or increasing dividend levels. In addition to these long term expectations (generally three to five years), the Ministry establishes annual dividend expectations. For example, of the unlisted SOEs 8 had paid dividends of 40 per cent or more of their profit for 2014 after tax and minority interests. Overall, the state budget received NOK 35.5 billion<sup>84</sup> in dividends from 15 SOEs for 2014 financial year<sup>85</sup>.

**Switzerland:** The Federal Council communicates its dividend expectations to individual SOEs through annual strategic objectives. These dividend expectations often take the form of a given percentage of net income or free cash flow, and are based on each SOE's expected profitability and future investment needs. If dividend levels need to be lowered due to lower-than-expected SOE performance, annual consultations occur between the Federal Council and the concerned SOE.

**Turkey:** the Law on State Economic Enterprises requires that profitable SOEs pay dividends to the state, which are calculated after net profit is adjusted for the following deductions: (i) 20 percent of net profits to be used towards any unpaid equity; (ii) further 20 percent of profits to be used to discharge any liabilities; and (iii) any accumulated operating deficits must be eliminated. After these adjustment, SOEs transfer 10 percent of their remaining profit as dividends to the State Treasury. In addition, as determined by the Council of Ministers, four SOEs are also required to pay "revenue share payments" to the State Treasury in an amount which is calculated as a percentage of gross sales revenues. These SOEs include: General Directorate of State Airports Authority of Turkey or DHMI (14 percent), The State Supply Office of Turkey or DMO (up to 10 percent), Coastal Safety or KIYEM (10 percent) and Turkish Petroleum Corporation or TPAO (10 percent).

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<sup>83</sup> Out of 37 SOEs in the portfolio. The size of the state's shareholdings differs. The state, for example, is the sole shareholder in COVRA (the Dutch nuclear waste processing and storage company), holds nearly 70% of the shares in Schiphol airport but owns just 1% of Thales B.V., a defence electronics manufacturer.

<sup>84</sup> Approximately US\$4.58 billion.

<sup>85</sup> The State Ownership Report 2014. [www.publikasjoner.dep.no](http://www.publikasjoner.dep.no)

### Extraordinary Dividends

The practices also exist for a state to impose extraordinary dividends on some SOEs. Such instances are not frequent and mainly promulgated by certain capital surpluses at SOEs, or budgetary needs. Such dividends are typically announced by a special Government decree or resolution. Examples of recent cases included reduction in SOEs capital or reserves to meet the targeted capitalization levels. Overcapitalization would typically result from strong financial performance of such companies or successful transactions. Such cases took place in recent years in the United Kingdom, Norway, Sweden, Estonia, Netherlands, Poland and other countries. Extraordinary dividends may also be employed to cover temporary budgetary needs, as recently noted in economies impacted by the economic crisis.

116. Government as the owner may waive payment of dividends in certain cases or even exempt public policy SOEs from payment of dividends. This may happen for example in case of investment needs, to cover the accumulated losses of the past periods or to support further delivery of public policy assignments. Poland and Sweden cases are provided in Box 16.

#### Box 16. Waiver and exemption from dividends in Poland and Sweden

In **Poland**, the dividend policy issued annually by the Minister of State Treasury foresees an individual approach to each company, taking into account its market situation, position in the industry, investment needs, sources of profit. The policy should assist the SOEs supervised by the Minister of State Treasury with safe development in the long term perspective, with simultaneous exercising the right of the owner to make a profit and the possibility of co-financing budgetary needs of the state. Under the policy dividends are waived if:

- accumulated losses from previous years recognized in the company's balance sheet are higher than the net profit for the financial year or
- the Ministry of State Treasury, in the given year, provides the company with financial assistance (subsidies), guarantees its loans or redeems its debts.

Also dividends may be waived in whole or in part in justified cases, in particular when the Company's authorities motion the allocation of the entire or part of the net profit for supplementary capital or reserve capital (specifically designated for development purposes - increase of non-financial fixed assets) with indication of specific projects and tasks resulting from the development strategy adopted by the Supervisory Board and

due to take place in this financial year according to this strategy.

*Source: Ministry of State Treasury<sup>86</sup>*

In **Sweden**, among other purposes, an SOE dividend policy shall ensure that the owner receives predictable and long-term sustainable dividends. However, the owner may also profit from an increase in value by allowing the company to retain and reinvest capital in the operations rather than by distributing it as dividends. Also, the performance of the public policy assignment may be associated with a cost, which will affect the company's financial outcome in terms of profitability and the possibility of paying dividends. The interpretation of a company's public policy assignment and the ambition expressed in the public policy targets therefore has a bearing on the company's financial conditions and hence what financial targets it should have. Therefore, in certain cases payment of dividends may be waived or even exempt for public policy assignments.

For example, Samhall, whose public policy assignment entails the company providing meaningful and stimulating jobs for people with reduced functionality, is exempted from payment of dividends. While Swedavia, which operates most of Sweden's major airports, is an example of an infrastructure company with a specifically adopted public policy assignment, Y2014 dividends were waived, despite the target rate of 30-50 percent on Y2014 net income as well as PostNord (national postal services) Y2014 dividends were waived, despite the target rate of 40-60 percent on Y2014 net income.

*Source: 2014 The Government of Sweden, Annual report state-owned companies<sup>87</sup>*

117. **As parastatals are mostly financed from the state budget, all decisions on return of net surplus or profit remittance are taken by the responsible minister and/or the Government.** Public policy considerations play an important role in such decisions. For example, healthcare and educational bodies usually have a chance to remit the received profit and spend it for the entities needs. For example, in Estonia, all hospitals<sup>88</sup> are entitled to retain any surplus and to reinvest it into the infrastructure or equipment. Hospitals acting as limited liability companies have the right to pay dividends to shareholders, but this right has not yet been used as the shareholders in public hospitals are municipalities, not private investors. This is also the case for the Netherlands where all hospitals<sup>89</sup> are not-for-profit. Overall, in Spain, profit transfers from parastatals to the budget are determined by the Cabinet of Ministers and remittances are decided on a case-by-case basis. In the Netherlands, profit transfers differs considerably from entity to entity, implying some scope

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<sup>86</sup> <https://www.msp.gov.pl/en/media/news/5656,Priorities-of-the-Ministry-of-State-Treasury-in-the-Council-of-Ministers.html?search=57893211>

<sup>87</sup> [www.regeringen.se](http://www.regeringen.se)

<sup>88</sup> In the legal form of a limited liability company or foundation.

<sup>89</sup> established as foundations.

for variable and implicit subsidies. In New Zealand, the Crown Entities Act gives the Minister of Finance an important power on his/her own to require a Crown entity to pay to the Crown an amount up to its net surplus.

## 6. STATE-OWNED ENTERPRISES IN THE MARKET PLACE

### 6.1 Fulfilling legal liabilities and responsibilities

118. **The state is normally liable for the conduct of a body of the state or its empowered agent. In most OECD countries, SOEs are subject to the same laws and regulations on insolvency and bankruptcy as private sector companies. Although SOEs are separate legal entities that offer limited liability to their owners, the government may have certain social obligations for an SOE's activities.** In most cases, governments may be able to manage social obligations at a lower cost than would be the case for an unlimited liability. Governments usually minimize their fiscal risks and also ensure fair competition on the market by imposing limitations on direct borrowings by SOEs and obtaining guarantees from the state. The existing practice in Kazakhstan of vicarious liability of the state for acts of parastatals, and limited liability for the acts of SOEs, is broadly comparable with most OECD countries.
119. A non-state entity can be legally empowered to exercise some element of governmental authority. When it is acting in that capacity the person or entity is considered to be acting for the state under local law. Empowered bodies may include a wide variety of forms such as public corporations, quasi-governmental entities, public agencies and even private companies. The legal form of the entity is irrelevant, so long as in each case the entity is empowered by the law of the state to exercise functions of a public character normally exercised by state organs, and the conduct of the entity relates to the exercise of the governmental authority concerned. This is illustrated by the example of agency status in Box 17.

#### Box 17. Agency status in Canada

The Treasury Board of Canada Secretariat indicates that “a Crown corporation that has **agent status enjoys the constitutional immunities, privileges and prerogatives that are enjoyed by the Crown and can bind the Crown by its acts**”.

The Crown is ultimately fully liable and financially exposed for all actions and decisions by its agent corporation while the corporation is operating within its mandate. This includes financial activities. Therefore, the corporation's assets and liabilities are the assets and liabilities of the government.

For a non-agent corporation, the government is not legally liable for the specific actions of the corporation, unless the corporation acts under explicit direction of the Crown, and has, in the eyes of a court, created a common-law principal-agent relationship.

Some policy analysts believe that even if the Crown corporation is a non-agent, the government may have a moral obligation for the results of the corporation's actions. Although a moral obligation may exist, it remains at the discretion of the government, and not the judiciary, to address. As well, the Crown may be able to manage a moral obligation at a lower cost than would be the case for an agency obligation.

**Partial Agency Status:** The constituent act of a Crown corporation can make the corporation an agent for some purposes and leave the corporation a non-agent for other purposes. For example, the Canada Mortgage and Housing Corporation is an agent except for purposes of section 14 of its constituent act, under which the corporation is empowered to establish branches and employ agents. Effectively, the exclusion ensures that the agents employed by the Crown corporation are not agents of the Crown.

A Crown corporation can become an agent of the Crown as a result of any one of the following events:

1. A provision in the corporation's enabling legislation declaring the corporation an agent;
2. An Order in Council issued under the authority of the Government Corporations Operation Act, which allows the Governor in Council to deem a corporation, all the issued shares of which are owned by, or held in trust for, the Crown and incorporated under the Canada Business Corporations Act or the Canada Corporations Act, Part I, an agent; or
3. Courts interpreting the actions of the Crown and the Crown corporation as effectively the corporation acting as a common-law agent of the principal, with the government exercising sufficient control over the entity's activities.

Most federal Crown corporations are agents as a result of a provision within their enabling constituent legislation. For example, the Canada Development Investment Corporation, the Federal Bridge Corporation Limited, and the Old Port of Montreal Corporation Inc. have been deemed agents pursuant to the Government Corporations Operation Act.

*Source: website of the Treasury Board <http://www.tbs-sct.gc.ca/gov-gouv/agent-mandataire/agent-mandataire-eng.asp>*

120. **In most OECD countries, SOEs are subject to the same laws and regulations on insolvency and bankruptcy as private sector companies**<sup>90</sup>. OECD (2005) survey indicates that this is the case for Austria, Denmark, Finland, Germany, Italy, Korea, Mexico, the Netherlands, the

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<sup>90</sup> OECD, 2005. Corporate Governance of State-Owned Enterprises: A survey of OECD Countries. OECD Publishing

Slovak Republic, Spain, and Sweden. The survey also highlights some exceptional cases of deviation from general rules that result from a special legal status, for example in the United Kingdom these are the trading funds and statutory corporations. In Poland<sup>91</sup>, only a few SOEs are subject to special laws: the Polish Post Office, Polish Railways and Polish Airports. The special legal status gives certain confidence to the government that essential services will continue to be provided in the event of bankruptcy or insolvency. The specific legal statute of the state-funded industrial and commercial establishment EPIC (Etablissement Public Industriel et Commercial) represents an exception in France<sup>92</sup> and is illustrated in Box 17.

121. **Although incorporated SOEs are separate legal entities that offer limited liability to its owners, the government may have certain social obligations for SOE's activities.** In most cases, governments may be able to manage social obligations at a lower cost than would be the case for an unlimited liability. Governments usually minimize their fiscal risks by imposing limitations on direct borrowings by SOEs<sup>93</sup> and obtaining guarantees from the state. For example, in Australia, in some circumstances, the Commonwealth as a shareholder chooses to set limits on the activities of a particular government owned enterprise, such as size of liabilities, limits of financial exposures, use of derivative instruments, etc. As a rule, the Commonwealth does not provide formal guarantees of government owned enterprise liabilities.

#### Box 18. EPIC special statute in France

In French law, EPICs are legal entities that have distinct legal personality from the state, financial independence, and certain special powers, including the performance of one or more public service tasks. These type of entities include state-controlled entities of an industrial or commercial nature, including some research institutes and infrastructure operators. The status of EPIC entails a number of legal consequences, including the inapplicability of insolvency and bankruptcy procedures under ordinary law<sup>94</sup> and applicability of Law No 80-539 of 16 July 1980 on the penalties imposed in administrative matters and on the execution of judgments by legal entities governed by public law (loi n 80-539, du 16 juillet 1980, relative aux astreintes prononcées en matière administrative

<sup>91</sup> If the state is the sole owner, the state is entitled to be informed by the court that the bankruptcy proceedings have been initiated, if it has been initiated by somebody else than the state. This is to express its opinion to the court about the justification of the motion, but this opinion is not binding.

<sup>92</sup> In France, these are SOEs operating natural monopolies/network activities, so there is a specific rationale for having them as EPIC. Other countries have equivalent types of SOEs.

<sup>93</sup> In Norway the Act # 71 of 30 August 1991 on the State-Owned Enterprises imposes limitations on borrowings by state-owned enterprises: "A state-owned enterprise can only raise loans or issue guarantees in so far as the value of its assets after the raising of the loan or issuing of the guarantee is sufficient to cover the total loan debt and guarantee liabilities of the enterprise". The same Act also obliges the state to contribute sufficient funds to the enterprise to meet the claims of its creditors when the enterprise is dissolved. While in the case of bankruptcy, the state is not liable for the debts of a state-owned enterprise.

<sup>94</sup> Because EPIC do not have legal personality as they are part of the state.



et à l'exécution des jugements par les personnes morales de droit public). Examples of EPIC entities are Institut de radioprotection et de sûreté nucléaire, (IRSN) - the French institute for radioprotection and nuclear safety, Opéra national de Paris, the national railway infrastructure company and SNCF - the French National Railway Company, also ports, airports and the postal company.

*Source: based on applicable legislation*

122. **The existing common law principle of vicarious liability of the state for acts of parastatals, and limited liability for the acts of SOEs, in Kazakhstan<sup>95</sup> is broadly comparable with most OECD countries<sup>96</sup>.** The state bears full vicarious liability for the acts of state bodies and economically controlled state enterprises. The state bears vicarious liability for the acts of operationally managed state enterprises only if bankruptcy is caused by the actions of the state or its authorized bodies. Like in common law OECD jurisdictions, the Government of Kazakhstan holds limited liability in the amount of its participation or shareholding in an SOE. In addition, under the Law on Bankruptcy first approved in 1997, the Government may introduce special administration regimes to ensure the continued provision of certain essential services in the event of bankruptcy or insolvency of the entities in the natural monopoly, monopoly or strategic sectors.

## 6.2 Financing of parastatals and SOEs

123. Sources of financing of public services varies among EU and OECD countries. Some services are fully funded by national budgets (including public grants or taxes) but many public services are co-funded by users (including telecommunications, broadcasting or production of electricity). It is important for the state to compensate SOEs for fulfilling public policy objectives, and SOEs need to separately account for such activities from regular business. In many OECD countries, authorities subsidize important public services offered by parastatals or SOEs. These are typically identified and either entities are able to cover them by cross subsidizing from other profitable activities, or the authorities compensate funding for important services to be offered to population.
124. **This section describes how various institutions that offer public services are financed.<sup>97</sup>** Financing sources and pricing are interrelated and typically have different mechanisms for

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<sup>95</sup> The Law on state property and privatization.

