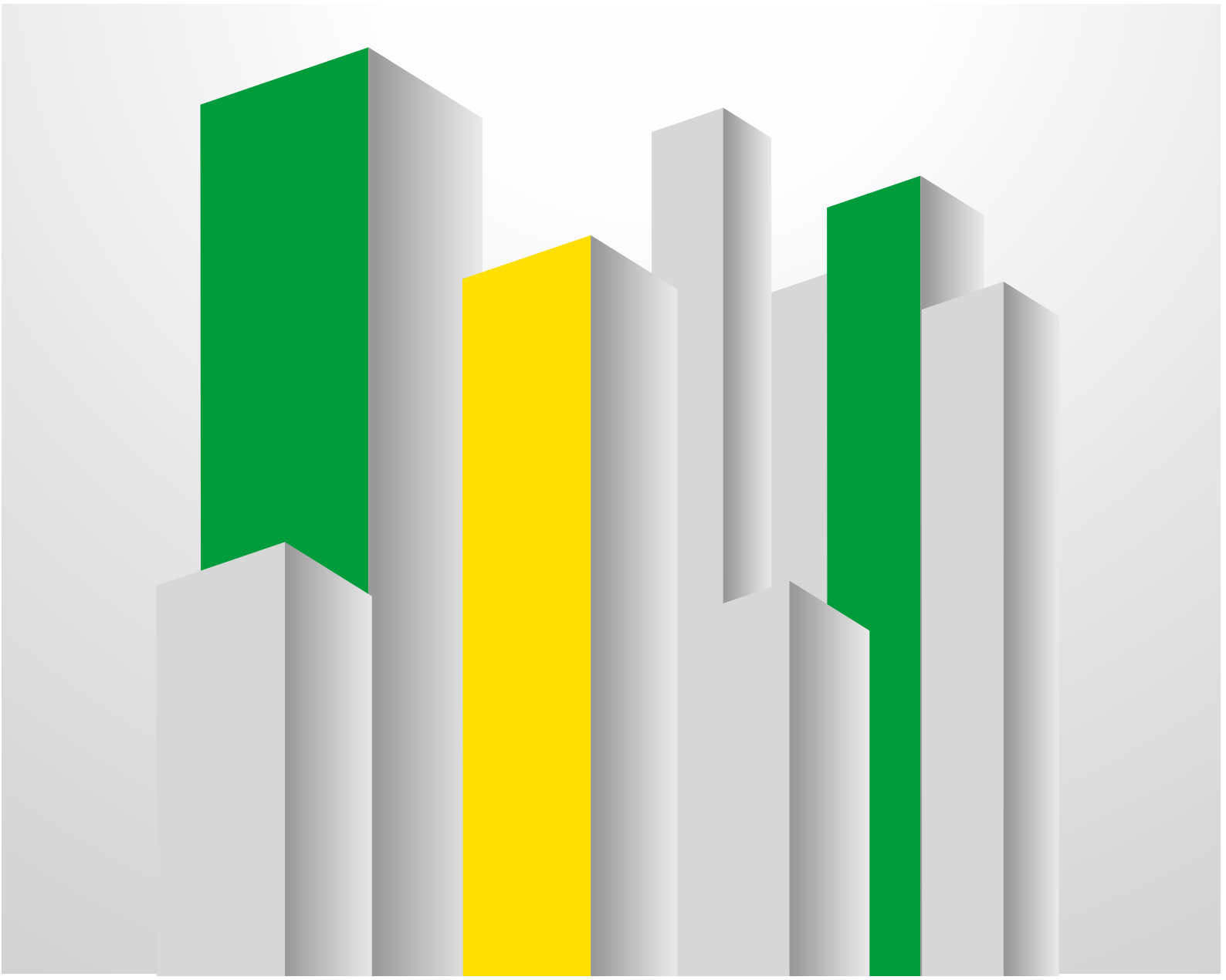
OECD Review of the Corporate Governance of State-Owned Enterprises

BRAZIL



OECD

OECD Review of the Corporate Governance of State-Owned Enterprises

BRAZIL

Please cite this publication as:

OECD (2020), *OECD Review of the Corporate Governance of State-Owned Enterprises: Brazil,* http://www.oecd.org/corporate/soe-review-brazil.htm

Erratum: Figure 4.2 data was corrected on 10 February 2021.

Foreword

This document presents a review evaluating the corporate governance framework of the Brazilian state-owned enterprise sector relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises (the "SOE Guidelines"). It was prepared at the request of the Federative Republic of Brazil to support its objective of strengthening its ownership and governance framework for SOEs. The project benefits from financial support from the UK Prosperity Fund.

The project commenced in December 2019 when, following an initial submission of data and other information by the Brazilian authorities, the OECD Secretariat undertook a fact-finding mission to Brazil. Following the mission, further information was submitted by the Brazilian authorities. Subsequently, an interim version of this report was presented for consideration at the Working Party on State Ownership and Privatisation's meeting in March 2020. At that occasion, the Working Party identified and communicated additional information that it needed in order to reach an opinion about Brazil's implementation of the SOE Guidelines. In September 2020, following the submission of more data and other information by the Brazilian authorities, the OECD Secretariat undertook a (virtual) second fact-finding mission to Brazil. In October 2020, the Working Party discussed and approved the final version of this report.

The document is replete with references to information obtained by the "OECD team", which refers basically to information gathered during the two missions, research drawing on public sources of information and through subsequent interaction with the Ministry of Economy's Secretariat of Coordination and Governance of State-Owned Enterprises (SEST) and representatives of other Brazilian authorities as well as civil society and representatives of the business community.

At Brazil's request, and unlike earlier SOE reviews, this report also addresses current and future privatisation of SOEs and divestments of state minority shareholdings. This part of the analysis draws on, where relevant, the publication OECD (2019), "A Policy Maker's Guide to Privatisation". It should also be noted that the current report focuses on federally-owned SOEs, while those owned at state or municipal level are not covered under this review.

This report was developed by Caio Figueiredo C. de Oliveira under the supervision of Hans Christiansen of the Corporate Governance and Corporate Finance Division of the OECD Directorate for Financial and Enterprise Affairs. The author is grateful to Daniel Blume and Alison McMeekin (OECD) for valuable comments and inputs. Further thanks to Henrique Sorita Menezes and Katrina Baker (OECD) for excellent editorial support.

Table of contents

Tables

Figures

Boxes

List of abbreviations

B3	Brazil's Stock Exchange ("Brasil Bolsa Balcão")
BNDES	National Bank for Economic and Social Development ("Banco Nacional de Desenvolvimento Econômico e Social")
CADE	National Competition Authority ("Conselho Administrativo de Defesa Econômica")
CAS	General Coordination of Union's Corporate Affairs within PGFN
CEF	Savings Bank fully-owned by the Federal Government ("Caixa Economica Federal")
CGPAR	Interministerial Committee on Corporate Governance and Corporate Equity Management ("Comissão Interministerial de Governança Corporativa e de Administração de Participaçoes Societárias da União")
CGU	Office of the Comptroller General ("Controladoria-Geral da União")
CMN	National Monetary Council ("Conselho Monetário Nacional")
CPPI	Council for the Investment Partnership Program ("Conselho do Programa de Parcerias de Investimentos")
COPAR	General Coordination of Equity Holdings ("Coornenação-Geral de Participaçoes Societárias") within the National Treasury
CRSFN	Administrative Appeal Body for the Financial Markets ("Conselho de Recursos do Sistema Financeiro Nacional")
CVM	Brazilian Securities and Exchange Commission
IBGC	Brazilian Institute of Corporate Governance ("Instituto Brasileiro de Governança Corporativa")
IG-SEST	Index of Governance for national SOEs of the Secretariat of Coordination and Governance of State-Owned Enterprises
IFRS	International Financial Reporting Standard

JSC	Joint stock company
LLC	Limited liability company
M&A	Mergers and acquisitions
PGFN	National Treasury Attorney's Office
PND	National Program of Divestment of National Public Assets (“Programa Nacional de Desestatizaçao”)
PPE	SOEs' Staff Profile
SEDDM	Special Secretariat of Privatisation, Divestments and Markets (“Secretaria Especial de Desestatização, Desinvestimento e Mercado”) of the Ministry of Economy
SEFAZ	Special Secretary of Finance (“Secretaria Especial de Fazenda”) of the Ministry of Economy
SEST	Secretariat of Coordination and Governance of State-Owned Enterprises (“Secretaria de Coordenação e Governança das Empresas Estatais”) – within the Ministry of the Economy
SIEST	National SOEs information system (“Sistema de Informações das Estatais”)
SIOP	Federal Government Integrated Planning and Budget System (“Sistema Integrado de Planejamento e Orçamento”)
SOF	Secretariat of the Federal Budget (“Secretaria do Orçamento Federal”) – within the Ministry of the Economy
SPU	Secretariat of Patrimony of the Union (“Secretaria do Patrimônio da União”) – within the Ministry of the Economy
STN	National Treasury Secretariat (“Secretaria do Tesouro Nacional”) – within the Ministry of the Economy
STF	Supreme Federal Court (“Supremo Tribunal Federal”)
TCU	Supreme Audit Institution (“Tribunal de Contas da União”)
WEF	World Economic Forum

Part I. State ownership landscape in Brazil

Chapter 1. Economic and political context in Brazil

The Federative Republic of Brazil, hereafter referred to as Brazil, is the largest country in Latin America and it is the fifth largest country in the world by territory. The country of 208 million people is administratively subdivided into 26 states, plus the Federal District, and 5 563 municipalities. The population predominantly lives in urban areas (84%) (Brazil, 2018a).

1.1. Economy

Brazil's economic performance has been unsteady and somewhat lacklustre in the past decade. An economic crisis began in 2014 and a recession took hold in 2015-2016. Partly reflecting this the average growth rate between 2011 and 2018 in Brazil was 0.1% compared to the G20's average of 3.6%. A loss in real GDP of 6.5% is projected for 2020 (OECD, 2020b).

The size of the Brazilian economy ranks 10th out of 141 countries, with a value-added currently accounting for 2 991 billion USD, or 2.5% of world GDP. Following years of sluggish growth, unemployment remains near record highs (12.5%) and poverty rates are resurging after the advances made in the 2000's (WEF, 2019). Brazil's income inequality, measuring 53.3, is higher than emerging markets (45.4) and advanced economies (30.4)[1] (OECD, 2019b).

1.2. Government

The political system in Brazil takes the form of a presidential democracy. The President is elected as both head of state and head of government for a maximum of two four-year terms. The sixth and current 1988 Constitution bestows significant powers on the President, including the ability to appoint the Cabinet and other key office positions in the administration, as well as the 11 Supreme Court Justices subject to Senate approval. The current President, Jair Bolsonaro, became the 38th President of Brazil on 1 January 2019. President Bolsonaro, who was elected as a member of the Social Liberal Party ("Partido Social Liberal" – PSL), received the required absolute majority vote in the second round of the election, at more than 55% of the electorate, to become President. Brazil's 26 states and the Federal District have power to adopt their own Constitutions and laws, subject to limitations imposed by the Federal Constitution.

In 2014, Brazil's public sector employed 11.9% of workers. Compensation of these public employees accounted for 28.9% of total government expenditure (OECD, 2017c). A 2019 Presidential decree was issued to improve civil service capability, establishing minimum criteria for filling civil service senior positions. The decree may help to address a lack of systematic and comprehensive appointment criteria for senior positions in the civil service, and inconsistent application of technical or managerial requirements for managerial

[1] Based on 2017 data for Brazil. The Gini coefficient measures the extent to which the distribution of disposable income among household deviates from perfect equal distribution.

positions (OECD, 2019c). Brazil's Federal centre of government tends to share more non-core responsibilities with other bodies of central administration than do most OECD countries, including other Federations (OECD, 2019d).

Brazil's national legislative authority takes the form of a bicameral parliament. The lower chamber – the Chamber of Deputies ("Câmara dos Deputados") – has 513 members elected through proportional representation on 4-year terms. The 81 members of the upper chamber – the Federal Senate ("Senado Federal") – are elected by plurality vote in multi-member constituencies for 8-year terms. The legislative oversight function is supported by Brazil's Supreme Audit Institution ("Tribunal de Contas" – TCU), whose mandate is established in the 1988 Constitution.

1.3. Legal system

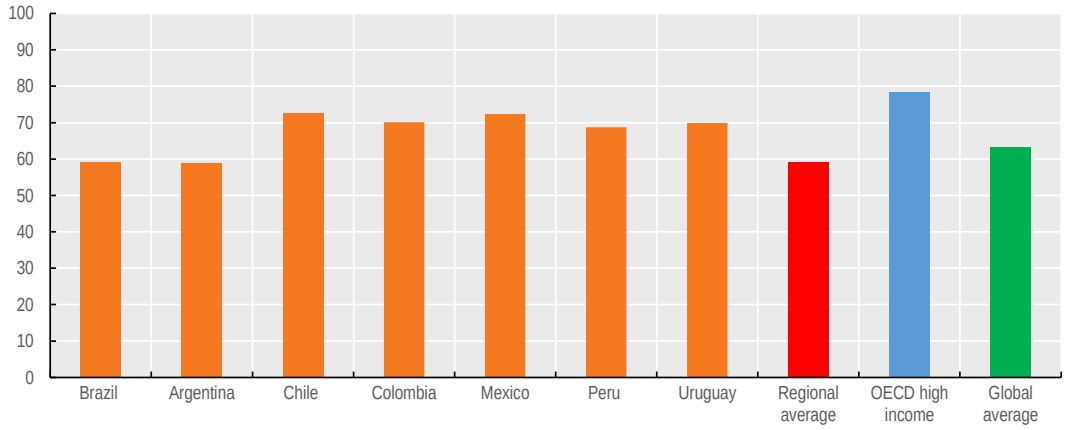
Brazil's legal system is based on the Civil Law tradition. Judicial powers are vested in the system of the Federal Supreme Court (Supremo Tribunal Federal - STF), Superior Court of Justice, courts of appeal (Regional Federal Courts in the Federal Branch of the Judiciary and State Appellate Courts in the State Branch of the Judiciary) and Judges (Federal or State Judges depending on the branch). The President appoints the 11 Justices of the STF, subject to Senate approval. At the apex of the legal system, the STF has exclusive powers to: (i) declare federal or state laws unconstitutional; (ii) order extradition requests from foreign States, and; (iii) rule over appeals from lower courts where such an appeal may challenge the Constitution (OECD, 2007). Suits are filed in the Federal or in the State branches depending, as a rule, if one of the parties is the Federal Government: if the Federal Government is one of the parties, the Federal branch is competent; and the State Branch is competent otherwise.