<sup>96</sup> The principle of vicarious liability is not directly applicable in civil law jurisdictions.

<sup>97</sup> This section draws significantly on a recent comprehensive study commissioned by European Centre of Employers and Enterprises providing Public services (CEEP) *Public Services in the European Union and in the 27 Member States, Statistics, organisation and regulations*, 2010.

services that are charged to customers and for services that are fully funded by the public budget (see next section describing pricing).

125. **Sources of financing of public services varies among EU and OECD countries.** Some services are fully funded by national budgets (such sources include public grants, or taxes) but many public services are co-funded by users (such services include telecommunications, broadcasting or production of electricity). Annex 5 illustrate some examples. Usually funding sources depend on the type of public service.
126. Also, OECD guidelines recommend that *“whether financing for an SOE’s economic activities comes from the state budget or the commercial marketplace, measures should be implemented to ensure that the terms of both debt and equity financing are market consistent”*. This essentially calls for arm’s length financing and no state guarantee should be in place for SOEs debt. OECD study (2014)<sup>98</sup> emphasizes that: (i) providing direct support to SOEs should only for compensation of additional costs related to public service obligations; (ii) this can be difficult when public service obligations are not separated from commercial activities; and (iii) although EU state aid rules prohibits direct support for non-public service obligations, these rules may be difficult to implement in practice.
127. In Germany, some of the public-law entities that are established and controlled directly under federal law are entitled to collect charges or contributions from their members. The budget of these entities, together with the charges or contributions set by them, require the approval of the responsible federal ministry. The setting of the charges or contributions additionally require the approval of the Federal Ministry of Finance.<sup>99</sup> Also, France has a complex system of price setting/control for the railroads. Illustration of financing of public services in Australia is presented in **Box 19**. The two cases illustrate that there is no one size fits all approach in financing of public services as it varies depending on specific activities and services.

#### **Box 19. Financing of public services in Australia**

In **Australia**, public entities typically have a variety of funding sources. They may receive a direct funding allocation from Parliament or rely on a portion of the funding granted to a department. Public entities may also derive some or all of their income from the sale of goods and services or from fees and other charges. In all cases, the relevant Minister remains responsible for the expenditure of the public entity’s funds. The funding required by public entities may differ, depending on the functions performed by the entity. In general, where it is proposed that a public entity should have the power to employ staff in its own right, rather than having staff made available by the portfolio department, it should have financial autonomy from the department. The establishing

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<sup>98</sup> Financing State-Owned Enterprises, an overview of national practices, OECD, 2014

<sup>99</sup> The Federal Budget Code 1969.

legislation should make the relevant financial powers available to the entity and specify desired financial delegations.

*Source: applicable legislation*

128. **Often SOEs get funding for their operations from borrowed funds and it is important to have mechanisms to prevent the state from excessive borrowing exposure, and as mentioned above not offer guarantees for SOEs debt.** Box 20 describes how financing and borrowing are organized in Ireland.

### **Box 20. Financing and borrowing by SOEs in Ireland**

Aside from subsidizing uneconomic services, government investment in state enterprises is largely prohibited by EU-inspired anti-competition legislation. Furthermore, not all commercial enterprises generate the majority of their revenue from their activities, particularly those more recently established enterprises that depend on the state for funding their initial infrastructural investments. In terms of the percentage of the enterprises' annual budget that is derived from 'traded goods and services', two-thirds (67 per cent) derive over 90 per cent of their income from this source. For the remainder, the nature of their activities determines that their annual budget currently relies on other sources of revenue, such as budget allocations from the state. Also, only 16 per cent of enterprises reported paying an annual dividend to government. This reflects a situation whereby state enterprises can retain their profits for reinvestment.

#### **Legislation**

For many state-owned enterprises, the limit at which they can borrow money to fund their activities without approval from the Department of Finance is set out in legislation. To exceed this limit, the approval of their parent department and the Department of Finance is necessary. Alternatively, the relevant legislation must be changed. For example, the new Harbours Bill published in 2008 contained provisions to facilitate greater flexibility for port companies to borrow in order to fund additional port capacity. Major borrowing decisions will normally also require political approval or even the assent of the Cabinet before they can be initiated. EU legislation determines that national governments no longer guarantee loans taken out by state owned enterprises, a practice that was common in Ireland as recently as the early 1990s. In the case of the subsidiary companies of the Irish transport system (CIÉ<sup>100</sup>), money is borrowed on their behalf by CIÉ itself. In

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<sup>100</sup> *Córas Iompair Éireann (Irish Transport System)* is a statutory corporation established under *Transport (Re-organisation of Córas Iompair Éireann) Act 1986* and responsible for most public transport in Ireland and – jointly with its Northern Ireland counterpart, the Northern Ireland Transport Holding Company – the railway service between Ireland and Northern Ireland.

practice any major investments require approval from an enterprise's parent department as well as the Department of Finance. Also most enterprises are required to seek approval from their parent department when taking out loans and establishing subsidiaries. The principal variables determining a lack of financial autonomy include the relative inability of some enterprises to shift their budgets by year, and also to determine charges for their services independently.

State enterprises normally receive subsidies from the Exchequer for the performance of the non-commercial tasks.

129. **In many OECD countries, authorities subsidize important public services offered by public institutions or SOEs.** These are typically identified and either entities are able to cover them by cross subsidizing from other profitable activities, or the authorities compensate funding for important services to be offered to population. Box 21 illustrates how **Spain** and **Norway** deal with fiscal burden of certain policies.

#### **Box 21. Subsidizing public services in Spain and Norway**

**Spain:** Public and private entities in some sectors are required by the government to provide services at below-cost prices. The fiscal burden of these policies has been largely captured by explicit subsidies in the state budget to public enterprises with social or public interest objectives (the railways, postal services, and coal mines, *Radio Televisión Española* (RTVE, the state's public TV and radio enterprise)).

Enterprises in the electricity sector are required to provide electricity to the islands at below-cost prices. They are encouraged to purchase domestic coal at above-market prices, with compensation explicitly indicated in the determination of its regulated price. In addition, Telefónica is obliged to provide universal service, reduced rates for pensioners, and provide phone booths in all municipalities.

The antitrust authority, the *Tribunal de Defensa de la Competencia*, is an autonomous body that regulates and enforces competition policy under the authority of the ministry of economy and finance (MOEF). Investigations of potentially anticompetitive behavior are undertaken by the *Servicio de Defensa de la Competencia*, an administrative body of the MOEF. In addition, the government has established specialized agencies for the regulation of former government monopolies (e.g., telecommunications - the National Commission for the Telecommunications Market and energy - the National Commission for Energy). The regional authorities may also establish competition authorities with competency for their territory, but must fully abide with EU and national legislation.

*Source: IMF, 2005.*

**Norway:** The main quasi-fiscal activities (QFAs) are related to the government's requirement that Posten Norge provide certain postal and banking services at below cost terms in remote regions and that Avinor provide airport infrastructure and services at given locations. These activities are cross-subsidized by other profitable activities of the companies. Goods and services provided at below-market costs by other nonfinancial companies are clearly identified and compensated with budget transfers (for example for the provision of railway services at below-cost rates by NSB).

*Source: IMF, 2009.*

### 6.3 Price regulation for goods, work and services of SOEs and parastatals

130. The underlying principles for setting prices and charges for SOEs and parastatals should be: existence of clear methodologies, independent oversight (especially important for monopolies), separate accounting between competitive and noncompetitive activities under the same SOE (both to make sure that SOEs that are implementing public policies are fairly compensated by the State, and to avoid cross-subsidies that create a disadvantage for private sector competitors). It is important to distinguish between economic activities in different sectors. Prices in competitive sectors should be very much driven by the market, this is less appropriate for services that are offered by monopolies with a view that they can be liberalized (for example in some countries telecommunications), and services that are offered by parastatals or SOEs where the main purpose of pricing is cost recovery and sustainable investment. OECD countries typically set-up special agencies with a crucial role of price setting, especially for monopolies.
131. **This section describes how prices for public services offered by SOEs and parastatals are regulated.**<sup>101</sup> Pricing is very much related to financing sources. OECD guidelines for governance of SOEs (2015) recommend that “*Costs related to public policy objectives should be funded by the state and disclosed*”. This is needed “*to maintain a level playing field with private competitors*”.
132. The underlying principles for setting prices should be: existence of clear methodologies, independent oversight (especially important for monopolies), separate accounting between competitive and noncompetitive activities under the same SOE (to make sure that SOEs that are implementing public policies are fairly compensated by the State).

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<sup>101</sup> This section draws significantly on a recent comprehensive study commissioned by European Centre of Employers and Enterprises providing Public services (CEEP) *Public Services in the European Union and in the 27 Member States, Statistics, organisation and regulations*, 2010.

133. **It is important to distinguish between economic activities in different sectors.** Prices in competitive sectors should be very much driven by the market, this is less appropriate for services that are offered by monopolies with a view that they can be liberalized (for example in some countries telecommunications), and services that are offered by public institutions or SOEs where the main purpose of pricing is cost recovery and sustainable investment (for example in some countries water supply and sewerage).
134. **Some principles used in OECD countries for SOEs price regulation are already present in the Kazakhstani legislation.** For example, some entities are required to set prices to ensure cost recovery, in cases of funding from budget resources the pricing needs to be coordinated with authorized by sectoral relevant authority, and for monopolies the pricing is coordinated with respective anti-monopoly body. Nevertheless, in view of revising and optimizing state ownership policies, international experience in regulating prices and establishing funding mechanisms for public services may be relevant in the context of Kazakhstan.
135. **Specialized regulatory agencies exist in most countries worldwide.** These often relate to restructuring of public services and opening them to competition (communication networks, transport and energy, social services, education, health, housing and other similar sectors). The two key tasks of such agencies are ensuring compliance with fair competition rules, and ensuring the supply of public services. In addition, a separate task is to set fair prices for monopolies.
136. **All EU countries have special authorities supervising competition in public services.** Annex 5 offers some examples of this practice. The authorities may be specialized by sectors, or across sectors. They often work closely or are combined with authorities dealing with consumer protection. Their organization, competences and powers differ according to different countries national traditions or sectors particularities.
137. Depending **on** the funding mechanism there is a need to establish prices or identify the volume of financing if the user is not charged for services. Where prices are regulated because services are open to private providers, this is done by specific agencies depending on types of public services, (the compilations from Annex 5 show some examples).
138. As mentioned in previous section, in Germany, some entities are entitled to collect charges or contributions from their members. Box 18 illustrates how public-law utilities set prices in Germany. The overarching principles are cost recovery, delivering value, preserving net assets, and the flexibility to charge different prices reflecting differences in services offered.
139. Box 23 presents the Australian Government Charging Framework that came into effect from 1 July 2015. It applies to all non-corporate Commonwealth entities and selected corporate Commonwealth entities, where the Finance Minister has made a 'government policy

order<sup>102</sup>, that applies the Charging Framework to them. Non-corporate and corporate entities are defined under the Public Governance, Performance and Accountability Act 2013.

### **Box 22. Price setting by public-law utilities in Germany**

In Germany, public-law utilities are subject to the local tax laws of the federal states. According to these laws, the utilities are legally bound to comply with the cost recovery principle, including the costs for preservation of real asset values and refinancing of the facilities. According to the provisions of the local tax laws, the following principles have to be adhered to for **the calculation of prices and charges**:

- The principle of equivalence, i.e. prices or charges, respectively, may not be significantly higher than the value of the service provided to citizens, irrespective of the costs of the service;
- The cost recovery principle, i.e. all costs incurred for the provision of water supply and wastewater management services must be recovered through prices or charges, respectively; a long-term cost overcompensation is not allowed;
- The prohibition of cost overrun;
- Taking the principle of preservation of net real-asset values into consideration;
- Breakdown of the fees of the consumer groups according to the costs incurred by type-classified customer groups
- Wastewater charges can be levied separately for wastewater and precipitation water (split charges standard).
- The wastewater charge is determined according to the freshwater consumed. Supply from rainwater utilization facilities must be taken into account for the calculation of wastewater charges. The precipitation water charge is calculated on the basis of drained areas. Alternatively, wastewater charges may be calculated only on the basis of the freshwater consumed (freshwater standard).
- Taking account of the cost structure in fixing the base price and the volumetric price;
- Adequate interest for equity capital;
- The share of fixed costs amounts to about 80 percent.

*Source: CEEP, 2010.*

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<sup>102</sup> It is expected that the first “government policy orders” will be available by June 30, 2016.

### Box 23. Australian Government Charging Framework

1. The Australian Government Charging Framework (the Framework) builds on the 2014 Cost Recovery Guidelines.<sup>103</sup> It encourages a common approach to planning, implementing and reviewing government charging, which should lead to improved and consistent government charging. The Framework supports the Australian Government's role in delivering quality public programmes to Australian citizens, communities and the economy more broadly, by assisting to improve programme funding decisions.
2. The Framework has been developed to support the legislative responsibilities of Commonwealth entities, as detailed, in the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). It applies to all non-corporate Commonwealth entities and selected corporate Commonwealth entities<sup>104</sup>, where the Finance Minister has made a 'government policy order' that applies the Framework to them.<sup>105</sup>
3. The Framework applies to:
  - regulatory charging activities
  - charging activities involving access to a public resource, public infrastructure and/or equipment
  - commercial charging activities, including the sale of Australian Government goods or services and acceptance of advertising and sponsorship payments.
4. Ministers, entities and their staff operate within a legislative and policy framework. In addition to the Framework, other relevant legislation and policies include:
  - the PGPA Act
  - the enabling legislation of the government entity
  - the relevant legislation for the activity
  - policy guidance issued by the Department of Finance (Finance).

The Australian Government Cost Recovery Guidelines 2014 apply to regulatory charging activities. Therefore, for regulatory charging activities, entities are still required to:

- have Australian Government policy approval
- have statutory authority to charge

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<sup>103</sup> The Australian Government Cost Recovery Guidelines 2014 are available on the Finance website at [www.finance.gov.au](http://www.finance.gov.au), and apply to all regulatory charging activities.

<sup>104</sup> The Finance Minister will make a Government Policy Order to apply the Australian Government Charging Framework to selected Commonwealth corporate entities by 30 June 2016.