A 2019 study showed that more than one-third of citizens believe that all or most of Brazil's judges are corrupt. While this figure rose from 21% to 34% between 2017 and 2019, judges remain among the more trusted of public figures, behind only journalists and religious leaders and well ahead of parliamentary, governmental and business officials (TI, 2019).

1.4. Business climate

Brazil ranks 124 out of 190 countries in terms of the World Bank's ranking of the "ease of doing business" Figure 1.1. Ease of Doing Business. Brazil's ranking is strengthened by its score on 'starting a business' and 'getting electricity' but is brought down by lower scores, primarily in the area of 'paying taxes'. Brazil saw a slight increase in its ranking between 2018 and 2019, which brought it closer to the level of its regional peers (World Bank, 2020).

Figure 1.1. Ease of Doing Business



Note: Distance to frontier score: 0 = lowest performance, 100 = frontier or highest performance. The distance to frontier score captures the gap between an economy's performance and a measure of best practices across the entire sample of 31 indicators for 'doing business' topics.
Source: World Bank, 2019, *Doing Business Ranking*. Brazil is 71st in the World Economic Forum's 2019 *Global Competitiveness Index*, making it 8th in Latin American and Caribbean.

A small recent improvement in its rank reflects some simplifications of cumbersome regulations (regarding the starting and closing of a business). At the same time business leaders continue to bemoan excessive red tape, with Brazil ranking last in the Index on measures of government burden. According to the World Economic Forum, competitiveness is moreover hindered by a lack of a long-term government vision, slow adaptations of the legal framework to digital business models and distortive taxation (WEF, 2019).

Further challenges remain. Investor confidence remains subdued, apparently because of concerns that include political stability, administrative efficiency, the rule of law and continued problems with corruption. These indicators of business sector confidence dropped significantly in 2014 when the Car Wash ("Lava Jato") corruption cases broke and remain lower than the regional average (World Bank, 2020a).

The OECD recently weighed in on the need for further macroeconomic and structural reform in Brazil. The country was advised to reduce uncertainty and promote investment by keeping inflation low, improving labour market conditions that promote consumption and implementing reforms effectively. In particular, the implementation of pension reforms was identified as a lever to improve investment conditions, given its immense strain on the public purse (OECD, 2019a), and a pension reform was effectively implemented at the end of 2019.

1.5. Capital markets

Brazil's financial and capital market system is highly regulated by the National Monetary Council ("Conselho Monetário Nacional" - CMN), the Brazilian Securities and Exchanges Commission (CVM) and the Brazilian Central Bank. BSM, a subsidiary of Brazil's 'B3' Stock exchange, inspects and supervises B3 and its market participants.

CVM is an independent regulatory agency at the federal level, with nationwide jurisdiction over the securities markets. Brazil's Securities Law (Law no. 6385/1976) gives CVM power to regulate publicly held companies, enforce related laws as well as CVM-issued regulations and investigate market participants. Its mandate covers investment funds,

commodities and financial derivatives markets as well. As government bonds are not part of the legal definition of securities (Law 6.385/76, Article 2), the government debt market is regulated by the Central Bank.

Brazil's only stock exchange currently in operation, Brasil Bolsa Balcão (B3), formerly known as BM&FBOVESPA, is located in São Paulo. It manages the organised securities and derivatives markets through registration, clearing and settlement services. B3 acts as a central counterparty for all transactions in its trading system and provides centralised deposit service of assets.

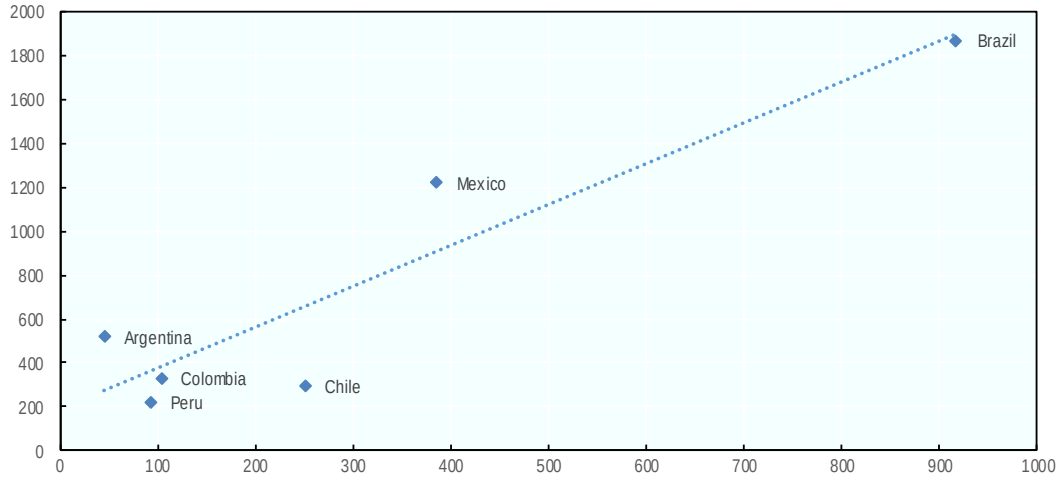
Brazil's B3 has four listing tiers. Brazil's New Market (Novo Mercado – NM) provides the highest corporate governance standards and transparency requirements, and only allows companies to issue voting shares (i.e., other classes of shares – called preferred shares – cannot be issued by companies in NM). The NM hosts the greatest number of listed companies, including the stock exchange itself. Segments 'level 1' (N1), 'level 2' (N2) and the 'traditional' listing segment provide options for both common and preferred shares (KPMG, 2016).

Brazil's 2018 market capitalisation as a percentage of GDP was 49%, compared to an average of 40% among select neighbouring countries (Argentina, Chile, Colombia, Mexico and Peru) (World Bank, 2019). FTSE classified Brazil's equity market as 'Advanced Emerging' in late 2019, putting it in a category with its fellow BRICS country of South Africa, the Czech Republic, Mexico and Turkey among others (FTSE, 2019).

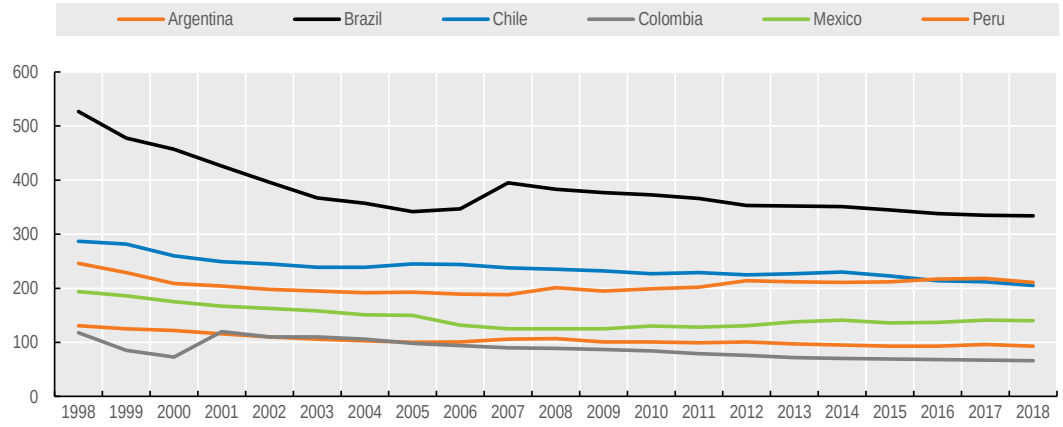
In terms of market value, Brazil's stocks showed gains in 2019, evidenced by an increase in market capitalisation to GDP over a 5-year period despite a reduction in the number of listed companies (figure 1.2a,b).

Figure 1.2. Market capitalisation & Number of listed domestic companies for select regional countries (2018)

A. Market Capitalisation (horizontal axis) to GDP (vertical axis) in USD bin (2018)



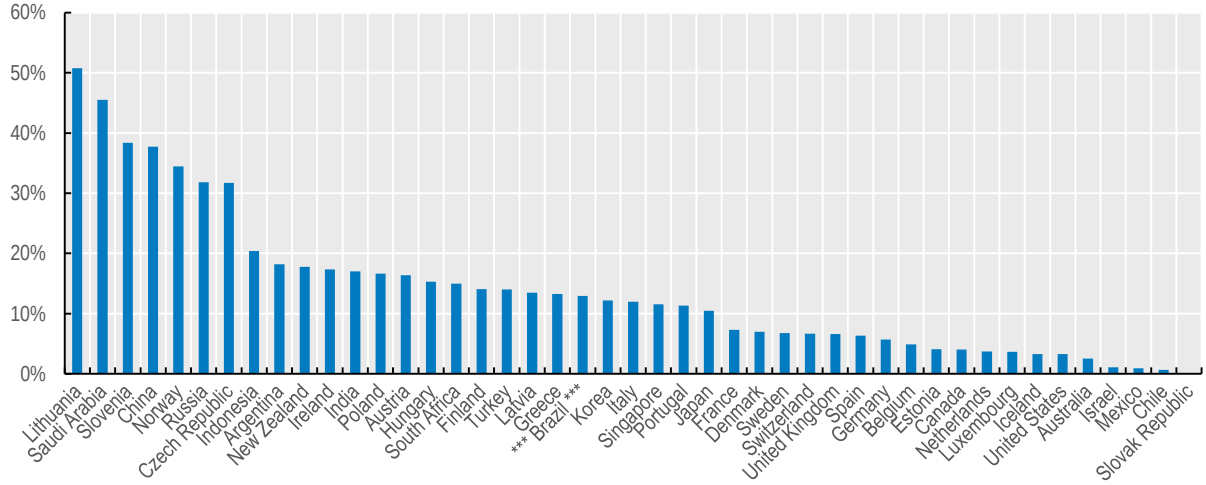
B. Number of listed companies (2018)



Source: OECD elaboration based on World Bank data (2018).

Investment in Brazil's listed companies comes from private corporations (34% of market capitalisation), institutional investors (25%), the public sector (13%) and strategic individuals (8%). The remaining 20% is free-floating. Non-domestic investors are more important owners of listed companies in Brazil than in other countries around the world – accounting for more than 40% of equity ownership (OECD, 2019e). As it is possible to observe in the figure below, the public sector ownership in Brazil is below the median in a sample of 45 jurisdictions.

Figure 1.3. Market capitalisation ownership by the public sector, end-2017



Note: From the original publication referred below, jurisdictions that are not OECD or G20 members were excluded to facilitate the visualisation of the data.
Source: OECD Capital Market Series dataset, FactSet, Thomson Reuters, Bloomber *apud* OECD, 2019e.

The public sector – Brazilian and foreign central governments, local governments, public pension funds and sovereign wealth funds – holds more equity ownership in Brazil through SOEs than its peers do. This is mostly a consequence of BNDES' relevant role as an equity investor and the fact that some SOEs have listed their subsidiaries (e.g., Petrobras Distribuidora). As shown in the table below, the total value invested by the public sector in

Brazilian listed companies as of the end of 2017 had, as its most important origin, SOEs (54% compared to 9% globally). Various levels of government owned 37% (compared to 56% globally) and pension funds owned 9% (compared to 11%) (page 42; OECD, 2019e).

Table 1.1. Origin of the public sector investors by investor type, end-2017

Country	Value of investment (USD)	Governments	Pension funds	SOEs
China	5 843 254 771 712	70%	0%	7%
Norway	776 912 699 392	11%	4%	2%
United States	455 942 930 432	2%	97%	0%
Brazil	61 232 472 064	37%	9%	54%
Argentina	13 553 178 624	36%	61%	4%
Chile	340 813 120	74%	0%	0%
World	10 245 992 734 571	56%	11%	9%

Note: The countries selected for comparison in the current report include the three biggest markets worldwide and the three biggest markets in Latin America by the value of investment by the public sector.
Source: OECD Capital Market Series dataset, FactSet, Thomson Reuters, Bloomberg *apud* OECD, 2019e.

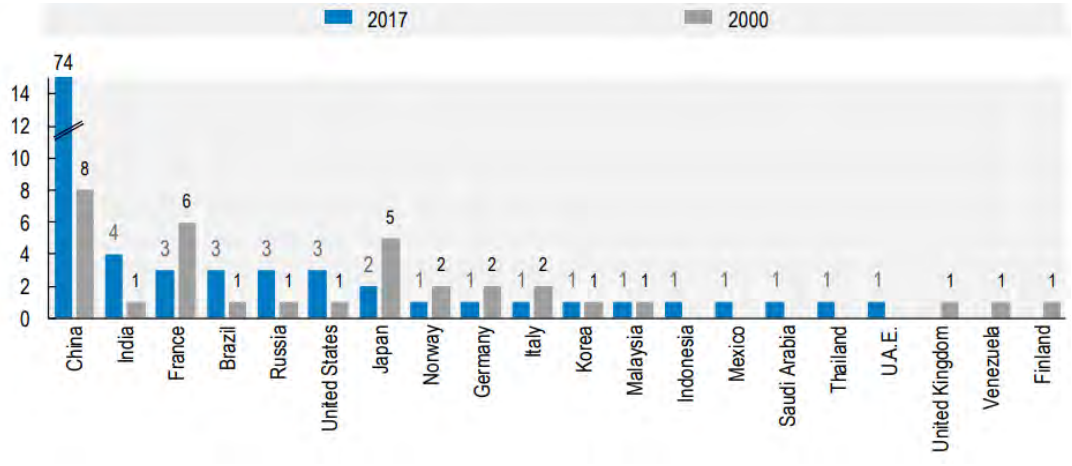
Chapter 2. Overview of the Brazilian state-owned sector

According to the Ministry of Economy, Brazil has 203 Federal SOEs. Forty-six SOEs are under direct control[2] (fully or majority-owned). An additional 157 Federal SOEs are under indirect control – as subsidiaries of five state-owned corporate groups further described later in the report: Eletrobras (71); Petrobras (52); Banco do Brasil - BB (26); CEF (5); and the National Development Bank - BNDES (3). The total number of Federal SOEs declined in recent years: in early 2016 it stood at 228 (Brazil, 2019).

The Federal Government has golden shares in few companies, such as Embraer, but it does not consider that the prerogatives guaranteed by the ownership of those shares represent a controlling power over the companies. Moreover, the Ministry of Economy understands that the ownership by the Federal Government of a minority stake could never mean that the company is an SOE. For example, SEST would not supervise a company with a Government stake of 40% and no other major shareholder (even if, for instance, the Government could elect the majority of the board of directors), and the SOE Law would not apply to such a company.

Several of Brazil's SOEs have significant economic size. Three of them are among the world's largest 500 enterprises, placing the country behind only China (74) and India (4), and at par with France, Russia and the United States (Figure 2.1).[3]

Figure 2.1. Brazil SOEs among the world's largest 500 enterprises (by annual revenue)



Source: OECD calculations based on Fortune Global 500.

[2] Of these, 18 are 'dependent' on the National Treasury in the sense that they rely on fiscal outlays to carry out their operations.

[3] A broad definition of "state-owned enterprise" has been applied in Figure 2.1, including all companies with a state ownership exceeding 10%.

2.1. Sectoral distribution of state-owned enterprises

Table 2.1 provides the sectoral breakdown of the Federal government's 46 majority-owned SOEs, six of which are listed and 40 unlisted. The six listed majority-owned SOEs have a market value of 126 058 million USD and account for approximately 20.9% of market capitalisation (end of 2019).

Table 2.1. Sectoral distribution of directly held Federal SOEs (end of 2018)

	Majority-owned listed entities			Majority-owned unlisted enterprises		
	No. enterprises	No. employees	Market Value (USD m.)	No. enterprises	No. employees	Market Value (USD m.)
Total	6	193 466	126 059	40	301 246	54 790
Communication				1	1 979	104
Electricity	1	14 641	8 728			0
Finance	3	115 136	35 409	5	88 496	45 426
Food Supply				3	4 826	151
Hospital				3	44 932	253
Information Technology (IT)				2	12 885	572
Manufacturing				6	6 857	1 169
Oil and gas	1	63 310	81 577	1	44	17
Postal services				1	105 333	66
Research & Project Management				6	14 381	938
Telecoms	1	379	345			0
Transportation				11	19 791	5 713
Water Infrastructure				1	1 722	380
Listed subsidiaries with independent businesses						
Electricity	1	4	170			
Finance	1	153	14 241			

Note: The number of employees include employees in subsidiaries.
Source: Submissions from SEST.

The Ministries of Economy, of Infrastructure and of Mines and Energy oversee the majority of SOEs under direct Federal control. Together, the Ministry of Economy and the Ministry of Mines and Energy exercise ownership of the five company groups that hold all 157 indirectly controlled SOEs in energy (Eletrobras), oil and gas (Petrobras) and finance (BB, CEF and BNDES). See section Ownership co-ordination for more information on ministries' SOE co-ordination and oversight.

Among the 46 companies in which the Federal Government has direct control, 19 are "dependent" on the National Treasury. In Brazilian vernacular this implies that these 19 companies receive financial resources from the Federal Government`s Fiscal Budget to cover personnel expenses, general costs and capital expenses – excluding, in the latter case, those arising from an increase in shareholding.

Dependent SOEs cannot pay variable remuneration for employees or executive managers, nor have employees or executive managers with remunerations above the constitutional limit (Supreme Federal Court Ministers` salary). Dependent SOEs' expenses and revenues (even when providing a service for private clients) must be in the Fiscal Budget[4]. Another

[4] As a practical consequence, the dependent SOEs realization of income and expenses must be via Federal Government Integrated Financial Administration System (SIAFI), the same that controls all other operations in the federal administration.

implication is that the expenses impact the Government's Constitutional limit to public expenses established by Constitutional Amendment no. 95.

The dependent SOEs include companies from different economic sectors, as it is possible to see in the table below, and they are all fully owned by the Federal Government.

Table 2.2. Federal SOEs dependent on the Fiscal Budget

Company	Industry
AMAZUL – Amazônia Azul Tecnologias de Defesa S.A.	Research - Defense
CEITEC – Centro Nacional de Tecnologia Eletrônica Avançada S.A.	Research - Semiconductors
CODEVASF – Companhia de Desenvolvimento do Vale do São Francisco	Regional Development
CONAB – Companhia Nacional de Abastecimento	Food Security
CPRM – Companhia de Pesquisa de Recursos Minerais	Research - Geology
EBC – Empresa Brasil de Comunicação	Public TV
EBSERH – Empresa Brasileira de Serviços Hospitalares	Health Services
EMBRAPA – Empresa Brasileira de Pesquisa Agropecuária	Research - Agriculture
EPE – Empresa de Pesquisa Energética S.A.	Research and Planning
EPL – Empresa de Planejamento e Logística S.A.	Research and Planning
INB – Indústrias Nucleares do Brasil S.A.	Nuclear Energy
NUCLEP – Nuclebrás Equipamentos Pesados S.A.	Nuclear Energy
HCPA – Hospital de Clínicas de Porto Alegre	Health Services
IMBEL – Indústria de Material Bélico do Brasil S.A.	Arms
VALEC Engenharia, Construções e Ferrovias S.A.	Rail
CBTU – Companhia Brasileira de Trens Urbanos	Rail
GHC – Grupo Hospitalar Conceição	Health Services
TRENSURB – Empresa de Trens Urbanos de Porto Alegre	Rail
TELEBRÁS – Telecomunicaçoes Brasileiras S.A.	Telecommunications

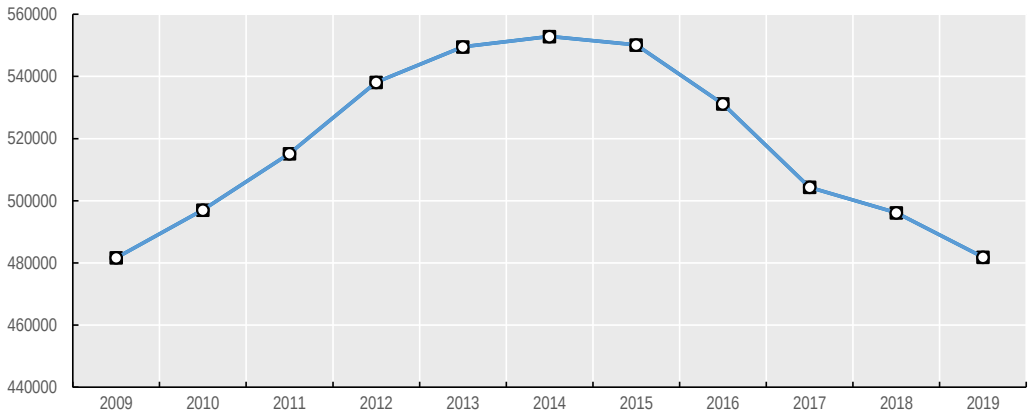
Source: SEST/SEDD/Ministry of the Economy

2.2. State-owned enterprises' share of national employment

According to the Ministry of Economy, wholly or majority-owned SOEs accounted for 481 850 employees in the third quarter of 2019 (Figure 2.2. SOE employment). This shows a return to employment levels of 2009. There was a steady increase in SOE employment from 2006 (not shown) until 2014, around the time that corruption scandals involving SOEs erupted and the economy began to suffer. By early 2020, SEST's estimation of employment by fully and majority-owned SOEs amounted to 491 411 employees. This puts the SOE payroll in Brazil, according to estimates by the Brazilian authorities, at close to 0.8 per cent of the country's total dependent employment, which is below OECD averages[5].

[5] Alternatively, if the estimated employment according to Table 2.1 (481K persons) is divided by Brazil's total dependent employment according to the ILO (92.8 million persons) one arrives to a figure closer to 0.5%.

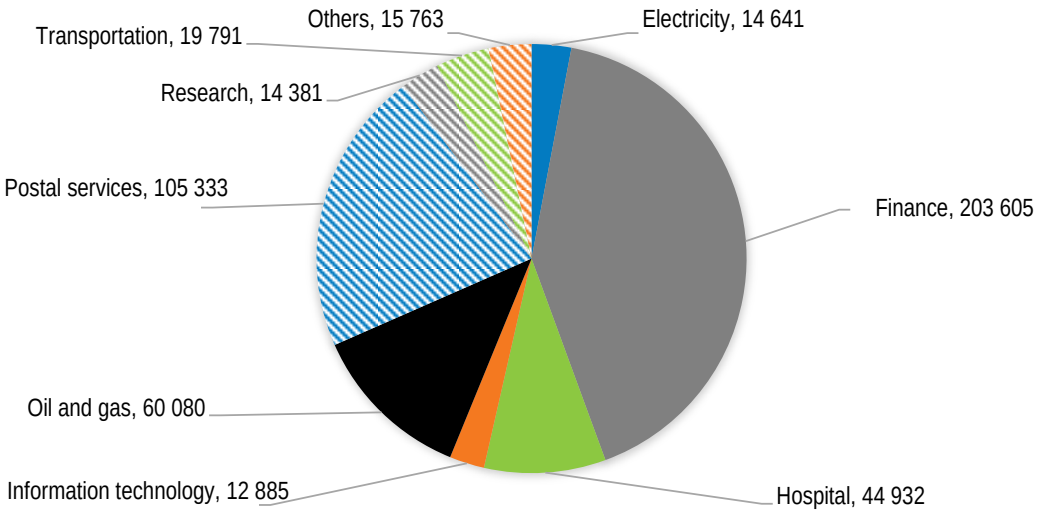
Figure 2.2. SOE employment



Note: This accounts for SOE staffing in the financial sector, by Eletrobras and Petrobras groups, the productive sector and those dependent on the Treasury.
Source: Government of Brazil, 2019.

A sectoral breakdown based on table 2.1 indicates that Brazil's SOE economy is heavily concentrated in three sectors: finance; oil and gas; and the postal sector. Measured by relative sizes of employment, finance comes out on top with more than 40 per cent of the total SOE payroll (Figure 2.3). It is followed by postal services (21 per cent) and the oil and gas sector (13 per cent). Measured by valuation, a slightly different picture emerges. Finance and the oil and gas sector account for the vast majority of the assets of the SOE sector, each accounting for more than USD 80 billion of the sector's total USD 181 billion valuation.

Figure 2.3. Sectoral distribution of Brazil's SOEs (by employment)



2.3. Operational performance of state-owned enterprises

Studies of SOEs' performance in Brazil have concluded that they tend to under-perform the private sector, but the picture is far from uniform. An academic assessment of non-financial listed companies in Brazil found that both majority and minority SOEs did not underperform from 2002 until (i) the end of the commodity cycle in 2014 and 2015 and (ii) the economic crisis of 2014-2016. SOEs with the state as their largest shareholder performed worse than private counterparts during the crisis when state support decreased. They moreover posit that the end of the commodity cycle in 2014 and 2015 contributed to SOEs' reduced cash flow – particularly among national champions that were active in commodities industries (Sheng and Junios, 2018). With reduced government support, the development bank BNDES came to play an ever-more important role in financing the national champions (Sheng and Junios, 2018).

The above finding echoes a more global trend. Another study, comparing 477 SOEs and 421 private firms in 66 economies, showed that SOEs did not systematically underperform between 1997 and 2012 except in face of external factors that affect the prioritisation of SOEs' public policy objectives (for instance, downturns and elections). Companies in which the state held significant minority states were less impacted (Lazzarini & Musacchio, 2018).

An ongoing concern is the use of SOEs for quasi-fiscal operations for various political reasons – setting regulated prices for goods and services of SOEs for instance – that can impact the SOEs' abilities to operate efficiently. Brazil's government made 'extensive use' of 'requirements for SOEs to source raw materials and equipment from relatively costlier national suppliers' (Musacchio et al., 2019). Academics theorise that this contributed substantially to delays and cost overruns in large-scale projects. Brazil's SOE Statute (Law no. 13.303/2016) and related regulation (Decree no. 8.945/2016) require the government to compensate SOEs for deviation from the policy objectives that justify their creation. However, as explored in this report, how to implement this provision is unclear.

Academics have pointed to the difficulty in assessing the relationship between state ownership and financial performance of Brazilian SOEs, partly because of the peculiar situation where the government indirectly holds its equity stake through large pension funds and its national development bank (BNDES) (Sheng and Junios, 2018).

Nevertheless, the Ministry of Economy reported that the net income of SOEs increased substantially between 2017 and 2018 based on a significant increase in contributions from non-financial sectors (Table 2.3. Net income of Brazil's SOEs: 2017-2018).