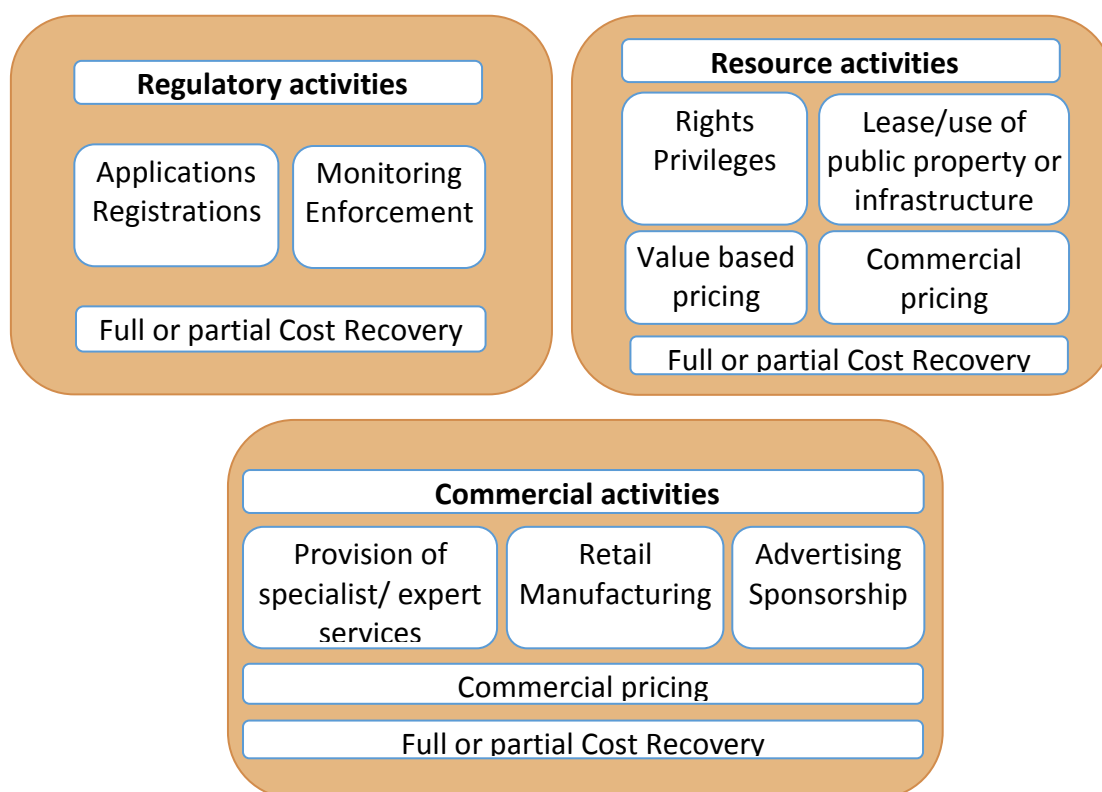
<sup>105</sup> Non-corporate and corporate Commonwealth entities are defined under the PGPA Act.



- ensure alignment between expenses and revenue
- provide up-to-date, publicly available documentation and reporting
- undertake and participate in a Portfolio Charging Review.

There are a variety of different pricing models that can be used, depending on the specific charging activity being undertaken. Figure 1 below shows the types of pricing models appropriate for different charging activities.

**Figure 1. Charging activities and pricing in Australia<sup>106</sup>**



140. **When optimizing state ownership and public services, Kazakhstan may consider policies that would** (i) ensure fair competition in competitive sectors where private sector is present; (ii) set cost recovery prices where there is no competition, ensuring prices are able to cover the necessary investment; (iii) finance public institutions that do not charge service users on the basis of their performance targets and delivery of results.

<sup>106</sup> Source: Australian Government Charging Framework 2015 available at website <http://www.finance.gov.au/>

## 7. AUDIT AS A KEY ELEMENT OF DISCLOSURE AND TRANSPARENCY

141. Transparency and disclosure requirements have undergone significant reforms in recent years in Kazakhstan. A further step in this direction could be the preparation and publication of aggregate reports including information about performance, situation and prospects of the SOEs sector as a whole, as recommended by OECD guidelines.
142. In OECD countries, the SOEs' financial statements are in most cases audited by an external audit firm. In some cases, the independent audit is conducted by the country's Supreme Audit Institution (SAI), especially in case of parastatals. Governments may also implement external control procedures, in addition to the independent external audit. In the case of parastatals, SAIs normally have the authority to perform performance audits in addition to the audit of the financial statements.

### 7.1 Audit of SOEs and parastatals

143. **In OECD countries, the SOEs' financial statements are in most cases audited by an external audit firm. In some cases, the independent audit is conducted by the country's Supreme Audit Institution (SAI), especially in case of parastatals.** Governments may also implement external control procedures, in addition to the independent external audit. In the case of parastatals, SAIs normally have the authority to perform performance audits in addition to the audit of the financial statements.
144. It is good practice for external auditors to be recommended by an independent audit committee of the board or an equivalent body, and to be appointed either by that committee/body or by shareholders directly; this ensures that management has not significant involvement and decision making in appointment or dismissal of auditors. This is the case in France, Norway, Poland, Slovenia and the Slovak Republic.
145. **In some OECD countries, SOEs financial statements are audited by the Supreme Audit Institution.** For example, in the United Kingdom, all SOEs are audited by independent auditors, with the exception of trading funds which are audited by the Comptroller and Auditor General. In Australia, the Auditor-General supported by the Australian National Audit Service<sup>107</sup> audits annual financial statements of Commonwealth entities and

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<sup>107</sup> Governed by the Auditor-General Act 1997 and the Public Governance, Performance and Accountability Act 2013.

companies, including their subsidiaries<sup>108</sup>. Box 24 provides an example of statutory audit requirements in Poland and Latvia.

#### **Box 24. Statutory audit requirements in Poland and Latvia**

**Poland:** The financial statements of joint stock companies and entities, which pass two out of three thresholds fixed in the 1994 Accounting Act, are under general obligation to be audited by a certified independent external auditor<sup>109</sup>. In the EU, according to the Accounting Directive, financial statements of all entities with limited liability should be subject to an independent audit; EU member states however can exempt small entities as defined by the Directive<sup>110</sup>. In case of SOEs incorporated as limited liability companies, the external audit requirement is optional and depends on the provisions of the articles of association of the SOE.

The procedure for selection of external auditors is determined by ministerial regulation. The regulation defines the criteria for evaluating the proposals from audit firms and selecting the certified auditor (market position of the firm and knowledge of the industry). Moreover, the regulation also provides criteria regarding the price of an audit. The audit firm should be recruited no later than the third quarter of the year preceding the preparation of the financial statements<sup>108</sup> by the company. A problem encountered in some SOEs is a yearly rotation of auditors. This puts pressure on the SOEs' management to accommodate different modes of interpretation of accounting and auditing rules, and is time-consuming familiarizing auditors with the peculiarities of the SOE sector.

**Latvia:** Statutory audit is required for all state and/or municipally owned companies. The audit and review (limited review) requirements are set forth in Article 91 of the new Annual Accounts and Consolidated Annual Accounts Law. Financial statements of all companies<sup>111</sup> are subject to statutory audit if they exceed two of the following thresholds for two consecutive years:

- 1) total assets exceed EUR 800.000
- 2) net turnover > EUR 1.600.000
- 3) average employees > 50.

Statutory audit is also required for a small company if:

- it is a parent company of a group (even if the parent company is exempt from preparation

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<sup>108</sup> For example, of the Australian Rail Track Corporation Ltd that prepares its consolidated financial statements in accordance with the Australian Accounting Standards and the Corporations Act 2001.

<sup>109</sup> For 2013 three thresholds were: (1) average employment of 50 full-time employees during a year, (2) total assets at the end of financial year equal to the equivalent of 2.500.00 EUR, (3) revenues from sale of goods or products and financial operations at the end of financial year equal to the equivalent of 5.000.000 EUR.

<sup>110</sup> Slovenia is another example of application of the EU accounting directive: All SOEs, except small-non listed, are subject to audit requirements.

<sup>111</sup> Including small companies.

of consolidated annual accounts)

- it is a capital company of a public entity, a subsidiary of such company or a public-private entity within the context of the Public Entity's Capital Shares and Capital Companies Governance Law 2014<sup>112</sup>.

it has applied IAS (IFRS) in recognition, valuation or presentation of certain items in the financial statements in order to achieve fair presentation and such choice can be justified (for example, parent company applies IAS).

*Source: data prepared based on applicable legislation*

146. **Governments may also introduce specific state control or inspection procedures, in addition to independent external audit of SOEs or, in some cases, as a substitute for external audit of the public sector entities.** A Supreme Audit Institution with extensive powers in terms of access to documents, premises and the staff of SOEs may supervise the quality of financial management and accountability. This is the case for the Court of Audits in the Netherlands<sup>113</sup> or Federal Court of Auditors in Germany<sup>114</sup>. In some countries, the Supreme Audit Institution performs financial audit of the annual accounts of certain public sector entities, for example, the Comptroller and Auditor General in the United Kingdom and the Office of the Auditor General in Norway. In New Zealand, all Crown entities (except small reserve boards) are required to prepare annual financial accounts and the Auditor-General has the legal responsibility to undertake the financial audits of all Crown entities and has the power to undertake efficiency and effectiveness reviews of both financial and nonfinancial performance (OECD, 2002). Box 25 elaborates more on these examples.

#### **Box 25. External audit and specific state control or inspection procedures**

The **United Kingdom**: All executive non-departmental public bodies (NDPBs) produce annual reports and accounts, which are made available to Parliament. The Comptroller and Auditor General, supported by the National Audit Office (NAO), is either the external auditor of, or has inspection rights to, all executive NDPBs. The Comptroller and Auditor General is also the auditor of the financial statements of trading funds. The specific powers and duties of the Comptroller and Auditor General and the National Audit Service (NAO) are laid down in acts of the Parliament. The main acts of the Parliament are: the National Audit Act 1983 and The Government Resources and Accounts Act 2000.

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<sup>112</sup> Capital company of a public entity is a company in which all shares or voting rights are owned by one public entity – state or municipal institution. Public-private entity is a company in which all shares or voting rights are owned by several public entities.

<sup>113</sup> The Government Accounts Act 2001.

<sup>114</sup> The Federal Budget Code 1969 and the Budgetary Principles Act 1969.

The **Netherlands**: The Court of Audit's tasks, powers and legal status are laid down in the Constitution and the Government Accounts Act 2001. The Court of Audit audits whether central government revenue and expenditure are received and spent correctly (regulatory audit) and whether central government policy is implemented as intended (performance audit). It has a mandate to audit institutions that carry important statutory tasks at arm's length from the government.

The Government Accounts Act 2001 states that the Court of Audit may institute an audit in respect to:

- a. public companies and private companies with limited liability, all or virtually all of whose issued share capital is owned by the state;
- b. public companies and private companies with limited liability other than those referred to under a where the state owns at least 5% of the issued share capital and a financial interest is involved that is greater than a sum to be fixed by the Minister of Finance<sup>115</sup>;
- c. legal persons, limited partnerships and general partnerships to which the state, or a third party acting for the account and risk of the state, has given, directly or indirectly, a grant, loan or guarantee;
- d. legal persons performing a function regulated by or pursuant to an Act of Parliament and to that end funded wholly or in part by receipts from levies instituted by or pursuant to an Act of Parliament.

The Court of Audit supplements control over the agents of the state that is performed by the internal audit division or by external accountants by order of the responsible minister. For example, in general, the act establishing ZBOs stipulates that their annual accounts need to be checked by an independent auditor and presented to the parent ministry. At the same time the Netherlands Court of Audit supervises the quality of financial management and accountability.

*Source: data prepared based on applicable legislation*

In **Finland**, an independent body affiliated with the Parliament, the National Audit Office<sup>116</sup>, exists to audit the financial management of the state and compliance with the budget. The National Audit Office audits all government budget entities yearly, including state authorities, government agencies and business enterprises. Based on sampling the National Audit Office also audits SOEs and non-governmental organizations that receive

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<sup>115</sup> Certain limitations on the audit powers and procedures towards this type of entities are detailed in the Act.

<sup>116</sup> The Act on the National Audit Office 2000.

government financing and are under its auditing powers.

In addition, all entities incorporated under the private law as limited liability companies are subject to mandatory audit<sup>117</sup>. However, there is no obligation to appoint an auditor for a company where not more than one of the following conditions were met in both the past completed financial year and the financial year immediately preceding it: 1) the balance sheet total exceeds 100 000 euros; 2) net sales or comparable revenue exceeds 200 000 euros; or 3) the average number of employees exceeds three. The auditor is appointed by the shareholders<sup>118</sup>.

*Source: data prepared based on applicable legislation*

**Norway:** The Office of the Auditor General (OAG) is the Parliament<sup>119</sup> auditing and monitoring body. The Auditor General Act of 2004 provides detailed provisions for the work of the OAG. The Office of the Auditor General performs its duties in an autonomous and independent manner, and determine itself how the work shall be arranged and organized. The Parliament may nonetheless instruct the OAG, through plenary decisions, to initiate an investigation into individual matters.

The OAG has a broad mandate, covering all the activities of central government, including the GPF-G<sup>120</sup>, public hospitals and universities, as well as public corporations and state grant recipients. One of the mandates is the OAG audit responsibility for all central government financial statements defined as financial statements rendered by central government agencies and other authorities that are accountable to the central government. The OAG also has audit responsibility for government corporations, government agencies with special powers and government funds. The OAG also has audit responsibility for other agencies or entities, where such responsibility is stipulated in the act regulating the activities of such agency or entity.

The OAG also monitors and controls the administration of the state's proprietary interests in companies etc. (corporate control). Corporate control encompasses state-owned limited liability companies, state-owned enterprises, companies organized through separate legislation and certain other separate legal entities that are wholly-owned by the state, such as the student welfare organizations and the Norwegian Risk Capital Development Fund for Developing Countries. This control also encompasses companies in which the state owns so many shares that it represents 50 per cent or more of the votes, or in which the state has a controlling interest through its shareholdings or by virtue of state control of the company's interests. The OAG does not

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<sup>117</sup> The Auditing Act 2007.

<sup>118</sup> The Limited Liability Companies Act 2006.

<sup>119</sup> The Storting.

<sup>120</sup> Government Pension Fund—Global.

normally conduct a financial audit of companies in which the state has ownership interests, as financial statements of these companies have to be audited annually by an independent external auditor.

The OAG does not cover the local government sector. The OAG has about 500 staff, and is generally perceived to be highly competent. The main activities include financial audit (70 percent), performance audit (26 percent), and corporate control of state interests in companies with full or partial state ownership (4 percent).<sup>121</sup> These companies also have private auditors, and the corporate control is generally much less comprehensive than the regular audits.

*Sources: data prepared based on applicable legislation<sup>122</sup>; IMF, 2009.*

**Spain:** Parastatals are controlled by the IGAE (Financial Controller at the Ministry of Finance) reporting to the Council of Ministers. Financial controls on autonomous bodies are carried out in the same manner and using similar procedures to general government ones. *Ex ante* control on all spending decisions is executed by the IGAE representative in each autonomous body. Public entities are only subject to *ex post* audit of their financial management and accounts. They may also be audited by external independent auditors. Annual information and accounts of these entities are subject to the external control of the Court of Accounts, reporting to the Parliament.

*Source: OECD, 2002.*

147. **In Kazakhstan, SOEs with the legal form of Joint Stock Company (JSC) are obliged to have their financial statements audited by independent auditors,** in accordance with International Standards on Audit (ISAs). The statutory audit requirement is foreseen by the JSC Law (no. 415 of May 2003, art 78), as well as by the Audit Law (of May 2006). The JSC Law indicates that the executive body or the board of directors may initiate an audit of the financial statements at the company's expense. The law also allows an audit to be initiated by a major shareholder at their own expense, and in this case the majority shareholder shall have the right to appoint an auditor independently (this right should ideally exist in any case). In accordance with the Audit Law, the financial statements of economically controlled

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<sup>121</sup> The term corporate control refers to OAG's assessment of whether the parent ministry has fulfilled its role as the administrator of the government's interest in companies in line with the decisions and intentions of the Storting.

<sup>122</sup> Act No 21 of 7 May 2004 relating to the Office of the Auditor General; Instructions No 700 of 11 March 2004 concerning the activities of the Office of the Auditor General.

state enterprises that have supervisory boards<sup>123</sup>, extractive industry and civil aviation entities, and some other companies, are subject to statutory audit.