Table 2.3. Net income of Brazil's SOEs: 2017-2018

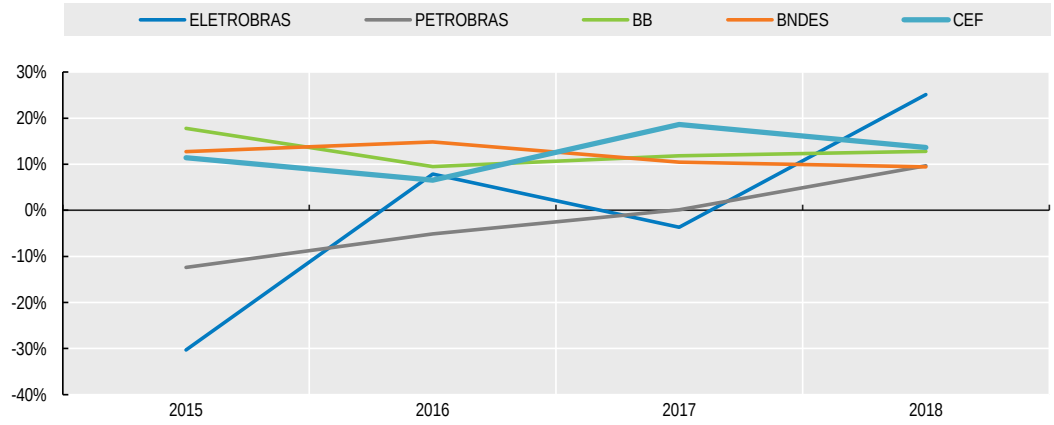
Billions BRL

Net income	2016	2017	2018
Non-financial sector	-12.1	-2.6	39.3
Financial sector	19.6	30.4	30.9

Source: Government of Brazil, 2019, Boletim das Empresas Estatais Federais, 2019.

The rate of return – calculated as net profit over the book value of equity – for the five biggest SOEs can be seen in the table below.

Figure 2.4. Rates of return on equity



Note 1: The equity book value used for a period is the average of the current book value and the value from the previous financial year.
Note 2: Please find rates of return data on smaller SOEs in Annex 1.B.
Source: SEST.

2.4. Evolution of the state-owned enterprise sector: a historical perspective

Large-scale state ownership in Brazil began mainly after World War I through railway bailouts and following World War II when Brazil's leadership created SOEs in industries considered key to economic development. The pinnacle of "state capitalism" in Brazil was in the early 1970s during a period of military dictatorship. By 1977, the public sector accounted for an estimated 43% of gross capital formation and SOEs were responsible for 25% of those investments (Musacchio and Lazzarini, 2014).

The share of SOEs with majority state control in Brazil's fixed capital formation dropped from 25% to 8.9% between 1977 and 2002. During this period, an economic crisis, oil shocks and debt crisis led to downsizing of private firms while SOEs racked up losses and large liabilities. In effect, the government restricted its provision of goods and services and triggered a "wave" of privatisation (IDB, 2013). A number of SOEs were privatised in the late 1990's, half being bought by "mixed consortia" of domestic and foreign investors. These privatisations gave way to a newer model of minority investment by the state and gave comparatively less prominence to majority-controlled firms (Musacchio and Lazzarini, 2014).

The Brazilian government developed an interest in broadening the ownership of SOEs in the 2000s on the heels of the more global trend to improve corporate governance and reap the benefits associated with listing. By 2009, around 5% of federal SOEs were listed. SEST (previously known as DEST) and relevant Ministries increasingly monitored SOEs (Musacchio and Lazzarini, 2014).

Sheng and Junios (2018) found an increase in the use of SOEs – both fully and partially owned – for political purposes between 2002 and 2016, and Musacchio and Lazzarini (2014) indicate that there was continued interference by the government in majority-owned firms. Filho and Alves (2018) have detailed how coalition presidentialism has led to frequent changes in the direction and objectives of SOEs (Filho and Alves, 2018). As Petrobras reeled from the corruption scandal, President Bolsonaro ordered the company to cancel the increase in diesel prices in an attempt to avoid strikes by truck drivers (Musacchio et al., 2019).

Relevant authorities have taken important steps to improve the corporate governance in the SOE sector. This includes (as discussed in more detail later) the establishment of the Inter-ministerial Commission on Corporate Governance and Management of Equity Interests of the Union (CGPAR), the introduction of the Corporate Governance Code in 2015 and, notably, the issuance of the 'SOE Statute' (Law no. 13.303/2016), which was regulated by Decree no. 8.945/2016, among others. These advancements are detailed further below and assessed in Part B.

Despite improvements, concerns remain about the potential use of SOEs for political purposes unforeseen in their established policy objectives.

Chapter 3. Legal and regulatory environment in Brazil

3.1. Main laws and regulations concerning the corporate sector

SOEs operate as limited liability companies (LLCs), joint stock companies (JSCs) or as statutory corporations. The greatest majority of SOEs are joint stock companies ("Sociedades Anonimas" in Portuguese) and the most relevant exception to that rule is CEF, which is a statutory corporation (more information in Box 3.2).

SOEs ("Estatais" in Portuguese) may be classified, in Brazil, as partially owned SOEs ("Sociedades de Economia Mista" in Portuguese) or as fully owned ("Empresas Públicas" in Portuguese). They are both subject to the same legal determinations as privately owned companies, including civil, commercial, labour and taxation duties and rights, as defined in the Constitution (art. 173, § 1º, II).

Until 2016, based on the provisions in Chapter XIX of the Corporations Act (6 404/1976), it was safe to conclude that partially owned SOEs were those where the Government had the controlling power (i.e., the majority of votes in a shareholders meeting and the power to choose the majority of directors) even with less than half of the voting shares. This would be possible, for example, through a shareholders` agreement or if all other shareholders do not individually have many shares.

Law no. 13.303/2016 ("SOE Law")`s article 4, nevertheless, establishes, at least for the ends of mentioned law itself, that partially owned SOEs ("Sociedades de Economia Mista" in Portuguese) would be considered as such only if the Government has the majority of voting shares. In other words, if the Government has a minority control of a company, this company would not be considered an SOE and, therefore, would not need to abide by SOE Law[6].

Brazilian legislation provides for any LLCs and JSCs to be registered as either publicly or privately held. JCSs are wholly governed by the Corporations Act. LLCs are considered as legal persons under Brazil's Civil Code (10.406/2002) which is the principal law bearing on these companies, but they may also be subject to the Corporations Act if so specified in their Articles of Association. Generally, what characterises publicly held corporations ("Companhia Aberta" in Portuguese) is that their shares may be sold to the general public. This can be done privately or over-the-counter, but in practice many such companies are traded on Brazil's stock exchange.

[6] Exceptionally, the SOE Statute (para. 7 of article 1) provides some broad guidance to the role of the state as a shareholder of a corporation that is not considered an SOE for the ends of the statute (i.e., corporations in which the state does not have majority-control). This broad guidance includes, for instance, an obligation for the state to evaluate relevant investments of the company and assess the necessity of new equity investments. Nevertheless, para. 7 of article 1 is merely a broad guidance, and all relevant and concrete provisions of the SOE Statute covered in this report do not apply to companies where the state has minority-control.

3.1.1. Corporations Act

The Brazilian Corporations Act (Law no. 6.404/1976) governs all listed and unlisted companies in Brazil, including those that are state owned. The Corporations Act covers many aspects of corporate governance, including the nomination of directors, corporate activities and governance structures, management, nomination of directors, decision-making processes, transparency and disclosure, and conflict resolution, among others.

The Brazilian Corporations Act establishes the duty of the controlling shareholder and minority shareholders[7] in the same broad terms as it is done, in the case of fiduciary relationships, in Common Law countries. The duty of loyalty of the controlling shareholder is defined as follows (art. 115 and 117): the controlling shareholders shall cast their votes and exercise their powers in the interest of the company. The controlling shareholders are, therefore, liable if they cause a loss or damage to the company or receive an undue private benefit. The Corporations Act (art. 115, paragraph 1) also includes a rule that, as currently interpreted by the Board of the Securities Regulator (CVM), states that shareholders cannot vote in a general shareholder assembly if they have conflict of interests with the company – essentially a majority-of-the-minority provision. For example, a shareholder would not be able to vote in a general assembly for the approval of a transaction between the company and the shareholder itself.

Application of the duty of loyalty of controlling shareholders to privately owned companies has in the past given rise to many disputes, but it is, at least in theory, relatively simple to interpret. However, in the case of SOEs there is a tension between the state's duty to minority shareholders and its role in orienting the company towards the fulfilment of policy objectives (explored further below in this Part A).

The Corporations Act defines the three most important corporate bodies of companies (including listed and unlisted SOEs) as the following: (i) board of directors ("Conselho de Administração"); (ii) C-level executives indicated in the company's bylaws ("Diretores Estatutários"); (iii) fiscal council ("Conselho Fiscal").

The board of directors has the authority (art. 142) to (i) define the strategy of the company, (ii) appoint and dismiss the C-level executives, (iii) control the acts of the executives, (iv) choose the external auditors and (v) decide on issues whenever the bylaws require it. The board of directors cannot represent the company and is not supposed to engage actively in the day-to-day management decisions (more in section 4.

"C-level" executives' overall responsibilities are to make day-to-day management decisions, manage risks, represent the company and keep the necessary accounting records. As in many other countries, C-level executives often include a CEO, a CFO and, in the case of public companies, it is compulsory for them to have a C-level executive who is responsible for investors' relations – who could take on the responsibilities of the CFO as

[7] The controlling shareholder (or group of controlling shareholders) is defined by art. 116 of the Brazilian Corporations Act as (i) the one who has enough shares to cast the majority of the votes in the general shareholders assemblies and effectively elect the majority of directors and (ii) in practice guide the company`s bodies activities. The legal scholarship is not unanimous on the exact meaning of the abovementioned article, however it is safe to conclude that the following applies to companies in Brazil: (i) there is no fixed threshold that defines who is a controlling shareholder (the stakeholder who holds more than 50% of the voting shares will automatically be the controlling shareholder, however smaller proportions might enable someone to be considered the controlling shareholder depending on the dispersion of the shareholders` base); (ii) there is no such a thing as a dormant controlling shareholder, because shareholders must exercise their powers to be considered controlling shareholders; (iii) someone who has strong powers over the company (such as a relevant creditor or the single buyer of goods and services offered by the company) would not be considered the controller of that company under the Brazilian Corporations Act.

well. The importance of the distinction between senior executives that are indicated in the bylaws and the others that are just employees is that the authority of CVM covers only the first ones in the public companies.

The fiscal council is given the authority (art. 163) to (i) investigate, by the individual initiative of any of its members, whether the C-level executives and the directors have been fulfilling their duties, (ii) denounce any irregularity, by the individual initiative of any of its members, to other company bodies and to the general shareholder assembly, (iii) examine the financial reports of the company, and (iv) offer its opinion on proposals of the board of directors to the general assembly. The fiscal council is thus essentially a body of control and is not supposed to intervene in the merit of the decisions of executives and directors. According to a source hear by the OECD team, fiscal councils have been extremely effective in finding apparent irregularities and signalling them to shareholders or to CVM, because of the capacity of a member of the fiscal council elected by minority shareholders to individually investigate possible irregularities.

The establishment of a fiscal council, while not compulsory for all corporations in Brazil, is mandatory for SOEs. It can be created in company bylaws or by a request from shareholders (10% of voting or 5% of preferred stockholders), and the council can have between three and five members. Its members are elected by the general assembly, and article 161 of the Corporations Act allows (i) preferred stockholders to elect one member and (ii) minority shareholders holding at least 10% of voting shares to elect another member. Likewise, in the case of companies partially owned by the State, article 240 of the Corporations Act guarantees minority shareholders the right to elect at least one member of the fiscal council regardless of the number of their voting shares.

3.1.2. Corporation bylaws

Corporation bylaws provide further reference for Brazilian corporations. The Corporations Act (art. 296) requires that corporations adapt their bylaws according to its provisions. While discrepancies between the two may exist, the Corporations Act will prevail in instances of dispute. Shareholders can amend bylaws at annual shareholder meetings.

The bylaws define, inter alia, the responsibilities, powers and number of "C-level" executives. Company bylaws can also create committees to advise the board of directors and the C-level executives in the fulfilment of their goals, whereas the Corporations Law only requires that committee members have the same fiduciary duties as those of directors and executives. In the absence of any specific rule, therefore, board advisory committees can have members who are not directors themselves.

3.1.3. Securities Legislation and the Brazilian Corporate Governance Code for listed companies

Federal Law no. 6.385/1976 establishes Brazil's Securities and Exchange Commission (CVM) and grants it the authority to set securities regulation for publicly held companies. CVM's rulings, opinions, joint-committee decisions and directives are enforceable. CVM continuously reviews its regulations to keep pace with governance standards and practices.

Since 2017, CVM obliges listed companies to report – based on a "comply or explain approach" – on the adoption of the good practices set forth in the Brazilian Code of Corporate Governance (Rule 586, amending Rule 480 of 2009). It was created and published by the "Interagentes Working Group", co-ordinated by the not-for-profit Instituto Brasileiro de Governança Corporativa (IBGC), involving 11 capital market representatives and benefiting from CVM and BNDES as observers. Built based on the G20/OECD Principles of Corporate Governance and other international standards as well as existing

Brazilian and IBGC guidance, the Code is underpinned by principles of transparency, fairness, accountability and corporate responsibility. The Code is broader in scope than B3's listing requirements, providing companies with details in its five chapters on shareholders, boards of directors, executive management, supervisory and control bodies, and ethics and conflicts of interest.

3.1.4. Stock exchange rules

Companies listed on Brazil's aforementioned stock exchange (B3) are subject to the listing requirements of the four listing segments. They are differentiated based on corporate governance demands. As the top listing segment, Novo Mercado has the most stringent standards and focuses on the protection of investors. Requirements include, inter alia, equity represented only by voting shares, a minimum 'free float', differentiation between the role of CEO and Chairman of the board and a minimum of 20% of independent board members.

3.1.5. Financial system and institutions

Law no. 4.595/1964 establishes and assigns responsibility to the National Monetary Council (CMN) for governance of Brazil's national financial system – comprised of the president of the Central Bank of Brazil and the minister of the economy. CMN does not have supervisory powers, but is authorised to set standards for those institutions to follow. The law establishes penalties in case of non-compliance. CVM must ensure that its regulations and guidance do not conflict with CMN policy.

3.2. Legal and regulatory framework as applied to state-owned enterprises

SOEs are entities with legal personalities, as ruled by private law (such as described in the previous section), which are controlled directly or indirectly by the state. Their legal status is meant to provide administrative, budgetary and financial autonomy.

3.2.1. General legal framework for state-owned enterprises

SOEs are subject to the general legal and regulatory framework for all enterprises, comprising the Corporations Act, the Civil Code, securities and stock exchange rules and provisions of their own bylaws (section 3.1). It is Law no. 13.303/2016, however, that now shapes an important part of SOEs' legal and regulatory framework.

Law no. 13.303, of June 30, 2016 ("SOE Statute" or "SOE Law") "establishes the legal framework of state-owned and state-controlled enterprises and their subsidiaries, within the Union, the States, the Federal District and the Municipalities." The SOE Statute is regulated by Decree no. 8.945/2016, which is valid for SOEs controlled by the Federal Government (the SOE Statute is applicable to subnational SOEs as well, but each state and city may have its own regulation for the SOEs it controls). The SOE Statute applies to state-owned and state-controlled enterprises that "exploit a business activity for the production or commercialization of goods or provision of services, even if the business activity is subject to the monopoly of the Union or is the provision of public services." Some corporate governance rules of the SOE Statute do not apply – due to a provision in the Statute – to

SOEs whose gross operating revenue was less than 90 million BRL in the previous fiscal year[8].

SOEs and public officials on boards or fiscal councils may also be subject to a host of other requirements of the Federal administration, including with regards to the following: sanctions for public agents (no. 8.492/1992); civil and administrative liability of legal entities carrying out wrongful act against national or foreign administrative bodies (Decree no. 8.420/2015 regulating Law no. 12.846/2013); determinations of administrative responsibilities and leniency agreements (Ordinance 910/2015); conflicts of interest (no. 12.813/2013); prohibition of nepotism within the public administration (Decree no. 7.203/2010).

The Interministerial Committee on Corporate Governance and Corporate Equity Management (CGPAR) Resolution CGPAR No. 10 (2016) establishes that the Code of Conduct for the Senior Government Officers at the Federal Executive Branch applies to all representatives of the Federal Government on boards and fiscal councils of national SOEs and companies in which the Union is a minority shareholder. Mentioned resolution subjects those individuals to standards of conduct that are even higher than the ones established by the Corporations Act, including, for example, the prohibition to accept any gift with a value above BRL 100 (or USD 25).

The following section highlights relevant content of key laws applicable to SOEs, with the purpose of shedding light on particularities and carve-outs for SOEs in Brazil's legal and regulatory frameworks.

3.2.2. Main individual laws applicable to state-owned enterprises

Corporations Act

Listed and unlisted SOEs are subject to the Corporations Act, and its rules on company-internal governance and operational arrangements, mergers and dispute mechanisms amongst others. The Corporations Act contains a provision (art. 238) that is central to understanding the relationship between the State and partially owned SOEs in Brazil: "The legal person that controls the partially-owned SOE has the duties and responsibilities of any other controlling shareholder (art. 116 and art. 117), but the State will be able to orientate the activities of the company in order to fulfil the public interest that justified its incorporation". In other words, the State must be loyal to the minority shareholders but can exercise its controlling powers to orientate the company to fulfil the public policy goals that were the reason for creating the SOE in the first place[9].

One condition for the State to deviate from the interest of the company[10], clear in art. 238 of the Corporations Act, is the need for the public policy goal to be the exact same one that justified the creation of an SOE. Nevertheless, the laws that allow the incorporation of SOEs are not usually precise in the definition of the public policy goals of those

[8] For example, the impediments set by art. 17 of the SOE Statute do not fully apply for those smaller SOEs. It means, therefore, that ministers, individuals who have recently worked in political campaigns and unions` leaders could be nominated as directors in SOEs with revenues below 90 million BRL.

[9] In this report, some cases of SOEs with public policy objectives that have minority shareholders are described (for ex., Petrobras and Eletrobras).

[10] It is a contentious subject in itself, but mainstream finance scholars would define the "interest of the company" as the investment in projects with positive net present value, or the creation of wealth to shareholders.

enterprises[11]. Therefore, it is often contentious whether, in practice, the State can lawfully orient the SOE towards fulfilling a specific public policy goal.

Box 3.1. Case example: interpreting Article 238 of the Corporations Act

In 2012, CVM sanctioned the Federal Government for voting in a general shareholders assembly of Eletrobras for the early renewal of concession contracts with the Federal Government itself (CVM nº RJ2013/6635). In its ruling, the CVM Board concluded that the Federal Government had interests that conflicted with the ones of Eletrobras, because the renewal of the contract could – at least potentially – financially benefit the Federal Government. Therefore, CVM's Board conclusion was that the Federal Government had an impediment to vote then due to the paragraph 1 of article 115 of the Corporations Act. The Federal Government, nevertheless, appealed to the Administrative Appeal Body for the Financial Markets ("CRSFN") and won. The reasoning behind CRSFN's ruling was that, in the mentioned general assembly, the Federal Government would have voted in favour of a public interest that justified the incorporation of Eletrobras – in line with article 238 of the Corporations Act – and, therefore, there was not a conflict of interests[12]

Despite broad application of the Corporations Act to SOEs, there is one exception to highlight (Box 3.2).

Box 3.2. CEF

CEF, which is one of the biggest financial institutions in the country (USD 326 billion in total assets) and is fully owned by the Federal Government, must comply with the Corporations Act (6.404/1976) and SOE Law (Law no. 13.303/2016) but there a number of important exceptions to the general rules applicable to privately-owned companies and other SOEs. For example, CEF Law defines that its equity is not divided into shares and the same statute determines that regulation enacted by the President of the Republic will establish the structure and prerogatives of the CEF`s bodies. Moreover, CEF`s CEO is directly appointed by the President of the Republic, and not by CEF`s board. Probably as a direct effect of that rule, a source heard by the OECD team confirmed that the Government does not provide strategic guidance to CEF`s board but it is rather the Minister of the Economy who directly interact with the CEO for guidance.

The "SOE Statute"

The "SOE Statute" (Law no. 13.303/2016, regulated by Decree no. 8.945/2016) provides legal status for state owned and controlled entities. The Statute applies to companies that the State controls solely, directly or indirectly, thus including SOEs' subsidiaries.

[11] Some laws do not even define which are the goals, leaving the interpreter with the challenging task of construing those goals based on the economic and political context when the SOE was created.

[12] CVM's board had made the same evaluation on whether the article 238 should be applied to the case, but it concluded that the Federal Government`s interest was merely a financial one and not a primary public interest (i.e., a public policy final goal).

Securities regulator CVM has not ruled[13] on whether the SOE Statute should be applied to a listed company that was co-controlled by the State and private investors. The Statute, in any case, does not apply to firms incorporated abroad (for example, to subsidiaries of BB or to Petrobras incorporated abroad) and to corporations controlled by the State without the majority of voting shares.

The SOE Statute was enacted in 2016 as one of the main political responses to societal pressure that resulted from the Car Wash investigations, which began in 2014 and revealed a massive corruption scandal involving senior executives of multiple SOEs, privately owned companies and elected politicians. The Statute has two main parts. The first is on the corporate governance of SOEs (see the translation of this first part provided by the Brazilian Government in 15.2.Annex C). The second is on procurement rules for SOEs.

The attention placed on public procurement in the SOE Statute – unusual in comparison to other countries – is evidence of attempts to placate concerns about procurement as a conduit for corruption in SOEs, which was indeed one such conduit for the widespread corruption revealed in the Car Wash case. The Statute's procurement provisions place a control burden on SOEs as compared to privately owned companies, but are less stringent than for public bodies. While Brazilian entities (SOEs, but not only) thought that the complexity and rigidity of the procurement controls contained in 13.303/2016 could be reduced without much more risk for corruption, others – notably the Federal Government Supreme Audit Institution (TCU) – argued that the controls established by the 2016 law are necessary.

The SOE Statute introduced a set of rules better regulating the relationship between the State as the controlling shareholder and SOEs, which may be divided in two groups: (i) clearer separation of the mandates of senior public officials and of SOE board members (directors) (art. 14 and 15), and; (ii) transparency of the public policy goals pursued by the SOEs (art. 8).

The Statute supports the Corporations Act in reaffirming that the controlling shareholder cannot intervene in the decisions made by the board of directors. Nevertheless, and recognising that boards' required independence can be difficult to achieve in practice, the Statute (art. 14.I) requires the national and subnational governments to include in their codes of conduct and integrity[14] that senior public officials cannot disclose any information that might impact the business of the SOEs without the prior authorisation of the competent body within the company. Such a provision would help to prevent senior public officials from disclosing material information about a listed SOE while the markets are open and through channels that might not guarantee an equal distribution of the information. The Federal Government on the 31st of August 2020 made the alteration in its code of conduct and integrity as the SOE Statute requires.

The SOE Statute states (art. 8, para 2, item I) that any obligation or responsibility that the SOE assumes – that is not equally borne by privately owned enterprises – should be clearly defined in a law, regulation or contract with the State. In practice, the mentioned provision limits boards` capacity to interpret laws of incorporation in order to establish public policy goals that are not already explicit in the law, a regulation or a publicly disclosed contract with the State.

The SOE Statute requires SOEs to create a Fiscal Council and an Audit Committee (art. 24 and 25). While the Corporations Act allows fiscal councils to be permanent or appointed

[13] CVM preferred not to rule, when it had the opportunity as to the application of the law (Process CVM 19957.008923/2016-12).

[14] In the case of the Federal Government, the code of conduct and integrity is a Presidential Decree.

for a particular fiscal year following shareholders' request, the SOE Statute requires the fiscal council to be permanent. The SOE Statute also requires SOEs to establish an Eligibility Committee in its bylaws (or, in other words, a "nomination committee" – art. 10 of the Statute).

The audit committee of SOEs should: (i) advise on the choice of external auditors; (ii) supervise the quality and independency of external auditors; (iii) supervise the activities developed by the teams responsible for accounting, internal controls and internal audit; (iv) monitor risks exposure and related-parties transactions; (v) elaborate an annual report with evaluations and recommendations of the committee, including the recognition of significant disagreements with external auditors and the SOEs` executives on the financial reports; (vi) evaluate how reasonable are the parameters of actuarial calculations used by the pension funds sponsored by the SOE[15]; (vii) maintain a whistle-blower channel for people within and outside the company.

The audit committee should have between three and five members, and at least one of them should have relevant experience in accounting issues. The audit committee reports directly to the board of directors and its members are appointed by the board. No member of the audit committee can have worked, in the prior 12 months to the nomination, for the SOE, its external auditing firm or the controlling shareholder. Likewise, members of the audit committee cannot receive any remuneration other than for their role as a member of the committee from the SOE, any other company in the same economic group and the controlling shareholder while they act as a member of the audit committee. As it will be possible to see below where the leadership of some SOEs are analysed, members of the audit committee might not necessarily be directors themselves.

The goals of the "Eligibility Committee" (nomination committee) are to evaluate whether the directors and members of the fiscal council were nominated and evaluated according to the applicable laws, regulations and corporate policies. The nomination committee reports directly to the board of directors and its members are appointed by the board. There is little supporting evidence that those committees have been playing an impactful role in improving the nomination process of directors and fiscal council members of SOEs. In any case, since article 17 of the SOE Statute does not literally apply to the members of the nomination committee, there is a risk that the positions in those committees could be used for political patronage, because, even though the committee does not have much power (it is only an advisory committee), its members could receive relatively high remuneration[16]. Members of the nomination committee might not necessarily be directors themselves.

3.2.3. State-owned enterprise-specific regulations on ownership and reporting

The Brazilian Corporate Governance Code for listed companies is applicable to listed SOEs under CVM instruction (No. 586, replacing 480). The Code uses a 'comply-or-explain' approach, thereby requiring its adherents to apply the principles and recommended practices therein and to report to the market on the manner in which this has been done.

[15] This issue is important because SOEs might have to cover actuarial deficits of defined benefits pension plans that they sponsor.

[16] In the case of SOEs controlled by the Federal Government, art. 21, paragraph 3, of the Decree no. 8.945 establishes that members of the nomination committee who are members of the board and/or other committees cannot receive additional remuneration for their function as members of the nomination committee. However, one reasonable interpretation of the provision would be that someone who is solely a member of the nomination committee would receive a remuneration and this remuneration would not have a cap (for instance, the model bylaws proposed by SEST to national SOEs allows the appointment of members of the nomination committee who are not directors and/or members of other committees).

The company`s leadership is compelled to explain and justify inaction in plain language in order to appropriately inform their decisions and assessments to shareholders and other stakeholders.

The SOE Statute (Law no. 13.303/16) and its regulation (Decree no. 8.945/16) establish minimum requirements of transparency to be observed by SOEs. Among those include the disclosure of:

- related entities transactions policy, including Federal Government and other SOEs;
- annual and quarterly accounting statements, accompanied by the explanatory notes;
- relevant information about issues such as financial and economic data and corporate governance;
- obligations and debts that SOEs have incurred in special conditions, as compared to those applied to private enterprises.