148. **The recently approved Law on State Audit and Financial Control (2015) ensures that state bodies and parastatals are subject to the state audit and financial control carried out by the Accounts Committee** in accordance with the Kazakhstani standards on state audit and financial control<sup>124</sup>. The Law defines parastatals (public institutions, or quasi-governmental entities), into the following categories: state enterprises; limited liability partnerships; joint stock companies, including national management holdings; national holdings; national companies, in which the state is a partner of a shareholder; as well as subsidiaries and associated entities. However, audit performed by the Accounts Committee should not be considered as a substitute for independent external audit.
149. **Publication of SOEs financial statements in Kazakhstan is at a comparable level with most leading OECD member countries.** All major SOE groups publish audited financial statements on their websites. For instance, the largest SOE Holding, Samruk-Kazyna, publishes its consolidated financial statement in its website: <http://sk.kz/section/69>. The government instituted a depository of financial statements ([www.dfo.kz](http://www.dfo.kz)), where SOE financial statements are filed and can be accessed by the general public. No aggregate data for SOEs is currently centrally prepared, as recommended by OECD guidelines.

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<sup>123</sup> Statutory audit is required under the Law on State Property/Assets for the state enterprises on the basis of economic control rights that have a supervisory body and operate in all sectors, while the Audit Law refers only to the ones that provide healthcare and education services.

<sup>124</sup> That are based on the international standards.



## 8. THE ROLE OF BOARDS IN SOES AND PARASTATALS

### 8.1 SOEs and parastatals: Governance bodies, authorities and appointment

150. In most of the OECD countries there is a trend to emulate private sector practices when it comes to the governance of **SOEs** and parastatals. For example, while the process of appointment and authorities of the boards, as well as other arrangements, may vary from country to country, they play a central function in governance of public service providers in such areas as healthcare and education; among others, this is the case for such countries as Australia, Belgium, the Czech Republic, Estonia, Norway, the Netherlands, New Zealand and the United Kingdom. Another important aspect is independence of boards and competences of their members: normally high level officials are not acting as board members and nomination process takes into account competences and issues of independence (especially in cases when the state is regulator of a sector and owner of an entity in the same sector). Kazakhstan is following the trend for governments to seek to improve performance of parastatals by emulating good private sector governance practices. Boards should be empowered to effectively advice to and oversee management and carefully composed to ensure an appropriate mix of knowledge and experience with only limited government representation.
151. **In order to ensure that management of parastatals and SOEs performs well, the State needs to afford it a great deal of operational autonomy, while being able to hold it accountable.** Good practice for the governance of parastatals could be based on SOE corporate governance principles and guidelines. The government must avoid interfering in the daily management of these entities beyond the exercise of its ownership rights, which requires outlining the limits of the state's participation in the management of its autonomous public sector entities and SOEs. This is especially important for SOEs because in many cases the state's ownership function is vaguely defined and falls in different ministries.
152. **The exact role of the board differs by jurisdiction.** In a *one-tier system*, a single board of directors provides strategy and oversight of the entity. Its board may be composed either entirely of *nonexecutive members* (that is, members who are not part of the senior management), of a combination of executive and nonexecutive members, or, in rare cases, of executive members only. In jurisdictions with a *two-tier system*, an autonomous public sector entity or SOE has both a *supervisory board* and a *management board*. The supervisory board, usually composed entirely of nonexecutive directors, oversees the management board, which consists of the entity's senior management team. For enterprises with a two-tier system, examples of the board of directors in this section refers to the

supervisory board. It is understood that the second board will carry out management functions and possibly some functions that executive directors might undertake in a one-tier board.

153. **Generally, and depending on legislative requirements, governments exercise their ownership rights in parastatals and SOEs by application of either one-tier or two-tier governance systems.** For example, in **Finland** companies incorporated under the Limited Liability Companies Act 2006<sup>125</sup> should have a one-tier system with a Board of Directors with the general competence of overseeing the administration of the company and the appropriate organization of its operations. Companies may optionally also apply a two-tier system of governance by appointing a Managing Director and a Supervisory Board. If appointed, the Managing Director provides the executive management of the company in accordance with the instructions and orders given by the Board of Directors, while the Supervisory Board, if appointed, supervises the administration of the company by the Board of Directors and the Managing Director. The Articles of Association may also provide for the Supervisory Board to appoint the Board of Directors. In Slovenia, an SOE must be incorporated as a company<sup>126</sup> under the requirements of the Companies Act and therefore must follow the same laws and regulations that apply to private companies. Companies are given an option of having a two-tier (supervisory board and management board) or one-tier management structure (board of directors). In Latvia, the Law on Public Persons Enterprises and Capital Shares Governance 2014 requires SOEs to establish a supervisory board provided net turnover exceeds 21 million EUR and balance sheet total exceeds 4 million EUR. In the Netherlands, public sector entities also have either one or two tier systems of governance (See Box 26 for details).
154. **In most, if not all, of the OECD countries there is a good trend to emulate private sector governance practices in public sector enterprises.** For example, while the appointment process, authority, and other arrangements of supervisory boards may vary from country to country, they all play a central function in the governance of public service providers in areas such as healthcare and education. This is the case, among others, for countries such as Australia, Belgium, the Czech Republic, Estonia, Norway, the Netherlands, New Zealand and the United Kingdom. Box 27 illustrates hospital governance arrangements in a sample of countries.
155. **The board of directors has a specific function in the overall governance structure<sup>127</sup> that includes the state (as owner), the board of directors, and management:**
- As owner, the state establishes its overall “expectations” of parastatals and SOEs and sets mandates or broad objectives for the entity it oversees.

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<sup>125</sup> *Osakeyhtiölaki 2006.*

<sup>126</sup> Either as a limited liability company (d.o.o.) or as a joint-stock company (d.d.). Nearly all the companies in Slovenia are registered as d.o.o..

<sup>127</sup> Stakeholders and markets also play a key “disciplining” role.

- The board of directors sets the strategy for achieving the mandates or objectives, oversees the management, and monitors performance.
- The management is responsible for implementing the strategy and is accountable to the board.

### Box 26. Public and private sectors governance in the Netherlands

The public sector of the **Netherlands** can be characterized by a wide spread two tier-system of governance. Supervisory boards are established to improve the accountability of parastatals<sup>128</sup>. Supervisory boards consist of external members who oversee the organization's strategy, policy and fulfilment of its statutory tasks. In all public sector entities, most or all members of the supervisory boards are appointed by the responsible minister. Despite the similarities with the private sector there is, however, an important difference in terms of legal position. Unlike the private sector, there is not yet uniform legislation covering public-sector supervisory boards. Each has its own set of rules and regulations. Reform is underway to harmonize the legal framework for public sector supervisory boards.

*Source: Hoek F., Montfort C., and Vermeer C. (2005).*

The statutory duties and powers of the supervisory board of public limited companies<sup>129</sup> are defined in the Civil Code<sup>130</sup>. Public limited companies in the **Netherlands** either have one-tier (Board of Directors<sup>131</sup>) or two-tier (Board of Directors and Supervisory Body<sup>132,133</sup>) governance structures. The two-tier structure is mandatory for open corporations that meet certain criteria, for example, when the total sum of its issued capital and the reserves, according to the balance sheet with explanatory notes, amounts up to at least a level as set for this purpose by Royal Decree<sup>134</sup> or when it employs jointly with its dependent companies on average at least one hundred employees in the Netherlands<sup>135</sup>. Subject to any restrictions under the articles of incorporation, the Board of Directors is charged with the governance (management) of the Corporation. The Supervisory Board is responsible for exercising supervision over the administration (management) and policy of the Board of Directors and over the general course of events

<sup>128</sup> Such as universities and university hospitals, school boards, health insurance funds, national museums and regional police forces that are established as legal entities with statutory task (RWTs).

<sup>129</sup> Often established by the municipalities to provide services of public interest, such as water supply. Additional examples include Oost (Ontwikkelingsmaatschappij Oost-Nederland N.V. ) – a regional development company, owned by the central government and two provinces and the Port of Rotterdam (Havenbedrijf Rotterdam N.V.) with the central government (29.17%) and Rotterdam municipality (70.83%) as shareholders.

<sup>130</sup> The Dutch Civil Code. Part 2. Open Corporations '*naamloze vennootschap*'(N.V.).

<sup>131</sup> Equivalent of the Executive body in Kazakhstan.

<sup>132</sup> Equivalent of the Board of Directors in Kazakhstan.

<sup>133</sup> For example, partially state owned KLM airlines (Koninklijke Luchtvaart Maatschappij N.V.).

<sup>134</sup> From October 1, 2004 this level is set at € 16,000,000.

<sup>135</sup> for three continuous years.

within the Corporation and its affiliated enterprise. The articles of incorporation may set additional provisions regarding the duties and powers of the Supervisory Board. In the case of one-tier management structure, the first Directors of the Corporation are appointed in the notarial deed of incorporation; the following (succeeding) Directors are appointed by the General Meeting. The Supervisory Directors (members of the Supervisory Board) who are not already designated as such in the notarial deed of incorporation, shall be appointed by the General Meeting<sup>136</sup>. The Supervisory Board appoints the Directors of the Corporation in the two-tier structure. The Supervisory Board has to approve a number of key strategic, business sustainability, continuity, etc. resolutions. The articles of incorporation may set additional provisions to the ones mandated in the Civil Code regarding the duties and powers of the Supervisory Board and shareholders.

*Sources: Data prepared based on applicable legislation.*

### **Box 27. Hospital governance in Estonia, the Netherlands and Norway**

**Estonia:** Under the Health Services Organization Act 2001 the services can only be provided by individuals or institutions operating as private legal entities: a limited liability company<sup>137</sup>, a foundation or a private entrepreneur. Most hospitals are owned (or founded) by the state, the local governments or some public legal bodies (for example, the University of Tartu).

Both legal entities (that is, limited liability companies and foundations) must have a Supervisory Board as the governing body and a Management Board for day-to-day operations.

In limited liability companies, the supervisory board is appointed by shareholders (with representation of national/municipal governments as owners) and the management board is appointed by supervisory board. No patient involvement on the boards.

In foundations, supervisory board is appointed by shareholders (with representation of national/municipal governments as founders) and CEO is appointed by supervisory board; Management board members are either appointed by CEO or by supervisory board. No patient involvement on the board.

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<sup>136</sup> At least one-third of the number of candidates should be nominated and recommended by the Works Council of the Corporation.

<sup>137</sup> JSC

**Netherlands:** Almost all hospitals have the legal structure of a non-profit making foundation<sup>138</sup>. Profit-making hospitals are not allowed by law. Each hospital has a Supervisory Board<sup>139</sup>, performing the following functions:

- appointment and discharge of the members of the hospital Executive Board;
- supervision of the functioning of the Executive Board and its individual members;
- appointment and discharge of the external auditor;
- approval of specific decisions and documents of the Executive Board, including the annual budget estimate, annual accounts and annual report,
- strategic and investment plans, decisions relating to property transactions and decisions on consolidations; and
- remuneration of the Executive Board members, and functioning as a sounding board for the hospital Executive Board.

The Supervisory Board is not in charge of hospital management, which is the exclusive responsibility of the Executive Board. Supervision requires that it operates at distance from the Executive Board. Supervisory Boards are appointed by cooptation (but increasingly selected on the basis of expertise), without political involvement (appointments by Ministry of Health, Welfare and Sport only in exceptional circumstances). Executive Boards are appointed by Supervisory Boards (but Employees' Council and Clients' Council<sup>140</sup> can give opinion on appointments).

**Norway:** The state owns the seven<sup>141</sup> regional health authorities. Each authority is governed by a Board of Trustees that is appointed by the Minister of Health and Care Services.

Independent health trusts<sup>142</sup> are explicitly independent legal entities with governing bodies and annual general assembly (similar to private firms). Owned by regional health authorities and regulated by statutes.

Hospital ("local") board is appointed by the regional health authorities, which are in turn appointed by the Ministry of Health and Care Services. Includes politicians; some regional health authorities place their own representative as chairman of the board but it can also be an external appointee. No direct citizen involvement in decision-making, but board

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<sup>138</sup> *Stichting*.

<sup>139</sup> *Raad van Toezicht*.

<sup>140</sup> Represents the citizens.

<sup>141</sup> On January 1, 2016.

<sup>142</sup> used interchangeably with "hospital", although an independent health trust may contain more than one hospital.

meetings open to the public.

*Source: World Health Organization, 2011.*

156. **The board fulfills the central governance function for parastatals or SOEs in this structure, while the important role of day-to-day management of an entity is exercised by the executive body.** As per the OECD, the board has ultimate responsibility for SOE performance and requires the authority, autonomy, and independence to make decisions that determine performance (OECD, 2013). It also acts as the intermediary between the state (as the owner or shareholder) and the management of the company and has a duty to act in the best interests of both. New Zealand is quite often cited as a country that has gone far in emulating private sector practices. Box 28 below briefly outlines the governance of Crown entities in New Zealand.

#### **Box 28. Governance of Crown entities in New Zealand**

Under the Crown Entities Act 2004 the governing body for most Crown entities<sup>143</sup> is a board. The board members of the Crown agents and autonomous Crown entities are appointed by the responsible minister with the term of up to three years, while the Governor-general on the advice of the responsible ministers appoints the board members of independent Crown entities for up to five years. The board of each District Health Board consists of seven members elected in accordance with the Public Health and Disability Act 2000; and up to four members appointed by the Minister under the Crown Entities Act 2004. Also provisions of the Education Act 1989 apply for appointment of the trustees<sup>144</sup> as the governing board of education entities. Board members of the Crown entity companies are appointed by the shareholding Minister.<sup>145</sup>

The Crown entity's board has the primary responsibility for the entity's performance. The board governs the Crown entity and exercises its powers, carries out its functions and makes decisions about its operations (i.e. a governance role). It also makes decisions (either itself or through delegated powers) about the operation of the entity, and ensures

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<sup>143</sup> The Crown Entities Act 2004 indicates the following five categories of the crown entities:

- statutory entities (Crown Agents, Autonomous Crown Entities and Independent Crown Entities) - bodies corporate that are established by or under an Act;
- Crown entity companies - companies incorporated under the Companies Act 1993 that are wholly owned by the Crown;
- Crown entity subsidiaries - companies incorporated under the Companies Act 1993 that are controlled by Crown entities;
- school boards of trustees established under the Education Act 1989;
- tertiary education institutions bodies corporate established under the Education Act 1989.

<sup>144</sup> A mixture of appointed and elected members.

<sup>145</sup> Provisions on board and CEO appointments of the Companies Act 1993 also apply; however, they are much the same as the Crown Entities Act 2004.

that the entity's functions are performed efficiently and effectively. A Crown entity chief executive is appointed by the board and is tasked with running the Crown entity on a day-to-day basis (i.e. a management role)<sup>146</sup>. The chief executive manages the Crown entity, including exercising the powers and performance of entity functions as delegated on behalf of the board.