The SOE Statute moreover obliges SOEs to publicise an annual letter, signed by all board members (art.8.I). The annual letter should contain the following: (i) specification of the public policies that will be implemented to fulfil the public interest that justified the incorporation of the SOE; (ii) clarification of the resources that will be used to implement mentioned public policies; (iii) objective evaluation of the financial and economic impact on the company of the implementation of the mentioned public policies[17]. As a complement to the annual letter, SOEs must include in their financial reports explanatory notes with operational and financial information of the activities related to the fulfilment of the collective interest that justified the incorporation of the SOE[18] (art.8.VI). More information on the implementation of this requirement is provided in Box 3.3.

Box 3.3. SOEs' annual letter

Implementation of the SOE Statute's provisions on transparency and disclosure is intended to facilitate an important improvement in the relationship between the State and the senior leadership of SOEs, and in reducing risks associated with private shareholders' investments in SOEs. The annual letter and its explanatory notes on the public policy activities would give (i) more predictability to SOEs' senior executives when planning business strategy and (ii) transparency to private investors around SOEs' performance, as compared to privately owned peers, because of public policy obligations. The enhanced transparency could moreover give citizens (who are the final beneficiaries of SOEs' market value and the public policies that they implement) the possibility of evaluating how well the SOEs are fulfilling the collective interests they are meant to protect.

The below examples provide insight into how two of the largest national SOEs have implemented the new requirement to publish annual letters.

[17] The information required by item I of article 8 of the SOE Statute should also be replicated in the "Formulário de Referência", which is a form that listed companies must disclose and includes a series of financial and non-financial information, such as risks and composition of the board of directors.

[18] Those explanatory notes shall include – as the item II of paragraph 2 of article 8 clarifies – the revenues and costs of those activities.

- Petrobras holding's 2018 annual letter, signed by all directors in May 2019, seeks to clarify that its bylaws were amended on the 15th of December 2017 to institute that the company should be compensated by the Federal Government for any cost in implementing public policies (i.e., for the higher costs or smaller revenues that it might face due to obligations that private firms do not bear). The letter outlines two public policy goals assigned by decrees enacted before 15 December 2017. The first one is to develop a culture among the population of saving non-renewable resources, costing the company 493 thousand BRL in 2018 and a budgeted cost of 238 thousand BRL for the following year. The second policy goal indicated in the letter was to guarantee stable prices for the provision of gas to two power plants, costing 1.4 billion BRL in 2018 but without a predictable cost for the following year (the annual letter clarified that the cost would depend on the market price of the gas).
- Banco do Brasil (BB) holding's 2018 annual letter outlines which public policies are implemented by the bank - mainly related to the development of agriculture and fishing businesses. The letter does not clarify whether the bank would have had higher return on equity without the aforementioned public policies. It could be posited, based on the annual letter and information provided by Brazilian authorities, that BB's public policies do not represent a loss for the bank. Most (if not all) of the sources of funding for associated public policies exist for the sole purpose of allowing the concession of credit to the agriculture and fishing sectors at attractive rates and conditions (i.e., below market rates), which are defined by the State much like if they were tariffs (more specifically, the National Monetary Council, as the annual letter informs). For example, the legislation demands that part of the money received by banks (privately and state-owned) through "poupança rural" (an investment product) and current accounts must be used to fund credit to agriculture and fishing businesses. Thus, banks operating in the country will actually maximise their profits if they can fund themselves from both sources, paying average interest rates that are smaller than the average rates that they charge from their special agribusiness credit lines (at the compulsory amount that they must lend). BB's annual letter, however, does not provide information on whether BB could have offered less credit lines directed by the Federal Government and, therefore, have increased its profit (i.e., if BB had costs implementing those public policies).

3.2.4. Applicability of market regulation to state-owned enterprises

All capital markets rules apply equally to listed companies regardless of whether they are privately or state-owned, and the Securities Regulator (CVM) supervises all public companies without exceptions due to the identity of their controlling shareholders.

Brazil has approximately 600 companies registered with CVM (meaning that they are able to list their securities), of which 350 are effectively listed in B3 and 44 are SOEs controlled by national or subnational governments (as of December 2019).

While CVM`s enforcement activity is broadly regarded as impartial and efficient, some stakeholders have highlighted to the OECD team two main concerns. First, that, because CVM has its budget proposed by the Government and approved by Congress, it might suffer a backlash from the Government in the case of an important decision against a national SOE. Second, taking into account the difficulties in finding redress in the Judiciary, it was mentioned that CVM might be wrongly focusing on enforcement actions instead of preventive ones.

B3 has a certification program for listed SOEs and those that are not yet listed but are registered with CVM ("Programa Destaque de Governança de Estatais"). In order to be certified, the SOE must adopt six mandatory corporate governance practices and achieve a minimum number of points in a questionnaire on other corporate governance practices, which include practices related to transparency, internal controls and composition of the administration[19]. Likewise, any SOE wanting to take part in the certification program must publicly disclose the result of B3's evaluation of its corporate governance practices.

Particularly in relation to related-parties transactions, CVM's unit that supervises listed companies reported that the quality and comprehensiveness of listed-SOEs' disclosure of related-parties transactions is relatively high. B3, for its part, considers that SOEs have suitable policies for related-parties transactions, but the disclosure on the actual transactions are not sufficient in many cases. B3 often finds inconsistencies between the information in the "Formulário de Referência" – which is similar in nature to a Form 10-K or 20-F in the US – and financial reports.

The SOE Statute allows SOEs to solve their conflicts with shareholders through private arbitration, or even include in their bylaws that such conflicts will always be solved through arbitration, which was done by Petrobras, Eletrobras, BB, BASA and BNB, according to PGFN. In any case, if the option were to use the Judiciary to solve a conflict with the Federal Government, the shareholder would have to initiate a lawsuit in the Federal Judiciary because, according to the Federal Constitution, the Federal branch of the Judiciary is the competent forum whenever the Federal Government is a part in the lawsuit[20].

Competition Law and Competition Authority

Brazil's competition framework regime was overhauled in 2011 when the new competition law was introduced. It streamlined Brazil's competition law and brought it closer in alignment with international good practices.

The Brazilian competition authority ("CADE") has the mandate to supervise and enforce the competition laws regardless whether the firms are privately or state-owned, or holding a legal monopoly. CADE is supervised by the Ministry of Justice, but there is no hierarchy between CADE and the Ministry (e.g., CADE's board members have fixed mandates). It means, for instance, that CADE`s decisions can only be appealed to the Judiciary, and not to its supervisory ministry.

A few CADE investigations of SOEs controlled by the Federal Government are highlighted:

- Correios (the national post office) has settled in an investigation of shameful litigation to increase the size of their monopoly (the SOE has a legal monopoly of "the delivery of letters" but was litigating to increase that monopoly to some services that were clearly unrelated to sending letters);
- Petrobras has settled due to some practices in the oil refining market, having to divest some refineries;

[19] For example, SOEs that take part in the program must have 30% of independent members in the board of directors.

[20] It must be noted, however, that business disputes that do not require the intervention of the Federal Government should be brought to State Courts in the case of partially-owned SOEs, as it is the case for any privately-owned company.

- Petrobras' subsidiary (Liquigas) could not be sold to Ultrapar (a privately owned company) because of the concentration that it might create.

Bankruptcy Law

The Brazilian bankruptcy law (Law no. 11.101/2005) establishes that SOEs cannot go bankrupt. Whenever an SOE becomes commercially inviable, the State has three alternatives: (i) begin to make transfers from the Fiscal Budget to the SOE, and treat the SOE as dependent on the National Treasury; (ii) it can be wound-up and liquidated; or (iii) the SOE can be privatised.

SOE´s liquidation is regulated by Law no. 9.491/1997, which created the National Privatization Program – ("PND" in Portuguese). The winding-up process begins with the proposal to include SOE in the PND to be liquidated, which should be based on studies and justifications. Once the SOE liquidation has been decided by the Council for the Investment Partnership Program – CPPI, a general meeting of the shareholders will be called to nominate the liquidator appointed by the Ministry of Economy and choose the members of the fiscal council. Thereafter, SEST will coordinate the liquidation process as the representative of the Federal Government.

The liquidation process of an SOE included in the PND will be governed by the Law no. 8.029/1990 and by the Decree no. 9.589/2018. Among other procedures, Law no. 8.029/1990 (art. 23) establishes that the Federal Government will succeed the entity in its rights and obligations.

The liquidation involves the preparatory acts for the winding-up, and comprises the liquidation of assets, payment of liabilities and the distribution of any remaining balance among shareholders. After the payment of all the SOE`s obligations and before the liquidation process is terminated, a general assembly must be called to analyse the liquidator's accounts, establish the end of his or her term and only then to establish – if it is the case – the allocation the remaining duties and obligations among federal bodies. Finally, the extinction of the legal personality occurs after the entire liquidation process is completed.

On the 29th of October this year, the liquidation process of Companhia de Armazéns e Silos do Minas Gerais – Casemg (a national food storage SOE) was finalised. In that case, there were some difficulties for the liquidator to sell the assets, which created barriers to pay the liabilities throughout the process. The main reasons for the difficulty of monetizing the assets of a company in liquidation are operational difficulties, such as properties' regularization. That may jeopardize the process to be financially self-sustainable.

In sections further below in this report, the financing costs of some selected SOEs are analysed to see if and how mentioned legal guarantee to creditors against bankruptcy affect SOEs business.

Chapter 4. Ownership arrangements and responsibilities

4.1. Ownership co-ordination

4.1.1. Ownership policy and framework

The SOE Statute does not include provisions on the state institutions involved in exercising the ownership rights. As the bill for the law was initiated by the Congress, it could not change the internal structure of the executive powers (the Federal Constitution establishes that only bills proposed by the government can have such provisions). It is Decree no. 9.745/2019 and a number of other decrees on ministries` internal structures that define the roles and competencies of Federal bodies in the exercise of SOE ownership.

Brazil's state ownership function is best described as a dual model. The ownership rights of the Federal Government over SOEs are exercised both by the Ministry of the Economy and line ministries responsible for individual SOEs. Both are represented on SOE boards of directors. Effective as of 1 January 2019, several ministries merged into the Ministry of Economy, which continues to play a central co-ordination role. The Ministry of Economy now hosts seven "special secretariats" (ministerial departments) and each one of those has multiple subordinated secretariats, which are described in more detail below.

The Ministry of Economy is responsible for guiding their governance and coordinating financial resources allocated in SOEs to support the public policy related to its activities. The Ministry of Economy's special secretariats involved in exercising ownership of SOEs (see below) are part of this structure and workforce, making it complex to account for resources attributed to their function. Line Ministries have their own departments that co-ordinate all processes related to SOEs.

The Ministry of Economy oversees Brazil's five SOE groups either solely (Banco do Brasil, BNDES and CEF), or in conjunction with the Ministry of Mines and Energy (in the case of Eletrobras and Petrobras). As for notable other large enterprises, they too are jointly shared with the Ministry of Mines and Energy (Furnas, Eletrosul, PIB BV and PNBV), as well as the Ministry of Infrastructure (Infraero and Valec) and the Ministry of Science, Technology, Innovations and Communications (Correios and Telebras). 0 provides a breakdown of Brazil's largest SOEs (or those in which the Federal government otherwise exerts a considerable degree of influence) by Ministry ownership and by corporate form. In cases where the Ministry of the Economy exercises sole ownership rights, the Minister of Economy typically has the authority to nominate all board and fiscal council members.

The Ministry of the Economy shares the oversight of 49 SOEs with a line ministry (SOEs or those in which the Federal government exerts considerable influence). In such cases the Ministry of Economy typically appoints one member of the board of directors and one member of the fiscal council, and the line ministry nominates all the other members of the board of directors that the Federal Government has the right to elect.

The preparation of an ownership policy is underway and being led by SEST, but the OECD did not have access to the draft.

Box 4.1. Power to appoint C-level executives in national SOEs

The Brazilian Corporations Act (art. 142) establishes that shareholders elect the board members who, in turn, appoint senior executives. In the case of national SOEs, this general rule does not apply, according to the Ministry of the Economy`s interpretation, because art. 26 of Decree-Law 200/1967 would allow line ministers to appoint the CEO and other senior executives of the SOE. Moreover, in the specific case of Banco do Brasil, the President of the Republic directly nominates the CEO (article 21 of Law no. 4.595 of 1964). Finally, in the case of CEF, art. 28 of its bylaws states that the President of the Republic has the power to nominate the company`s CEO. In all those cases, the board of directors still has to formally appoint the senior executives nominated by the ministers or the President, but there is no known case where the board has denied to appoint an executive nominated by a minister or the President.

For example, the current CEOs of four of the biggest national SOEs by revenues were appointed following the procedure below:

- BB and CEF: the President has issued Decrees to nominate the CEOs of both companies;
- Petrobras and Eletrobras: both CEOs – respectively, Mr. Castello Branco and Mr. Ferreira Júnior – were nominated by the Minister of Mines and Energy and then formally appointed by the boards of directors.

4.1.2. Main institutional actors and select responsibilities

Ministry of Economy, Secretariat of Coordination and Governance of State-Owned Enterprises

The Secretariat of Coordination and Governance of State-Owned Enterprises (Secretaria de Coordenação e Governança das Empresas Estatais - SEST) is responsible for exercising some ownership rights in companies in which the Federal Government holds a majority of the voting capital directly. SEST has the following main functions (art. 98 of the Decree no. 9.745/2019): (i) give transparency to the financial results of the SOEs; (ii) provide guidance to the vote to be cast by the Special Secretary of Finance ("SEFAZ") on the remuneration of directors and senior executives of SOEs; (iii) provide advice on corporate governance, employment policy, retirement and health insurance issues to SOEs and their boards, and; (iv) coordinate and plan the liquidation of SOEs. Furthermore, it supports the planning and execution of operations for privatisation, restructuring, merger, incorporation and liquidation of SOEs. SEST's workforce consists of 116 employees and the Secretariat has a budget of USD 2 871 244 for 2020 (about USD 25 000 per capita a year and USD 62 000 per majority-owned SOE a year).