*Source: data prepared based on applicable legislation.*

157. **Good practice increasingly calls for an empowered board to appoint and, subject to clear terms, remove the CEO.** This reinforces the key function of the board in overseeing management and ensures that the CEO is accountable to the board rather than to the government. It also reduces the scope for government interference in operational decision making. For these reasons, some countries have made changes to explicitly strengthen the power of the board:
- OECD countries such as Australia, Germany, New Zealand, Norway, and Sweden now explicitly empower the board to choose the CEO.
  - Romania and a smaller number of other emerging market economies are doing the same.
  - Some countries have adopted an intermediate approach. South Africa, for example, allows the board to select the CEO subject to final approval by, or in consultation with, the ownership entity and other shareholders.
158. **Good practice and company law in many jurisdictions with the two-tier board systems of SOEs suggests that the supervisory board is typically responsible for choosing the management board.** This is a long-established practice in Germany that is now followed in Estonia, Poland, and Kazakhstan as well.
159. **It is good practice to limit the appointment of government representatives to the board and, where they are appointed, to ensure that they meet the necessary qualifications, are able to devote the time and have the same obligations and roles as any other board member.** Boards composed mainly of government representatives lack the objectivity and skills vital to well-functioning boards. Therefore, more and more countries are limiting ministers and other political appointees from serving on boards, restricting the number of government representatives on boards while increasing the share of private sector members.
160. **Kazakhstan follows the almost uniform practice for governments worldwide, seeking to improve the performance of public sector entities by mirroring private sector practices.**

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<sup>146</sup> In most cases, corporations sole (a Crown entity with one office holder, e.g. the Privacy Commissioner) do not appoint a full time chief executive.

The GOK exercises its ownership rights by appointing members of the board of directors and the heads of parastatals. Under legislation of Kazakhstan, a two-tier governance system with an executive body and a board of directors is a must for joint stock companies.<sup>147</sup> Within SK group of companies, members of the Government and other state officials cannot be members of the board of directors.<sup>148</sup> The executive body of a JSC may comprise either a management board or a CEO only. Generally, LLPs do not have a supervisory board, which is optional under the law.<sup>149</sup> The economically controlled state enterprises in areas of health care and education have to apply a two-tier system of governance. In that case, supervisory boards are established by decision of the owner, i.e. central government or local authorities. The heads of parastatals are appointed in accordance with the rules set by the body authorized for state planning<sup>150,151</sup>.

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<sup>147</sup> The Law on Joint-stock companies.

<sup>148</sup> 2015 Corporate Governance Code of Sovereign Wealth Fund Samruk-Kazyna JSC. The Code is based on “comply or explain” model. In practice, there are several cases of non-compliance with this provision.

<sup>149</sup> The Law on Partnerships with Limited Liability and Additional Liability.

<sup>150</sup> At the moment by the Ministry of National Economy.

<sup>151</sup> Except for the cases of appointments that fall under the authority of the President of Kazakhstan.



## 9. AREAS FOR CONSIDERATION

161. The report is not a comprehensive diagnostic comparing standards and practices in Kazakhstan with relevant international benchmarks. The report uses examples from many OECD countries and leading global economies in specific areas requested by GOK/MNE. SOEs and parastatals have evolved in very different ways and there are wide variations in national approaches and treatment, which can make it hard even to identify those entities to be classified as public sector entities, including SOEs. Given this wide variation in country circumstances the research seeks to identify general trends, point to widely held principles, and highlight good illustrative examples of governance in SOEs or parastatals around the world. The report also outlines current practice in Kazakhstan and indicates areas for further consideration by policy makers which may help improve the structure of public ownership. The areas of research requested by the MNE and addressed in this report include: (i) the rationale for state ownership; (ii) legal forms and objectives of SOEs and parastatals; (iii) establishing, maintaining, liquidating and divesting of SOEs and parastatals; (iv) the state's role and responsibilities as an owner; (v) governance structures of parastatals and SOEs; (vi) disclosure and transparency, including audit arrangements; (vii) SOEs in the market place – including funding and price regulation; and (viii) the role of governing bodies in SOEs and parastatals.
162. **The areas for consideration by the GOK/MNE in further developing policies in governance of SOEs and parastatals can be summarized as follows:**
- (1) **Defining the rationale for state ownership in a public policy document and introducing periodic reviews.** Such a policy document will set out a clear vision of the reasons for state ownership, types of ownership, and objectives of ownership in particular areas/sectors. This requires a comprehensive approach and can bring significant progress in increasing efficiency and attractiveness, while optimizing the use of public resources.
  - (2) **Changing the legal form of entities which are not corporate entities.** These might be reorganized into corporate entities (normally JSCs) if they operate in a non-competitive area, or liquidated. This can be addressed as part of changes to the law on state property. A policy of corporatizing entities which perform economic activities or entities which fulfill public policy objectives could be introduced and ways of introducing modern private sector oriented management and governance practices explored. Also, regular reviews can be considered for assessing whether entities are achieving or failing against their original charter and whether their scope and intended purpose remain valid;
  - (3) **Consolidating the state ownership function over SOEs, and improved coordination of ownership;**

- (4) **Clarifying appropriate legal and financial considerations when formulating dividend policy and net income distribution.** The principle of paying dividends only if an SOE can meet its capital needs and financial obligations should be respected. SOEs management should have a clear expectation of the dividend size, retaining some flexibility for crisis situations and market fluctuations;
- (5) **Further enhancing the role and accountability of the state in parastatals and SOEs** through introduction of key elements of corporate governance in those entities that are not incorporated, allowing them to adopt certain private sector governance and management practices; continue introducing private sector governance practices in parastatals and non-corporate entities can help improve performance and management. Policy makers could also further consider efforts to professionalize boards, address issues of competence and independence, as well as making boards accountable to the state as owner;
- (6) **Further enhancing transparency** by preparing and publishing aggregate reports for SOEs as recommended by OECD guidelines. Consideration may be also given to the growing international trend for all SOEs to be audited by independent auditors and to defining the role of the supreme audit institution in auditing SOEs and parastatals;
- (7) **Continue improving SOEs operations in the market place through optimizing state ownership and public services** by (i) ensuring even-handedness in competitive sectors where the private sector is present, so that private companies and SOEs operate under the same conditions based on market principles; (ii) set cost recovery prices in non-competitive sectors to ensure prices cover the necessary investment; (iii) link the financing of parastatals that do not charge service users to their meeting performance targets and delivering agreed results.

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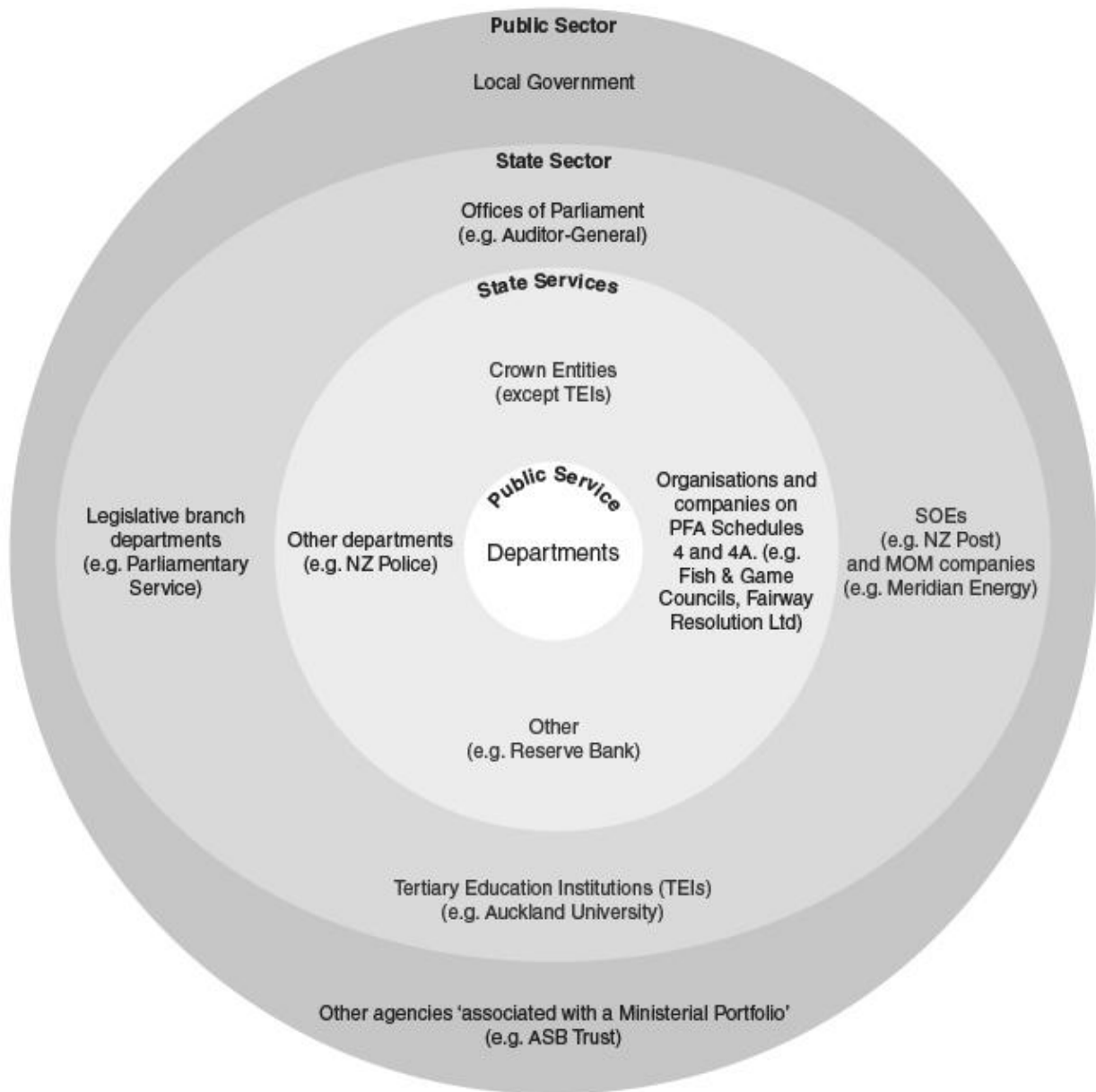
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## ANNEX 1. NEW ZEALAND: PUBLIC SECTOR MAP



### Key to terms used in the public sector map above<sup>152</sup>

|        |  |
|--------|--|
| Agency | Synonym for 'organization'. A blanket term that may include departments, Crown entities, State-owned Enterprises, PFA Schedule 4 organizations, PFA Schedule 4A and 5 companies, Offices of Parliament and the Reserve Bank. |
|--------|--|

<sup>152</sup> Source: New Zealand State Services Commission <http://www.ssc.govt.nz/resources/9389/all-pages>

|                         |   |
|-------------------------|---|
| Autonomous Crown entity | Autonomous Crown entities (ACEs) are statutory Crown entities that must have regard to Government policy directions as distinct from giving effect to Government policy directions or being generally independent of Government policy.   |
| Crown                   | Means the Sovereign and includes all Ministers of the Crown and all departments (including any of their departmental agencies). It does not include any other type of 'organization' described in the definition of 'agency' above.   |
| Crown agent             | Crown agents are statutory Crown entities that must give effect to Government policy directions as distinct from having regard to Government policy directions or being generally independent of Government policy. Crown agents are those Crown entities most closely subject to ministerial control.  |
| Crown entity            | <p>Crown entities are stand-alone corporate bodies that are legally separate from the Crown. They are public bodies that operate at arm's-length from Ministers, but still an integral part of the State sector. Ministers have a key role in managing the Crown's interests in Crown entities, for example through their role in board appointments, setting direction and funding levels, and monitoring entity performance.</p> <p>Section 7 of the Crown Entities Act 2004 outlines the five categories of Crown entity:</p> <ul style="list-style-type: none"> <li>• Statutory entities - bodies corporate established through legislation;</li> <li>• Crown entity companies - companies that are incorporated under the companies act and are wholly owned by the Crown, (e.g. Crown Research Institutes, TVNZ);</li> <li>• Crown entity subsidiaries - companies that are controlled by Crown entities;</li> <li>• School boards of trustees - as constituted under Part 9 the Education Act 1989; and</li> <li>• Tertiary education institutes - polytechnics/institutes of technology, universities and wānanga established under part 14 of the Education Act 1989.</li> </ul> |

|                                 |  |
|---------------------------------|--|
| Department                      | The departments that comprise the Public Service are listed in the First Schedule to the State Sector Act. In addition to those departments, the Public Finance Act includes the New Zealand Defence Force, New Zealand Police, Office of the Clerk, Parliamentary Counsel Office, Parliamentary Service and the New Zealand Security Intelligence Service in the definition of department. The latter departments are also referred to as 'Non-State Sector Act departments' or 'Non-Public Service departments'. |
| Departmental agency             | A new organization form involving a specific operational delivery or regulatory function or functions placed within a host department. A Departmental Agency has a chief executive employed by the State Services Commissioner. The Departmental Agency's chief executive reports directly to the Minister responsible for the Departmental Agency, who may or may not be the same as the Minister responsible for the host department.  |
| Independent Crown entity        | Independent Crown entities (ICEs) are statutory Crown entities that are generally independent of Government policy as distinct from giving effect or having regard to Government policy.   |
| Mixed Ownership Model companies | Mixed Ownership Model (MOM) companies are listed in Schedule 5 of the Public Finance Act 1989. This model applies to companies majority controlled by the Crown, and minority controlled by persons other than the Crown.  |
| Offices of Parliament           | The primary function of an Office of Parliament is to be a check on the Executive, as part of Parliament's constitutional role of ensuring accountability of the Executive. An Office of Parliament must discharge functions which the House itself might appropriately undertake. Currently there are three Offices of Parliament: Office of the Controller and Auditor-General, Parliamentary Commissioner for the Environment, and Office of the Ombudsmen.   |
| Public sector                   | The public sector comprises the State sector ('central government') and all local authorities ('local government'), including council-controlled organizations.  |
| Public Service                  | The Public Service comprises the departments listed in the First Schedule to the State Sector Act. Any Departmental Agencies hosted within a Public Service department are also part of the Public Service. Sometimes described as the first, or inner, tier of the 'three tier State', the other two tiers being Crown entities and State-owned enterprises. Narrower than both 'State sector' and 'public sector'.   |



|   |   |
|---|---|
| Responsible Minister                        | The Minister accountable to Parliament for the financial performance of a department or Crown entity. In relation to an Office of Parliament, the Speaker is the responsible Minister.  |
| Public Finance Act Schedule 4 organizations | PFA Schedule 4 has a list of miscellaneous organizations, including Fish and Game Councils and Reserve Boards, which are subject to certain provisions of the Crown Entities Act (specified in the Schedule).   |
| Public Finance Act Schedule 4A companies    | Schedule 4A of the Public Finance Act has a list of companies in which the Crown is the majority or sole shareholder, and which are not listed on a registered market. PFA schedule 4A companies are treated as Crown entities for the purposes of directions under the section 107 of the Crown Entities Act 2004, and various sections of that Act relating to financial powers also apply (as specified in the Schedule).  |
| State-owned enterprise (SOE)                | SOEs are businesses (typically companies) listed in the First Schedule to the State-Owned Enterprises Act 1986. SOEs operate as a commercial business but are owned by the State. They have boards of directors, appointed by shareholding Ministers to take full responsibility for running the business.  |
| State sector                                | The State sector comprises all organizations that are included in the 'Government reporting entity' and are referred to in s 27(3) of the Public Finance Act 1989, namely: Public Service departments and departmental agencies; other departments under the PFA; Offices of Parliament; State-owned enterprises; Crown entities; organizations listed on schedule 4 of the PFA; companies listed on Schedule 4A and Schedule 5 of the PFA; and the Reserve Bank of New Zealand. A comprehensive list of State sector agencies is available at:<br><a href="http://www.ssc.govt.nz/state_sector_organisations">www.ssc.govt.nz/state_sector_organisations</a> . |
| State services                              | A term defined in section 2 of the State Sector Act 1988. It is a broad definition that, essentially, includes departments, most Crown entities and other organizations that are " <i>instruments ... of the Government of New Zealand</i> ". "Government of New Zealand" is interpreted (consistent with the definition of "Government" in the Public Finance Act 1989) as the Executive branch of government.   |

## ANNEX 2. ENTITIES WITH LEGAL PERSONALITY

### Norway: Central government

#### Legal-structural types<sup>153</sup> distributed by form of affiliation:

- Civil service organizations having legal status as part of the state (the civil service can further be divided into three sub forms of affiliation<sup>154</sup>;
  1. **Ordinary civil service** (directorates/central agencies<sup>155</sup>, other public administration bodies<sup>156</sup>, financial institutions<sup>157</sup>) - In the state budget, ordinary civil service organizations are positioned under the section of «the states own debit and revenue», they are gross budgeted and have separate budget chapters relating to a debit side and a revenue side. They receive governmental grants/subsidies mainly through customary budget entries, and are tightly coupled to the main principles of the governmental budget system.
  2. **Government administrative enterprises**<sup>158</sup> - Governmental administrative enterprises are kept separate in the budget system from the other two sub-categories of civil service organizations, not as «the state's own debit and revenue», but as part of «the business management of the state». In contrast to organizations with extended authority which are fully net budgeted, government enterprises are only part net budgeted. This applies to their day-to-day funding while investments are budgeted gross. In this way, the debit and revenue side are seen in relation to each other, and the enterprises at the end of a budget term may either break even, experience a surplus, or a deficit.

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<sup>153</sup> Up-to-date data base of the state units is available on the web site of the Norwegian Centre for Research Data <http://www.nsd.uib.no/polsys/en/civilservice/administrationdatabase.html>

<sup>154</sup> Organizations with extended authority and governmental administrative enterprise are given broad authority of different kinds due to their particular organizational form. In these instances, authorities go hand-in-hand with organizational form. Ordinary civil service organizations are not exempted from general governmental rules and regulations in principle but can be delegated special authority by the parent ministry or parliament if needed. Special authority can be of a financial kind (e.g. budgetary) or administrative (concerning personnel, terms of employment, level of salaries etc.). Special authorities is delegated on the basis of the particular circumstances experienced by an agency or group of state organizations, and do not follow the organizational form *per se* as is the case for organizations with extended authority and governmental administrative enterprises.

<sup>155</sup> 61 unit as of January 1, 2016. For example, Civil Aviation Authority - Norway, Norwegian Competition Authority, National Police Directorate, Directorate of Taxes.

<sup>156</sup> 70 units as of January 1, 2016. For example, the Church Council, The Norwegian Institute of Local History, National Archives of Norway.

<sup>157</sup> Just 5 units as of January 1, 2016. For example, Norges Bank (the Central Bank of Norway), Fishery and Aquaculture Industry Research Fund.

<sup>158</sup> Just 4 units as of January 1, 2016: Norwegian Public Service Pension Fund, Directorate of Public Construction and Property, Norwegian Mapping Authority and Norwegian Guarantee Institute for Export Credits.

3. **Central agencies with extended authority**<sup>159</sup>. - Organizations with extended authorities are budgeted with a net amount as an overall solution, and as such receive a non-specified governmental subsidy or grant, thus emphasizing their particularly free and independent position towards their parent ministry and the political authorities

Central agencies and government administrative enterprises are units at sub-ministerial level and are, legally speaking, government entities subject to ministerial directions and directly subordinated to ministerial control. In contrast to state-owned companies, the state budget, the state collective wage agreement, the state pension scheme, the Freedom of Information Act, and the administrative law regulate the civil service. Government administrative enterprises are given enhanced budgetary leeway.

- Two other types of public sector organizations

4. **State-owned companies** and (own legal status; different types):

- **Fully state owned limited companies**: 29 entities as of January 1, 2016. This type includes companies that were to some extent previously organized within the central government. This is the preferred form of business organization in commercial and industrial activity in which no particular sectoral policy considerations apply, or where the enterprises operate in a competitively exposed market and are given this organizational form in the interests of business efficiency and freedom of action. Increasingly companies that are considered to be important policy instruments are nevertheless organized in this form in order to provide them with the greatest possible freedom to run the companies according to normal business practice. For example, Posten Norge AS (Norway Post), Flytoget AS (Airport Express Train), Nationaltheatret AS (National Theatre), NSB AS (Norwegian State Railways).
- **State corporations**<sup>160</sup> 7 entities as of January 1, 2016. They are allowed to operate on almost the same terms as private companies, but with some limitations. They must be wholly owned by the State. There are limitations on the companies' activities, often established in the letters of association, that are related to sectoral policy obligations the companies are expected to carry out. For example, Statnett SF, Aerospace Industrial Maintenance Norway SF.
- **Limited companies with private shareholders** 14 entities as of January 1, 2016. For majority or minority share companies the Companies Act – that

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<sup>159</sup> Few in number. Mostly in education and research. 31 units as of January 1, 2016. For example: University of Oslo, Norwegian Academy of Music, Norwegian Space Centre, Norwegian Cultural Heritage Fund.

<sup>160</sup> Statsforetak.

regulates all incorporated companies - applies without the special provisions that apply to 100 per cent State owned incorporated companies. The Government may thus only use its ownership influence by participating and voting in the general meeting. For example: Telenor ASA (provider of tele, data and media communication services), Statoil ASA.

- **Hybrid state companies organized under special law<sup>161</sup>**: 7 entities as of January 1, 2016. These are a composite group whose common factor is that they are established under special legislation for each enterprise. The company is governed by a specific law which regulates its operations and specifies the social policy objectives it is to promote. Hybrid companies are legal entities in their own right. Most hybrid companies are established in areas where they are essentially in a monopoly situation. Hybrid companies can take the form of either incorporated companies or statutory companies. For example, AS Vinmonopolet (Retail monopoly of wine and spirits from 19.6.1931); NSB AS (the state railways); Posten Norge AS (the postal service); Regional health authorities<sup>162</sup>: For example: Helse Midt-Norge RHF (Central Norway Regional Health Authority), Nasjonal IKT HF (National ICT - Health care solutions provided by information and communication technology).

5. **Governmental foundations** (own legal status<sup>163</sup>, different types) - Self-owned *separate* legal entities established under the Foundation Act 2001 and authorized to enter into contracts with third parties, and be a party in legal actions before the courts and in relation to the authorities. Governmental foundations are founded either by a ministry (central foundations) or by an agency (fringe foundations). A characteristic feature of Norwegian foundations is that the legal basis for this kind of entity is a disposition. This disposition can, for example, be a gift or similar, or placing an asset of financial value, most commonly money, at the independent disposal of a foundation for a defined purpose, included but not limited to idealistic, humanitarian, social, educational and financial activities. Like state-owned companies, they are not covered by the civil service rules and regulations like the state budget, financial management regulations, public personnel administration, the Civil Service Act, the Public Administration Act or the Freedom of Information Act. In contrast to state-owned companies they are self-owned entities, and thus have more formal autonomy from the ministry than state-owned companies. The government can control the foundations by general laws and regulations, by recruiting board

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<sup>161</sup> *Særlovselskaper.*

<sup>162</sup> 7 entities as of January 1, 2016.

<sup>163</sup> As of January 1, 2016 there are 47 central foundations, mainly museums, for example, Norwegian Petroleum Museum, The Norwegian Centre for Design and Architecture and 13 fringe foundations, for example, Polaria - the world's most northerly aquarium.

members and by formulations of statutes. These control devices are, however, weaker and less precise than for the others forms of affiliation.

*Sources: Data retrieved from the Norwegian Centre for Research Data; OECD, 2003; Rubecksen K., 2004; Læg Reid, P. and V.W. Rolland, P.G. Roness og J.E. Ågotnes, 2003.*

## Public sector in Spain

Spanish legislation includes a broad definition of the public sector and a legal distinction between the administrative (general government), public enterprise and public foundation sectors. There are three levels of government: the central government, the regional governments, and the local governments. The General Budgetary Law of 1988 makes a legal distinction between the components of the state public sector:

- (a) The administrative public sector includes the state central government, the social security funds, autonomous administrative bodies, public funds without legal status, consortia between public administrations, and any other public entity that redistributes income, does not provide goods and services at market conditions, and is mainly financed with transfers from the central administration;
- (b) The public enterprise sector includes public enterprises that are not corporations, public corporations and other public entities that are not part of (a); and
- (c) The public foundation sector is composed of foundations in the state sector.

The three components mentioned above together form the state public sector. This distinction between the administrative and public enterprise sectors is repeated in the regional and the local governments<sup>164</sup>, with the exception of the social security funds, which are administered by the Spanish unitary social security system.

**Autonomous administrative bodies** are organizations that operate under the auspices of the various ministries in order to carry out specific administrative responsibilities. They are intended to give greater flexibility in the day-to-day operation of particular functions, while overall policy and budgetary control remain with the ministry responsible. They enjoy a

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<sup>164</sup> Legislative Royal Decree 2/2004 on the Compiled Text of the Law Regulating Local Finances (*Texto Refundido de la Ley Reguladora de las Haciendas Locales*) establishes the list of basic expenditure responsibilities that all local governments must implement, including public lighting, cemeteries, drinking water supply, sewer, waste management, paved roads, urban planning, and building control. The mandate to provide other services, such as public libraries, firefighting, public parks, and public transportation, are decided on the basis of a municipality's size. In particular, the law states that municipalities with a population over 5,000 inhabitants must provide public parks, a library, a market place, and waste processing; municipalities with a population over 20,000 inhabitants shall also provide social services, firefighting, sports facilities, and slaughterhouses; and municipalities with a population over 50,000 inhabitants must also provide urban public transportation and environment protection.

separate legal status, they have their own budget allocation, they employ their own internal auditor and are endowed with their own technical services, including a legal service. Their status was initially regulated by the Law on Autonomous State Bodies of 1958 that, among other things, exempts them from taxes, rates, duties and registration fees, and was updated by the General Budgetary Law. The proliferation of autonomous administrative bodies has resulted in an attempt in recent years to reduce their number (albeit simply converting them into autonomous commercial bodies or into directorates or subdirectorates general). There is also a considerable difference between the scale and importance of their operations. Examples of OAAs include:

The National Employment Institute under the auspices of the Ministry of Labor and Social Affairs has the important task of supervising the whole area of unemployment, assisting unemployed workers with retraining and providing unemployment benefits.

The National Social Security Institute works in the area of health and social security/social services.

More than fifty universities, including the Open University, also figure as autonomous bodies, a status which is embodied in the University Reform Law of 1982.

The Institute for Agrarian Reform and Development under the Ministry of Agriculture, Fisheries and Food is involved in a wide variety of activities, including infrastructural improvements, the modernization of access roads and drainage schemes.

The Museo Reina Sofia was created by Royal Decree 535/88 of May 1988 operate in the cultural area. The Higher Sports Council was established by the Sports Act of October 1990 and is directing the development of sport within the Spain.

**Public enterprises that are not corporations (EPEs).** According to Law 6/1997 on the Organization and Functions of the General State Administration, the purpose of EPEs is to produce, provide, and manage public goods and services in exchange for a charge that is set to cover operation costs, including amortization. They are created by law and placed under the authority of a sectoral ministry (e.g., the Public Railway Entity, under the authority of the Ministry of Public Works). They are governed by public law in the exercise of responsibilities assigned to them and by commercial/private law in other respects. For example, the Manufacture of National Currency and Bills. EPE workers are not civil servants. However, EPEs must observe public procurement, recruitment, and budgeting laws. With a few exceptions, EPEs are subject to the same tax regime as the private sector. The government authorizes EPEs' hiring, wage-setting, and contracts for infrastructure projects above a certain threshold. EPEs have autonomy, however, in managing their own assets and liabilities. EPE final accounts are audited by the General Controller and Accounting Directorate (*IGAE*) and by the Court of Auditors. Their financing can come from capital injections and transfers from the central government, user fees, European Structural Funds, or borrowing from financial markets or multilateral institutions (e.g., European Investment

Bank). In some cases, EPEs have been created to provide infrastructure that was formerly provided by the general government (e.g., railways). If these capital injections to EPEs are expected to yield a positive return, they are not classified as government expenditure. For example, the Public Railway Entity (*RENFE*), the Railway Infrastructure Management Enterprise (renamed the Administrator for Railroad Infrastructure under the authority of the Ministry of public works after absorbing the RENFE investment operations), Spanish Airports and Air Navigation<sup>165</sup>), and Ports of the State under the authority of the Ministry of public works, the Northern Coal Mining Company part of the SEPI group of companies.

**Public corporations (*Sociedades Mercantiles*/SMs).** According to Law 33/2003 on the Assets of Public Administrations, SMs are corporations in which public ownership is above 50 percent. They are fully subject to commercial/private law, although their budget must be presented to the Parliament together with the state budget. In addition, they must respect some other special rules on issues of recruitment, financial control and so on being part of the public sector. The Cabinet of ministers must authorize SMs creation. Some of them are under the authority of the Ministry of economy and finance, either by the State Industrial Holding Company (SEPI), or by the General Directorate of the Patrimony of the State (GDPS). The rest of the SMs are under the authority of a sectoral ministry (e.g., the public company in charge of air traffic controllers' training which is under the authority of the Ministry of Public Works). Most of SEPI's corporations operate in the industrial and service sectors. Public corporations under the GDPS's authority mainly operate in the provision of water and environmental infrastructure, postal service, land management, insurance, and tourism. Other examples include State Companies for Water Works, Land Management Companies, and Irrigation Modernization and Construction Companies. As in the case of EPEs, some SMs are providing infrastructure that was previously provided by the general government (e.g., water) and receive capital injections that are not classified as part of government expenditures, provided the investment is expected to be profitable. SMs are subject to the same tax and regulatory regimes as private corporations, with very few exceptions. *Special case:* Public entity for the provision of television and radio services (RTVE). According to Law 4/1980 on the Status of Radio and TV, the state is allowed to create a public entity for the universal provision of TV and radio services. The Parliament appoints the 12-member Board of RTVE, while the Cabinet of ministers appoints the General director. Financing comes from the government subsidies and advertising revenues.

**Public Foundations (PFs).** Although not strictly involved in the selling of goods and services, PFs are considered, under Spanish legislation, as part of the enterprise sector. The PFs are nonprofit organizations in which, according to Law 50/2002 on Foundations, public participation is above 50 percent. They are involved in social activities such as the promotion of cultural, educational, and sports activities, development and research,

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<sup>165</sup> Disposed on February 19, 2015 via IPO - Direct competitive sale of 49% of shares. Prior to IPO it was owned by SEPI.

restoration and conservation of the historical and artistic heritage, and conservation of the environment. They are placed under the authority of a ministry (e.g., the Thyssen-Bornemisza Collection Foundation under the Ministry of Education, Culture and Sport) or SM authority (e.g., the SEPI Foundation) and are financed with transfers.