SEST is housed under the Special Secretariat of Privatisation, Divestments and Markets (Secretaria Especial de Desestatização, Desinvestimento e Mercados – "SEDDM"), which has the mandate to sell assets owned by the Federal Government, including real estate assets and the controlling rights of SOEs. In addition to SEST, SEDDM also oversees the Secretariat of Patrimony of the Union, responsible for managing, supervising and granting permission to use Federal Real Estate ("Secretaria do Patrimônio da União" or "SPU").

Ministry of Economy, other Secretariats

The authority to represent the Federal Government in the general shareholders meetings of the SOEs directly controlled by the government belongs to the Minister of the Economy, but it is currently delegated, depending on the subject and the qualification of the company, to the Special Secretary of Finance ("SEFAZ") or to the Special Secretary for Privatization, Divestment and Markets ("SEDDM"), through Ordinance No. 54, of 18 February 20[21]. It is the SEFAZ and the SEDDM, therefore, who formally decide how the Federal Government will exercise its voting rights in all SOEs directly controlled by the Federal Government. The public lawyers from the Ministry of the Economy ("PGFN") are responsible for representing the Federal government at general shareholders meetings, and vote according to the guidance received from the SEFAZ and SEDDM.

Subordinated to SEFAZ are two secretariats that perform activities that are to some degree relevant to the SOEs: the Secretariat of the Treasury ("STN") and the Secretariat of the Federal Budget ("SOF").

STN has formally, among many other assignments, the attribution to supervise and recommend to the SEFAZ changes in the dividend policy of the SOEs and action when there are major modifications in the debt owed by the SOEs that might represent a risk for the Federal Government (art. 54 of Decree no. 9.745/2019)[22]. In practice, nevertheless, it was not possible to find any evidence that STN (or any other body of the Federal Government, for that matter) effectively supervises leverage ratios, financial results and the dividend policies of the SOEs or to confirm that actions are taken when those financial issues present a risk for the sustainability of an individual SOE. SOEs themselves develop their dividend policies and the board of directors propose the actual dividend distribution, which is finally approved in the shareholders` meeting.

SOF is responsible for drafting the budgets that will be sent to the Congress for approval. In the Brazilian Federal Government, there are three budgets that have to be approved by Congress: (i) the fiscal budget, which, among many other revenues and expenditures, includes transfers to SOEs that are dependent on resources from the Federal Government and dividends to be received from all SOEs ; (ii) investment budget for non-dependent SOEs (i.e., how much SOEs that are sustainable without transfers from the Federal Government plan to invest in the following year); (iii) social security budget, which is not usually relevant for SOEs. In relation to the investment budget, which is the most relevant for the goals of the current SOE Review, it seems that the role of SOF is merely formal. SOEs send their investment budgets to SEST, which has the prerogative to approve them or not. SEST then send SOEs[23]`investment budgets to SOF to aggregate them into one sole budget.

PGFN is responsible for representing the Federal Government in general meetings of companies in which the Federal Government directly participates in the equity. For this representation, PGFN uses data and information produced by other entities, such as SEST,

[21] In few specific cases, the Minister of the Economy also has the prerogative to orientate the vote of SOEs in the general shareholders` assemblies of indirectly controlled SOEs (cases defined in the Decree no. 1.091), but usually SOEs have the freedom to decide how they will vote.

[22] STN has also the prerogative to nominate, on behalf of the Ministry of Economy, a member to the Fiscal Council of the SOEs controlled by the Federal Government.

[23] One important consequence for SOEs that are classified as dependent on resources from the Federal Government is that they must abide to the same remuneration ceiling as the one applied to public servants, which is the remuneration of Supreme Court`s Justices.

STN, line ministries, among others. These entities, within their attributions, express themselves on various matters that are in the agenda for the meeting.

After receiving information from the other entities involved in the process, PGFN consolidates all the information and makes a legal analysis of the positions of the areas involved, submitting its legal opinion to the authority responsible for authorizing the practice of acts of representation at the meeting. As previously mentioned, this authority is currently subdivided, depending on the subject and the qualification of the company, between the Special Secretary of Finance and the Special Secretary for Privatization, Divestment and Markets, by delegation of the Minister of Economy.

The competent authorities analyse PGFN`s legal opinion and authorizes or not the practice of the proposed acts on behalf of the Government in the shareholders` meeting, providing the direction of the acts that should be performed.

Interministerial Corporate Governance and Federal Government Management of Participation Commission

The Interministerial Corporate Governance and Federal Government Management of Participation Commission ("Comissão Interministerial de Governança Corporativa e de Administração de Participações Societárias da União" or "CGPAR") was created in 2007 – according to SEST during the first mission of the OECD team, following recommendations from the OECD – to get a more holistic view of holdings, and to manage corporate governance and equity investments of the federal government. SEST acts as CGPAR's secretariat.

CGPAR is composed of the Minister of Economy and the Chief of Staff of the Presidency, who has the status of a Minister. The Commission has the power to (i) establish guidance to all public bodies involved in the ownership of SOEs on a broad set of issues, including payment of dividends, executives` remuneration and disclosure of financial reports; (ii) set the criteria for the evaluation of Federal SOEs; (iii) establish the process to be adopted by line ministries for them to choose the Federal Government`s representatives in SOEs` boards and fiscal councils; (iv) guide the activity of directors and members of fiscal councils nominated by the Federal Government.

Line ministries and similar agencies

In addition to the Ministry of Economy's co-ordination and ownership of individual SOEs, other line ministries exercise ownership together with the Ministry of Economy on behalf of the state. Annex 1.A provides a breakdown of Ministries' responsibilities in this regard and Annex 1.D provides details on the activities developed and resources used by line ministries in relation to the SOEs they supervise.

Laws used for SOEs' creation are supposed to define the SOEs' assigned public policy goals. However, they are most often defined in very broad terms leaving the Government in constant attempt to define what those public policy goals are. Within the Federal Government, the line ministries responsible for the supervision of the SOEs – and the Ministry of the Economy for SOEs under its sole supervision – concretely define what the public policy goals are. However, there is little documentation on SOEs' public policy

goals or guidance: such communication between senior line ministries` officials and the directors appointed by the Federal Government is usually informal[24].

One of the few bodies that does formally communicate public policy objectives to SOEs (notably, in this case, to Eletrobras) is the National Council of Energy Policy ("CNPE"). It is composed of ten ministers and the CEO of the Enterprise of Energy Research (the Chairperson of the Council is the Minister of Mines and Energy). In any case, there is still scope for the Ministry of Mines and Energy to provide guidance to the SOEs that it supervises in addition to what the CNPE recommends and, effectively, the Ministry does provide policy guidelines both informally and through legal instruments enacted by the Minister ("portarias" in Portuguese).

The line ministries also set – as they refer to them – "technical performance goals" for the SOEs they supervise. In the case of the Ministry of Infrastructure, it could be, for example, the capacity for a port to embark and disembark commodities and industrialised goods. In the case of the Ministry of Mines and Energy, for example, it could be safety measures that an oil exploration SOE should adopt. In some of those cases, it might be a matter just of semantics to call those goals "performance objectives" or "public interests" if they might represent costs for the SOEs that are not borne by private firms that operate in the same industry.

Among other tasks as owner, line ministries can nominate members of the boards of directors and fiscal councils, and the CEO position. Within the ministries of Infrastructure, of Mines and Energy and of the Economy, there is no structured process to choose the persons who will be nominated by the Federal Government as directors and senior executives. In a few cases, the Ministry of Mines and Energy used the services of head-hunters hired by Eletrobras to find suitable candidates for a leadership position in a subsidiary of the company. However, the choice is usually done by the relevant Minister among his or her professional network.

The right to appoint the C-Level executive, as interpreted by the Ministry of Economy, comes from the Decree-Law 200/67 originated from the "Ministerial Supervision" power. Each line Ministry will choose names according to their internal procedures, but they must comply, at least, with the SOE Statute`s requirements and be formally appointed by the Board of Directors.

After the line ministry decides on the individual to be nominated, it refers it to the Presidency ("Casa Civil") for a political review. Finally, an SOE's nomination committee evaluates the nomination.

It has been widely suggested in newspaper articles and corruption investigations that the nomination to leadership positions in SOEs has been used as a form of political patronage, but it is difficult to evaluate whether this practice has significantly changed since the enactment of the SOE Statute. As mentioned, the new Statute established some restrictions concerning the nomination of directors and senior executives. However there is still space for political patronage. The leadership of Eletrobras, Petrobras and BNDES – according to two independent sources consulted by the SOE team – seem to be more insulated from short-term electoral interests than in the past. However an evaluation of the individual directors and senior executives of all SOEs is beyond the scope of this review. In any case, it is fair to say that the selection process of directors and senior executives nominated by

[24] PGFN`s representatives have asserted, in a meeting during the first fact-finding mission, that the Minister could lawfully discuss with SOEs` boards of directors directly on the public policy goals that should be pursued by the respective companies.

the Federal Government is still as based on the political leadership`s personal preferences as it used to be in prior years.

I) Government Secretariat of the Presidency

The Special Secretariat for Social Communication – SECOM is the division of the Secretariat of Government of the Presidency of the Republic – SEGOV, as established in Decree no. 9.980/2019, whose primary function is to guarantee the uniformity of the communication for the Federal Executive Branch. Specifically, SEGOV is responsible for supervising Empresa Brasil de Comunicação (EBC), which is the SOE that operates the Federal Government`s public TV channel.

SECOM public servant team directly related to EBC activities is composed of 6 people.

SEGOV represents the federal government in acts related to EBC, in which the government is the main shareholder, through its representatives on the company`s board of directors. In accordance with legislation provisions, EBC`s board of directors is formed by nine members:

- A member appointed by SEGOV, who will chair the board;
- Two independent members appointed by SECOM;
- The CEO;
- A member appointed by the Minister of Education;
- A member appointed by the Minister for Tourism;
- A member appointed by the Minister of the Economy;
- A member appointed by the Minister for Science, Technology, Innovations and Communications; and
- A member representing EBC employees.

II) Regional Development Ministry

There are 3 state-owned companies supervised by the Ministry of Regional Development ("MDR" in Portuguse):

- Trensurb - Urban Trains Company of Porto Alegre S.A.
- CBTU - Brazilian Urban Trains Company
- Codevasf - Development Company of the São Francisco and São Paulo Valleys Parnaiba

According to the MDR, the monitoring of SOEs related to the Ministry is done mostly through the individuals appointed by the Federal Government to the SOEs´ Boards of Directors and Fiscal Councils, according to the provisions and procedures provided for in the internal regulations of each of the companies.

Due to the inclusion of CBTU and Trensurb in the PND, the Minister of the Economy appoints the federal government representatives in the Board of Directors members of those two SOEs.

MDR possess in its ministerial structure five public servants focused on the supervision of the three mentioned SOEs, including one Special Adviser for nominated directors, one Ombudsman, one Investigator and two auditors.

III) Defense Ministry

Four SOEs are related to the Ministry of Defense. Nevertheless, the Armed Forces Command and its institutions effectively supervise the SOEs[25]:

- Empresa Gerencial de Projetos Navais – Emgepron, which operates in the Arms sector;
- Amazônia Azul Tecnologia de Defesa S.A. – Amazul, which develops a submarine powered by a nuclear reactor;
- Indústria de Material Bélico do Brasil – Imbel, which operates in the Arms sector;
- NAV Brasil Serviços de Navegação Aérea S.A. – NAV Brasil, which was recently incorporated to control air traffic.

The Defense Ministry does not have a specific sector to follow and monitor SOEs. Three Ministry`s public servants are part of the team responsible for the nomination of directors and Fiscal Council members of the SOEs, and verify the fulfilment of requirements and absence of restrictions for the respective positions.

IV) Ministry of Science, Technology, Innovations and Communications ("MCTIC")

MCTIC is responsible for the supervision of Correios (the postal services SOE) and Telebras (Telecom sector). At the Ministry, there are six public servants responsible for the governance of state-owned companies.

MCTIC, in a short note forward by SEST to the OECD team, defines its role as a Supervisory Ministry in (i) the nomination of board members, senior executives and fiscal council members and (ii) manifesting opinions regarding long-term credit operations, sponsorship of pension plans and personnel policy (wages and benefits).

V) Ministry of Agricultue, Livestock and Food Supply ("MAPA")

The SOEs related to MAPA are the following:

- Companhia Nacional de Abastecimento – Conab (food distribution);
- Empresa Brasileira de Pesquisa Agropecuária – Embrapa (agricultural research);
- Centrais de Abastecimento de Minas Gerais S.A. – Ceasa/MG (food distribution); and
- Companhia de Armazéns e Silos do Estado de Minas Gerais S.A. – CASEMG (in liquidation).

MAPA develops the following activities in relation to the SOEs it supervises: (i) makes nominations to the executive boards, including CEOs, directors and fiscal council members; (ii) approves accounts, reports and balance sheets, directly or through the ministerial representatives in the shareholders meetings; (iii) stablishes personnel and administration expenses.

[25] The Navy Command, in the cases of Emgepron and Amazul; Army Command, in the case of Imbel; and the Air Force Command, in the case of NAV Brasil.

In MAPA`s structure, there is a division for related entities and collegiate bodies, directly related to the Executive Secretariat, with seven public servants, which monitors corporate officers appointed by the Ministry.

In addition, there are several other MAPA units that guide and control the SOEs supervised by the Ministry, including their public policy goals.