**Other public entities.** For example, the Carlos III Health Institute, part of the public enterprise sector under Spanish legislation, is the main public entity for research in Spain in the field of health sciences and a scientific and technical support body for the National Health System. It comes under the Ministry of Economy and Competitiveness, through the National Secretariat for Research, Development and Innovation, and reports to the Ministry of Health, Social Services and Equality. Reporting to both ministries is coordinated through a Mixed Committee (approved by a Cabinet of ministers) to ensure collaboration in various fields of expertise.

*Source: Data prepared based on applicable legislation, central administration<sup>166</sup> and companies' websites; IMF, 2005; Newton and Donaghy, 1997.*

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<sup>166</sup> <http://administracion.gob.es/>



## Switzerland: Federal level legally independent organizations

|                       | Non-autonomous units within government bureaucracy  |  | Semi-autonomous units within government bureaucracy |  | Legally independent organizations  |  |
|-----------------------|---|--|---|--|--|--|
|                       | General Secretariat (within the department) and Chancellery (for the entire government) (Generalsekretariat, Bundeskanzlei) | Federal Office (Bundesamt, Staatssekretariat, Teilsreitkraft, Direktion) | NPM <sup>167</sup> -led Offices (FLAG-Ämter)        | Governmental Commissions (Behördenkommissionen or inspektorat) | Institutions of Public Law (Öffentlich-rechtliche Organisationsformen (eg. Anstalt, Stiftung)) | Institutions of Private and Public Law (Privatrechtliche Organisationsformen und Spezialgesetzliche) Public Corporation (Aktiengesellschaft (AG)) <sup>168</sup> |
| Legal basis           | Public Law  | Public Law   | Public Law  | Public Law   | Public Law   | Public or Private Law  |
| Own legal personality | No  | No   | No  | No   | Yes  | Yes  |

<sup>167</sup> New Public Management (NPM).

<sup>168</sup> A public limited company; this is a company whose shares are offered to the general public and traded on a public stock exchange, and whose shareholders' liability is limited to their investment.

|                                    | Non-autonomous units within government bureaucracy |              | Semi-autonomous units within government bureaucracy |                 | Legally independent organizations                        |  |
|------------------------------------|--|--------------|---|-----------------|--|--|
| Direct oversight by the Government | Yes  | Yes          | Yes   | No              | No   | No   |
| Governance structure               | General Secretary, Chancellor                      | Director     | Director  | President, Head | Management board and Board of Directors (Verwaltungsrat) | Management board and Board of Directors (Verwaltungsrat) |
| Finances (most important revenues) | State budget                                       | State budget | State budget and own revenues                       | State budget    | Own revenues and budget appropriations                   | Own revenues, occasionally budget appropriations         |

|         | Non-autonomous units within government bureaucracy   |  | Semi-autonomous units within government bureaucracy   |  | Legally independent organizations  |  |
|---------|--|--|---|--|--|--|
| Tasks   | Ministerial tasks, e.g. policy advisement, coordination, service provider to the government and other organizational units | Public services with a monopoly or some market: e.g. treasury, border control, agriculture | Public services with a monopoly but a strong customer focus, e.g. weather forecasts, national library, sports, telecommunications, civil aviation | Regulation and sectoral oversight          | Regulation, services with a monopoly or a rather weak market, e.g. postal services, pension fund, higher education | Services with a strong market, e.g. railways, communications |
| Example | General Secretariat of the Department of Defense   | Federal Office of Public Health  | Federal Office of Topography  | Federal Communications Commission (ComCom) | Swiss Federal Institute of Technology Swiss postal services  | Swisscom AG Swiss Federal Railways AG <sup>169</sup>         |

Source: Verhoest K., S. Van Thiel, G. Bouckaert, and P. Læg Reid, 2012.

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<sup>169</sup> regulated by public law.

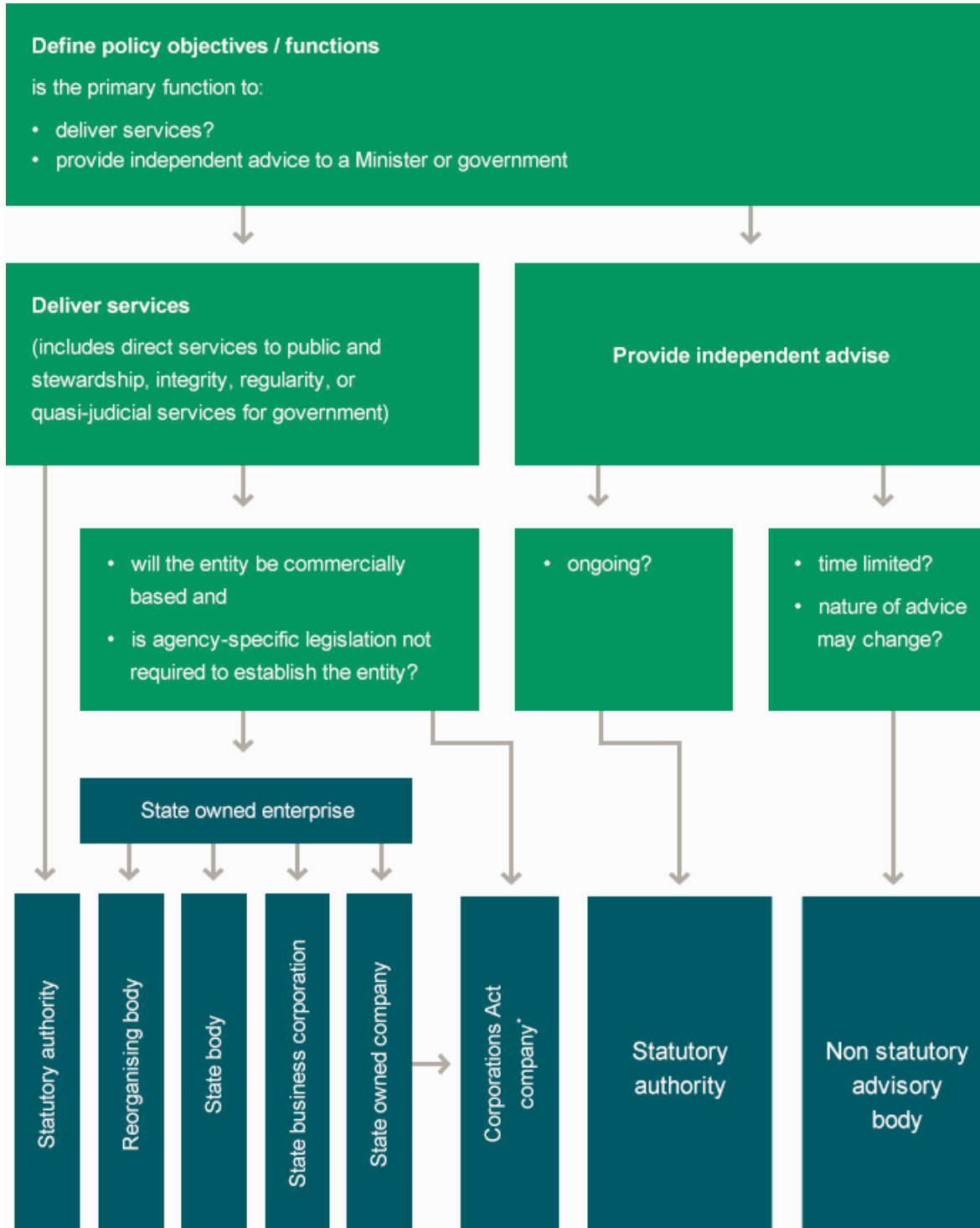
## The United Kingdom: Companies in Central Government

| Description of company types | Formation  | Characteristics   |   | Example: Sponsoring Department in Central Government/Company   |
|------------------------------|--|---|---|--|
| Private limited by guarantee | Incorporated under the Companies Act 2006 and registered at Companies House. | Classified as an executive non-departmental public body ( <b>executive NDPB</b> ). The most frequently used type by "companies in government". Has members not shareholders, separate legal entity from members, liability limited to nominal amount (normally, between £1 and £10) if the company becomes insolvent and is wound up, usually operated on a not for profit, can raise capital through borrowing. The liability of the owners (members) on winding up the company is limited to the (usually nominal) amount stated in the company's articles. It is commonly used for not-for-profit companies. | Considered as a government controlled company if government is a member and/or if it exerts control by: being able to appoint, approve or remove directors; providing funding, with rights of control over how that funding is spent; owning a share conferring special rights; or being able to set or constrain corporate policy. | Department of Transport: High Speed Six (HS6) Ltd (by guarantee)   |
| Private limited by shares    | Incorporated under the Companies Act 2006 and registered at Companies House. | Classified as an <b>executive NDPB</b> . The most frequently used type by "companies in government". Owned by shareholders, separate legal entity, liability limited to amount unpaid on shares, operated on a for profit/commercial basis, cannot raise funds by offering shares to the public. The liability of its owners (the shareholders) is limited to the amount, if any, unpaid on the shares which cannot be publicly traded. Shares in government companies are typically owned by the Secretary of State and have a nominal value of £1.  | Considered as a government controlled company if government is a member and/or if it exerts control by: being able to appoint, approve or remove directors; providing funding, with rights of control over how that funding is spent; owning a share conferring special rights; or being able to set or constrain corporate policy. | Department of Transport: The Pullman Car Company Ltd; Ministry of Defense: BAE Systems Marine (Holdings) Ltd (Special share). Ordnance Survey Limited is a company limited by shares wholly owned by the Secretary of State for Business, Innovation and Skills. |

|                          |  |  |   |
|--------------------------|--|--|---|
| Public limited by shares | Incorporated under the Companies Act 2006 and registered at Companies House.                 | Undertakes commercial function. Has features of private limited by shares but name ends with words 'public limited company' or 'PLC' and can raise funds by offering shares to the public. The Public Limited Company is permitted to offer shares for sale to the public. It must have issued shares to the public to a value of at least £50,000.  | Her Majesty's Treasury: Royal Bank of Scotland Group plc; Ministry of Defense: AWE plc; Department for Business Innovation & Skills: Rolls-Royce Holdings plc (special share), BAE Systems plc (special share)  |
| Royal Charter            | Recommendation of the Privy Council.   | Classified as an <b>executive NDPB</b> . A special corporate form used for "companies in government". Created by Royal Charter which sets out the terms of operation. A Royal Charter is a way of incorporating a body, that is, turning it from a collection of individuals into a separate legal entity. A body incorporated by Royal Charter has all the powers of a natural person, including the power to sue and be sued in its own right. These have no shares or members and are created by Royal Charter which sets out the terms of operation.   | Her Majesty's Treasury: Bank of England (Royal Charter), University of Cambridge, Institute of Internal Auditors - UK and Ireland   |
| Statutory                | Created by bespoke legislation (Act of Parliament) and may be modified by later legislation. | A special corporate form used for "companies in government". Entities incorporated pursuant to legislation other than Companies Act 2006. They carry out a wide range of administrative, commercial, executive and regulatory or technical functions which are considered to be better delivered at arm's length from ministers. These are also called companies created by legislation or corporations. They have no shares or members. Work within a strategic framework set by ministers, undertaking or delivering a public service in a given sector. Generally, commercial operations are undertaken to support strategic goals, rather than for profit. | Department for Transport: Civil Aviation Authority established in 1972 under the terms of the Civil Aviation Act 1971; Ministry for Culture, Media & Sport: Olympic Delivery Authority established in 2006 under the London Olympic Games and Paralympic Act 2006, dissolved in 2014. |

Source: The National Audit Office, 2015

## ANNEX 3. PROCESS FOR SELECTING LEGAL FORMS AND GOVERNANCE ARRANGEMENTS FOR PUBLIC ENTITIES IN AUSTRALIA/ STATE OF VICTORIA



\* usually a company limited by shares

Source: VPSC, 2013

## ANNEX 4. WAGE SETTING

**Austria:** Social dialogue is characterised by close voluntary cooperation between employers, employees and the state, a specifically Austrian manifestation of corporatism (“social partnership”). Austrian labour law significantly privileges multi-employer over single-employer bargaining. At the same time, there are certain exemptions, for example the state majority owned the Austrian Post Company (Österreichische Post AG) operating in the postal services sector has a company level agreement, at ÖBB, the Austrian Federal Railways, a holding company for railway services, owned by the state an overwhelming majority of the sector’s workers are covered by special ÖBB service regulations. Most of the ÖBB rail workers are still public employees with special service employment regulations (which are therefore excluded from formal bargaining).

*Source: CEEP, 2010*

The **Czech Republic:** In the public sector (non-enterprise sphere), the government is the trade unions’ partner for pay bargaining. The legislation on pay in the non-enterprise sphere is prescriptive and leaves no room or only very little room for pay demands to be governed by an individual contract or for collective bargaining. For the commercial enterprise sphere trade unions active in the sectors mainly conclude company-level agreements.

*Source: CEEP, 2010*

**Hungary:** As the wage scale and the budget of the public sector institutions are set by law, collective bargaining, in the strict legal sense, is limited to workplace level agreements. Moreover, in central administration even workplace level bargaining is not allowed, the scope of the legislation being limited to participation in higher consultative bodies. For all public employees (including the vast majority of the health sector employees, as hospitals are mainly owned by local authorities) annual pay agreements are regularly concluded in the KÉT. Köztisztviselői Érdekegyeztető Tanács (KET) is a separate forum for the dialogue between the government and the civil servants working in the central administration. In case of commercial SOEs collective bargaining is organised at company and sectoral level.

*Source: CEEP, 2010*

The **Netherlands** does not use formal collective agreements in the state sector. Instead, negotiations result in joint conclusions<sup>13</sup> which are implemented through government decisions. The importance of these conclusions is strengthened by a government ordinance requiring trade union agreement to any changes in pay and employment conditions. The negotiations take place on a single level, with some issues being negotiated by the Ministry of the Interior for the whole of the government, while others including pay are negotiated at sector level. There are currently thirteen pay bargaining sectors. The Netherlands

practices top-down budgeting. Each year, the Minister of the Interior calculates and decides on a pay index that determines the economic envelope for pay setting. The pay index is based on a reference model (Referentiemodel) that takes account of pay developments in the private sector as well as of developments of the social contributions paid by employers. However, the government can decide to amend the index through a unilateral policy decision. During the spring, the Minister of Interior issues the pay envelop letter (Ruimtebrief) to cabinet sectors and their subsectors about the calculated levels of pay related expenses concerning the current year. If the pay increases agreed to by an employer is higher than the pay index, then that employer has to finance this by reductions in other parts of its budget.

*Source: Rexed, K. et al., 2007*

In **New Zealand** Responsibility for human resource management is exercised at the agency level. Generally speaking, the chief executives of state entities have all the rights, responsibilities, and powers of an employer, including hiring and dismissal of employees. New Zealand has a single level system for collective agreements. The pay of state employees is regulated in individual contracts or collective agreements. Collective bargaining is considered as an important part of building productive employment relationships, but the proportion of New Zealand labour covered by collective agreements in the public sector has fallen to 49%. New Zealand has a more detailed classification of public entities than most countries, and the degrees of freedom in operational matters and pay arrangements varies substantially.

Another factor worth noting is that the collective agreements do not have to cover the actual pay setting; that is sometimes done through a less formal consultative process for workers covered by the collective agreements.

The State Service Commission issues bargaining parameters that reflect the government's policies and expectations for collective bargaining and employment relations. They also aim at encouraging co-ordination and fostering a whole-of-government approach to employment relations and conditions. Formally, the bargaining parameters only apply to collective bargaining in the public service. However, to the degree that the parameters set out general government policies and expectations on employment issues, public service departments are also expected to apply them in all other setting of terms and employment conditions. Crown entities are also expected to have regard to the parameters. Those New Zealand state sector agencies that are subject to government budget controls are given budget allocations for various categories of services that they provide, and are expected to manage all input costs, including remuneration, within those allocations. There are no automatic adjustments of budgets for most pay-setting entities. The normal baseline is last year's budget plus adjustments for structural changes. Pay setting entities are expected to search for ways of reducing costs and improving productivity in order to be able to finance



pay increases. If they consider that they need a higher budget allocation, they have to submit their business cases and argue for them.

There is no set model for taking developments in the private sector into account, though nothing prevents chief executives from doing so. The ability of pay setting entities to argue that their labour market situation and recruitment and retention or capability challenges are distinctive can play a role in the budget process. All state sector entities can run operating deficits, but departments require explicit government authorisation to do so and many crown entities require approval to borrow, which imposes a degree of discipline on spending decisions that create deficits.

*Source: Rexed, K. et al., 2007*

The **United Kingdom** uses a single level system for collective agreements. Pay for certain groups of civil servants is however set by government decisions after proposals from independent pay review bodies. Each pay setting entity is empowered to set its own rates of pay and establish its own grading structure under a delegated system of department and agency wage setting. All departments have designed pay systems to suit their business needs, although there are similarities in the grade and pay band structures used. The Cabinet Office has overall responsibility for managing the government's policies on pay and performance management for civil servants. The Treasury, working with the Cabinet Office, operates a pay remit system to ensure bargaining units operate within affordable and consistent parameters, and that pay systems are modernised (e.g. to support improved delivery and promote equality and fairness). The pay remit process covers the pay setting arrangements for most of the civil service and for public sector workers in non-departmental public bodies. Each bargaining unit has to secure annual approval for their pay bids from the Treasury. As part of this process, the Treasury sets out a framework that serves as bargaining parameters, and includes affordability reference points, as well as approval criteria for pay remits. In general, departments will need to demonstrate that their pay remit is affordable and that it should not generate inflationary pressure. Departments are also requested to consider their pay, relative to others in the same relevant labour market segment. The main agencies and non-departmental public bodies need to have the approval of their minister before submitting their pay remit to the Treasury. In addition, the Public Service Pay Committee will have the power to scrutinise particularly contentious individual remits. The Pay Review Bodies use available evidence and their own independent research to formulate recommendations on the remuneration of employees within their sector. Their recommendations are submitted to the Prime Minister and Secretaries of State early in each new year.

For the public services (central and local government, education, health, armed forces, police and fire services) there are four main systems of determining pay and working conditions: 1. independent pay review bodies; 2. sectoral collective bargaining on behalf of

a number of employing bodies; 3. departmental or agency bargaining under central guidelines; and 4. national bargaining for integrated organisations with nominally separate employers. Examples of each are as follows: 1. doctors and dentists; 2. local government; 3. civil service; 4. National Health Service (NHS).

There has never been a sharp legal distinction between industrial relations in the public and private sectors. There are some significant distinctions between the public and private sector in relation to collective bargaining and wage setting (in the private sector this is largely done at individual or company level). For SGIs in Railways, Electricity, Gas, Water, Post and Broadcasting, collective bargaining with strong unions typically takes place at company level. Shareholder Executive<sup>170</sup> is involved in liaising with enterprises under its remit in respect of remuneration principles of CEO and board members.

*Source: Rexed, K. et al., 2007*

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<sup>170</sup> The Shareholder Executive (ShEx) managed the government's shareholder relationships with businesses owned or part-owned by the government. In April 2016 the Shareholder Executive was brought together with UK Financial Investments (UKFI) under a single holding company – UK Government Investments (UKGI). This is part of the government's plan to deliver a centre of corporate finance and governance expertise for government.

## ANNEX 5. FINANCING AND INSTITUTIONS RESPONSIBLE FOR PRICES REGULATION FOR SERVICES OF GENERAL INTEREST (SGIS) IN SELECTED OECD COUNTRIES

Social tariffs/prices in EU countries:

| Country           | Social tariffs/prices  |
|-------------------|--|
| Austria AT        | For Electricity, Railways, Heating, Broadcasting, Public administration, Education, Vocational training, Childcare services  |
| Belgium BE        | For Water, Waste water and in some cases Public transport  |
| Bulgaria BG       | Public contributions for post, gas, transport, water, heating, health, education, vocational training, social protection, social housing, care (child, disabled, elderly), cultural  |
| Cyprus CY         | Social tariff for telecom, for electricity (right to energy/social aid for poor households). Recovery of costs for water. Affordable prices to low income households   |
| Czech R. CZ       | Public grants for transports, education, vocational training, social housing, care (children, disabled, elderly), cultural services  |
| Germany DE        | Free for public administration, education and vocational public service, compulsory and complementary social protection, care of disabled. Social tariffs for social housing   |
| Denmark DK        | Public subsidies to individuals for electricity, gas, heating  |
| Estonia EE        | For some categories of users (students, seniors, inhabitants of islands) for railways, education, culture  |
| Spain ES          | Electricity  |
| Finland FI        | Transport (railways, regional and local), Social housing   |
| France FR         | Electricity, Gas, Telecom, Railways, Broadcasting,   |
| Greece GR         | Telecom (elderly), Electricity and Water (families), Transport (disabled, families, students)  |
| Hungary HU        | Electricity, Gas, Transport (railways, regional and local), Health, Culture  |
| Ireland IE        | Regional and local transport, Water, Waste water, Heating, Health, Education   |
| Italy IT          | For Telecom, Electricity, Railways, Regional and Local transport, Ambulatory health services, Higher education, Complementary social protection, Housing, Care, Culture  |
| Lithuania LT      | Electricity, Transport (railways, regional and local), Water, Waste, Heating, ambulatory Health services, Education, Vocational training, child and disabled Care, Culture   |
| Latvia LV         | Transport (railways regional and local), Water, Waste water, Heating   |
| Luxemburg LU      | Postal services. Public grants for Railways, Regional and local transport, Waste water, Health, Education, Social protection, Social housing, Care (children, disabled, elderly)   |
| Malta MT          | Electricity, Water, Waste water (households in need), Public education, Vocational training, Public medical health services (free of charge), Transport (subsidised between Malta and Gozo, for Gozitans), Social housing, other forms of free social protection |
| Netherlands NL    | Health, House rent, Public broadcasting, Education, Public transport (students, elderly, disabled); Culture, Sport (in some municipalities), etc.  |
| Poland PL         | Rail and road passenger transport (children, students, elderly, disabled), electricity (in project), cultural services (children, students, elderly, disabled)   |
| Portugal PT       | Water, Electricity, Local transport, Railway passenger transport   |
| Romania RO        | Regional and local transport of passengers (students, elderly)   |
| Sweden SE         | Free of charge primary and secondary education, higher education, vocational training  |
| Slovenia SI       | Public contributions for Railways (passengers and freight), Local and Regional transports. Water. Waste water. Broadcasting. Health and Care. Education. Social protection. Culture  |
| Slovakia SK       | Transports (railways, regional and local)  |
| United Kingdom UK | Free health services, primary and secondary education  |

## Regulatory agencies in EU countries:

| Country           | Regulatory Agencies   |
|-------------------|---|
| Austria AT        | Anti-trust Authority. Specific Authorities for Telecommunications, Electricity, Gas, Railway transport, Air transport, Broadcasting, Financial services, Health, Education          |
| Belgium BE        | For Telecommunications, Energy, Broadcasting  |
| Bulgaria BG       | Energy and Water Regulatory Commission. Communications Regulatory Commission. Supervision by ministries for health, education, transportation. Protection of Competition            |
| Cyprus CY         | Office for telecom and postal services. Energy sectors. Independent authority for electricity networks. Radio-television Authority. Civil aviation                                  |
| Czech R. CZ       | Independent Authorities for telecommunications, post, energy. Majority of SGLs regulated by central authorities (rail, civil aviation, navigation, broadcasting, education, health) |
| Germany DE        | Federal Network Agency for telecommunications, postal services, electricity, gas, railways, Agency of public health for quality and effectiveness                                   |
| Denmark DK        | Telecom, Energy, Aviation   |
| Estonia EE        | Competition Authority includes Energy and Communications  |
| Spain ES          | For Telecommunications, Energy (electricity and hydrocarbons)   |
| Finland FI        | For Communications, Energy, Transport safety, Consumer, Competition, Welfare and health   |
| France FR         | For Telecom and Postal services, Energy (electricity and gas), Broadcasting, Railways, Financial services   |
| Greece GR         | For Telecom and Post, Communication security and Safety, Energy, Gas, Maritime transport, Local transport of passengers, Radio and television, Credit and Financial Institutions    |
| Hungary HU        | For Communications, Competition, Consumer protection, Energy, Transport, Broadcasting, Water and Environment, Health care   |
| Ireland IE        | For Telecom, Energy, Transport for Greater Dublin, Civil aviation, Maritime transport, Broadcasting, Health, Financial services and Competition Authority                           |
| Italy IT          | For Telecom and broadcasting, Energy, Maritime transport, Antitrust Authority   |
| Lithuania LT      | For Communications, Energy, Transport, Water, Heating, Quality of higher education, Insurance, Competition council, Consumer rights   |
| Latvia LV         | Two-level regulation system of Utilities (Public Utilities Commission at State level and local government regulators), Competition Council  |
| Luxemburg LU      | Competition Council. Regulation Institute of Luxembourg for telecom, post, electricity, gas. Independent Commission of Broadcasting. Financial services and Insurance               |
| Malta MT          | For Telecommunications, Broadcasting, Transport, in process for health, Financial services  |
| Netherlands NL    | For Post and telecommunications, Competition authority for energy, transports, Broadcasting, Financial markets  |
| Poland PL         | For Communications, Energy, Financial market, Broadcasting, Roads and Highways, and Office of Competition and Consumer Protection   |
| Portugal PT       | For Communications, Energy, Broadcasting, Health, Water, Waste water, Air transport, Railway transport, etc., and the Authority of Competition                                      |
| Romania RO        | Competition Council, Protection of Consumers, Public Utilities Regulatory Authority, Energy, Transport, Communications  |
| Sweden SE         | For Post and Telecom, National agencies in charge of social services, Education, Financial markets  |
| Slovenia SI       | For Telecommunications, Post and Electronic Communications. Broadcasting. Energy. Rail transports. Higher Education   |
| Slovakia SK       | For Communications, Electricity, Gas, Broadcasting, Air transport, Railway transport  |
| United Kingdom UK | For Communications, Gas and Electricity, Water, Rail, Civil aviation, Competition   |

## Austria

### Main financing methods of SGIs

| Fees/payment by users/clients  | Public grants/aids  | Taxes/contributions   | Insurance funds  | Incomes from the activity                           | Social tariffs/prices   |
|--|---|---|--|---|---|
| Telecommunications<br>Postal services<br>Production of electricity<br>Transport-distribution of electricity<br>Gas transport-distribution<br>Railway transport of passengers<br>Freight rail transport<br>Air transport<br>Inland water transport<br>Maritime transport<br>Water (more than 99% cost coverage)<br>Waste water<br>Heating<br>Broadcasting<br>Primary and secondary education (private schools)<br>Higher education<br>Vocational training<br>Complementary social protection<br>Social housing<br>Childcare services (0-6 years)<br>Care of disabled<br>Financial services<br>Cultural services | Railway transport of passengers (overall, about 30-40% cost coverage)<br>Freight rail transport (overall, about 30-40% cost coverage)<br>Vocational training<br>Social housing<br>Childcare services (0-6 years)<br>Care of disabled<br>Cultural services | National public administration<br>Regional and local public administration<br>Hospital health services<br>Ambulatory health services<br>Primary and secondary education<br>Higher education<br>Compulsory social protection | Hospital health services<br>Ambulatory health services | Broadcasting<br>Higher education (research funding) | Production of electricity (ongoing discussions)<br>Railway transport of passengers (students, pupils, families, apprentices, seniors, etc.)<br>Heating<br>Broadcasting (blind persons, persons receiving social welfare, etc.)<br>National public administration<br>Regional and local public administrations<br>Higher education<br>Vocational training (women, migrants, etc.)<br>Childcare services (0-6 years)<br>Care of disabled<br>Elderly care<br>Financial services <sup>table 05</sup><br>Cultural services (seniors, students) |

### National authorities responsible for setting pricing and/or tariff policies

| Central government             | Länder   | Local government  | Regulatory agencies   | Providers   |
|--------------------------------|--|---|---|---|
| National public administration | Heating<br>Broadcasting<br>National public administration<br>Länder public administration<br>Local public administration<br>Childcare services (0-6 years) | National public administration<br>Local public administration | Telecommunications<br>Production-transport-distribution of electricity,<br>Distribution of gas<br>(network access; E-control sets tariffs for Ökostrom) | Railway transport of passengers (transport of passengers) |

## The Czech Republic

### Main financing methods of SGIs

| Fees/payment by users/clients  | Universal service fund | Public grants   | Insurance funds   | Incomes from the activity                 | Sponsorship                     |
|--|------------------------|---|---|---|---------------------------------|
| Telecommunications<br>Postal services<br>Production of electricity<br>Electric networks<br>Distribution of electricity<br>Gas transport<br>Distribution of gas<br>Railway transport of passengers<br>Freight rail transport<br>Regional and local transport of passengers<br>Air transport<br>Inland water transport<br>Maritime transport<br>Water<br>Waste water<br>Heating<br>Broadcasting<br>National, regional and local public administration<br>Hospital health services<br>Ambulatory health services<br>Primary and secondary education (private schools)<br>Higher education<br>Vocational training<br>Social housing<br>Childcare services<br>Care of disabled<br>Elderly care<br>Financial services<br>Cultural services | Telecommunications     | Railway transport of passengers<br>Regional and local transport of passengers<br>Primary and secondary education (public and private schools)<br>Higher education<br>Vocational training<br>Social housing<br>Childcare services<br>Care of disabled<br>Elderly care<br>Cultural services | Hospital health services<br>Ambulatory health services<br>Compulsory social protection<br>Complementary social protection | Production of electricity<br>Broadcasting | Complementary social protection |

### Authorities responsible for setting pricing and/or tariff policies

| Parliament                               | Central government                         | Regional and local government              | Regulatory agencies        |
|--|--|--|----------------------------|
| Broadcasting                             | Railway transport of passengers            | Regional and local transport of passengers | Telecommunications         |
| National public administration           | Freight rail transport                     | Water                                      | Postal services            |
| Regional and local public administration | Regional and local transport of passengers | Waste water                                | Electricity                |
| Primary and secondary education          | Hospital health services                   |  | Gas transport-distribution |
| Higher education                         | Ambulatory health services                 |  | Heating                    |
| Compulsory social protection             | Social housing                             |  | Financial services         |
|  | Childcare services                         |  |                            |
|  | Care of disabled                           |  |                            |
|  | Elderly care                               |  |                            |

Source: CEEP, 2010