VI) Ministry of Infrastructure ("MINFRA")

Eleven SOEs are supervised by the Ministry of Infrastructure. Of these eleven companies, the following eight (all ports) are partially owned by the federal government:

- Companhia Docas do Ceará – CDC;
- Companhia das Docas do Bahia – CODEBA;
- Companhia Docas do Espíritos Santo – CODESA;
- Companhia Docas do Estado de São Paulo – CODESP;
- Companhia Docas do Pará – CDP;
- Companhia Docas do Rio Grande do Norte – CODERN and
- Companhia Docas do Rio de Janeiro – CDRJ.

The other three SOEs are fully owned:

- Engenharia, Construções e Ferrovias S.A. – VALEC (rail sector);
- the Brazilian Airport Infrastructure Company – Infraero (airports); and
- Planning and Logistics Company – EPL (planning).

Depending on the sector in which each of the SOEs operate, a different unit within the Ministry is responsible for the ministerial supervision and to assist the Minister in the fulfilment of his functions in relation to the SOE. In the case of airports, it is the National Civil Aviation Secretariat; in the case of the waterway and port transport sector, it is the National Secretariat of Ports and Waterways Transport; in the land transport sector, it is the National Secretariat of Land Transportation; in the case of research and planning, it is the Secretariat for Promotion, Planning and Partnerships ("SFPP" in Portuguese).

Among the specific units of SFPP, the Department of Infrastructure Development and Development has the competence to evaluate and propose mechanisms for restructuring, privatization and institutional reorganization of bodies and entities linked to the Ministry, including SOEs. In this sense, despite the fact that it is not SFPP´s responsibility to supervise the policy or ownership of state-owned companies related to MINFRA, it is worth noting that this Secretariat currently has one public servant in its organizational structure for supervising issues related to SOEs. In addition to this public servant, there are two other public civil servants that carry out, among others, activities related to the processes of restructuring, privatization and institutional reorganization of bodies and entities linked to the Ministry.

Corporate objectives

The law that mandates the creation of an SOE should ideally be clear in relation to the reasons that justified its incorporation. These reasons are the final objectives of the SOE. In any case, the bylaws also have the opportunity to detail both the public policy and business objectives of the SOE. In its ordinary activity, the board of directors will also have to reflect on the short and medium-term objectives of the SOE, for instance when proposing

the payments of dividends to shareholders and defining the structure of variable remuneration programs.

While Congress holds the pen when approving the bill that allows the incorporation of the SOE, Government (and, in those cases, specifically SEST within the Ministry of the Economy) will have a say in relation to changes in bylaws, distribution of dividends and definition of variable remuneration programs.

Changes in the bylaws and distribution of results are sent to the Government as proposed by the company's board of directors, and the government's assessment of the matter is expressed through its representative at the company's general meeting. In some cases, the board of directors may submit a consultation prior to the submission of the matter to the general meeting, in which case the governmental position is forwarded directly to the board by means of a letter and technical note on the matter.

In the case of variable remuneration programmes, the board of directors forwards its program proposals to SEST, which is the only government agency responsible for this assessment. The program must contain general rules, indicators, targets and justifications for the proposed targets, and must be aligned to the company's business plan. SEST evaluates the program, in particular its alignment with the company's strategic objectives, as well as with the market perspectives and the past results history. SEST demands, as a requirement for approval of the variable remuneration programme, that its goals should be more challenging than the results in the previous year and the average of the previous five financial years for a given indicator, except for justified cases.

4.2. Financial controls in the state-owned enterprise sector

SOEs in Brazil are subject to a complex system of internal and external controls at the federal level, as well as state and municipal. SOEs are required to establish internal audit units and audit committees, and to hire external auditors registered by CVM (SOE Statute). SOEs are additionally subject to state audit and control by two federal bodies – the Federal Court of Accounts (reporting to the legislature) and the CGU (part of the government administration). The authorities provide the following distinction between their respective functions:

I. The Federal Court of Accounts (Tribunal de Contas da União, TCU) is the Brazilian institution for accounting, financial, budgetary, operational and patrimonial oversight of the Federal Government and the entities of direct administration and indirect administration, as to the legality, legitimacy and economy and the supervision of the application of subsidies and the waiver of revenue; and

II. The Comptroller General of Brazil (Controladoria-Geral da União, CGU) is responsible for assisting the President of the Republic directly and immediately in the performance of its duties in matters that, within the scope of the Executive Power, are related to the defence of public assets and the increase of management transparency, through the activities of internal control, public audit, correction, prevention and fight against corruption, and national ombudsman. The CGU is also a central body of the Internal Control System and Correction System, both of the Federal Executive.

The Federal Court of Accounts

The TCU was established in 1890 as an auxiliary body to the Congress. Nine Ministers lead the entity – one-third of which are appointed by the Chamber of Deputies, one-third by the Federal Senate and one-third by the President. The TCU plays an important role in

Brazil's government accountability architecture with broad powers of control and oversight over federal public sector entities, including SOEs, and use of public funds (OECD 2013; 2017).

TCU fulfils the role of public sector "external audit" that, according to OECD standards, should not replace third-party external audit of SOEs. Indeed, in Brazil, TCU's external audits are in addition to those imposed by the SOE Statute. Operating under the 'Court Model', the TCU has judicative authority that enables it to investigate and sanction. This is not the case for all Supreme Audit Institutions around the world.

The TCU conducts individual audits of SOEs, as well as transversal audits on the SOE sector and of ownership and governance arrangements at the Federal level. Audits at the state level are conducted by State Courts of Accounts ("Tribunal de Contas do Estado"). Recent audits include one on SOEs' compliance with board nomination requirements of the SOE Statute (art. 17) as well as the implementation of all provisions in the SOE Statute. In another case, TCU found that the Federal Government incorrectly identified one SOE as independent of the fiscal state budget. In an audit of Petrobras, they found that the company assumed all the risks in relation to an asset but did not recognise it in the company`s balance sheet. More of TCU's audit findings are discussed as relevant in Part B.

The Office of the Comptroller General of Brazil

As the central body of the internal control system in the federal public sector, CGU has technical supervision of and provides normative guidance on internal control systems (including internal audit), correction and ombudsman of the federal public administration, including SOEs. CGU thus has multiple roles vis-à-vis SOEs. One such function is to audit SOEs that are controlled directly or indirectly by the Federal Government and companies in which it only has a minority stake. To this end, the CGU consistently exchanges information with SOEs' internal and external auditors. In many countries in Latin America, the Comptroller General's Office fulfils the public external audit role that, in Brazil, TCU fulfils. There are thus two Federal-level auditors of SOEs and the SOE sector – one subordinate to the legislature and one to the President. This has consistently raised concerns about the external control burden placed on SOEs in Brazil as compared to private firms that are audited only by third-party external auditors (OECD, 2013; 2017).

CGU regularly audits the following: (i) financial and operational performance of SOEs (e.g., whether costs are too high or revenues too low); (ii) the effectiveness of SOEs` internal control systems; (iii) the nomination for senior leadership positions in SOEs; (iv) whether SOEs are financially viable or if they should be considered dependent on the transfer of resources from the fiscal budget. In addition, CGU is also focusing on an assessment of SOEs' public policy objectives, including: (i) SOE`s management calculations of their costs associated with public policy objectives, and; (ii) the alignment between the public policy goals pursued by an SOE and those that justified their incorporation. All the auditing reports and information that CGU gathers in relation to SOEs are publicised in the Portal of Transparency, which is an open website. CGU's audit findings are discussed as relevant in Part B.

In addition to auditing SOEs' internal controls (and relatedly the internal audit function), CGU provides SOEs' internal audit functions with a risk matrix to guide the company's own audit planning. SOEs' audit plans are then approved by respective boards with a summary description of the risks attached to each item slated for audit. The risk matrix evaluates the probability and impact of risks on firms' objectives. CGU approves the appointment and removal of SOEs' chief internal auditor, who was previously nominated by the board of directors. CGU houses the Federal Administration's Ombudsman function as well, and thereby receives complaints from or related to SOEs (OECD, 2016).

In more of an advisory and advocacy role, CGU developed a Guidebook of Compliance for SOEs to help SOEs address fraud- and corruption-related compliance risk, as well as a companion Evaluation of the Compliance of State-Owned Enterprises (OECD, 2016).

The structure of the CGU is established in a way that seeks to mitigate potential conflicts of interests between its audit authority, national ombudsman function and advisory support for SOEs. Part B discusses challenges to this end, as well as between any gaps, overlaps or duplications between the control activities of the CGU and TCU vis-à-vis SOEs.

Other financial controls and audit requirements

The Federal House of Representatives has a Commission of Financial Auditing and Control ("Comissão de Fiscalização Financeira e Controle") that works based on the information that TCU provides it. In other words, the Commission has a more reactive role in supervising SOEs controlled by the Federal Government, relying on the initiative of TCU in initiating investigations (TCU can do so without the previous approval of Congress). When there are investigations and accusations involving relevant SOEs, the Commission can exercise its power to call on SOEs' senior leaders to explain the problem in Congress.

4.3. Boards of directors of state-owned enterprises

The SOE Statute and its detailed provisions on boards of directors should help to advance the professionalization of SOE boards. Strengthening mechanisms to prevent conflicts of interest and improve risk management and control within the company were among the innovations of the new Statute.

4.3.1. Board role and competencies

As mentioned in the beginning of this chapter, the Corporations Act establishes the board of directors as one of the main corporate bodies within the company structure. It gives the board of directors the authority (art. 142) to (i) define the strategy of the company, (ii) elect and dismiss the C-level executives, (iii) control the acts of the executives, (iv) choose the external auditors and (v) decide on issues whenever the bylaws require it. The board of directors cannot represent the company and is not supposed to engage actively in the day-to-day management decisions. For example, the board cannot sign a contract on behalf of the company or represent it in a judicial proceeding.

The SOE Statute (art. 18) clearly states that the board is responsible for implementing and supervising the systems of risk management and internal controls to mitigate the main risks faced by the SOE, including the integrity of financial reports and the occurrence of corruption and fraud. Directors and executives have fiduciary dutiesto the company, including loyalty, care and full disclosure to the companies and their shareholders (art. 153 of the Corporations Act). There are some examples of possible violations of the aforementioned duties in the law, but the Corporations Act sets those duties in broad terms and their exact meaning is interpreted in practice. It is clear nevertheless that directors and senior executives should act in the best interest of the company, and cannot favour any specific private interest (including that of the shareholder who elected the director).

4.3.2. Structure and composition of SOE boards

The SOE Statute stipulates – in line with the Corporations Act – that SOEs must provide for, in their company bylaws, a board of directors with a minimum number of seven and maximum of eleven members. For SOEs whose revenue is less than BRL 90 million, the minimum is three. Directors have a term of no more than two years and can be reinstated

no more than three times (in total, therefore, a director could stay in their position for up to eight years).

The board shall be composed of several members designated by the sectoral ministry (established in bylaws), one designated by the Ministry of Economy, one member elected by the employees (for SOEs with more than 200 employees) and, where applicable, at least one representative of minority shareholders.

SOEs must have at least 25% of independent directors in their boards or, if the general assembly chooses to elect directors using a cumulative voting system, at least one independent director. The definition of independence is offered by the SOE Statute itself and, in summary, it includes the requirement that the director shall not have professional or economic links to the SOE, its economic group, the controlling shareholder, and clients and providers of the company (art. 22 of the SOE Statute).

Law no. 12.353 of 2010 also establishes that SOEs controlled by the Federal Government with more than 200 employees should have one director elected by the employees in a separate process. In any case, all the duties and impediments that apply to other directors, including the ones in the Corporations Act and SOE Statute, are also applicable to the directors elected by the employees.

While public servants are permitted to sit on SOE boards, the SOE Statute (art. 20) establishes that they can be remunerated only for up to two positions in boards of directors or fiscal councils. Taking into account that public servants have full-time jobs, the goal of the rule is to avoid overextending officials' capacities to act diligently. The table below provides an overview of the boards of the largest SOEs.

Table 4.1. Boards of directors in large SOEs

SOE	Board composition
Banco do Brasil	8 members, of which: - 2 elected by minority shareholders; - 6 nominated by the Federal Government, deliberated at the General Meeting: 1 President of the Bank, 4 representatives nominated by the Minister of Economy, 1 elected by Banco do Brasil employees.
ELETROBRAS	11 members, of which: - 7 appointed by the Minister of Mines and Energy; - 1 appointed by the Minister of Economy; - 1 elected by minority shareholders holding common shares; - 1 elected by the holders of preferred shares (excluding the controlling shareholder); - 1 elected as employee representative.
PETROBRAS	At least 7 and at most 11 members. The composition must be alternated and in accordance with the guidelines of articles 18 and 19 of the Bylaws.
CEF	8 directors, of which: - 6 nominated by the Minister of Economy; - the President of CEF; - 1 employee representative.
BNDES	11 members, of which: - 9 nominated by the Minister of Economy; - 1 by the Minister of Foreign Affairs; - 1 representative of BNDES employees.
VALEC	6 members, of which: - 3 nominated by the Minister of Infrastructure; - 2 appointed by the Minister of Economy; - 1 representative of Valec employees.
EMGEA	7 members appointed by the Minister of Economy

SOE	Board composition
BNB	- 4 members appointed by the Minister of Economy; - 1 member appointed by minority shareholders, holders of common shares - 1 employee representative - the President of the Bank
INFRAERO	7 members, of which: - 3 appointed by the Minister of Infrastructure, of which 2 must meet the requirements of independent directors; - 1 appointed by the Minister of Economy; - 1 appointed by the Minister of Defense; - 1 indicated by employees; - the President of Infraero.
CODESP	7 members, of which: - 3 appointed by the Minister of Infrastructure; - 1 appointed by the Minister of Economy; - 1 member representing the employees; - 1 member representing minority shareholders, who must meet the requirements of an independent director; - 1 Business Class representative, nominated by representatives on the Port Authority Council, who must meet the requirements of an independent adviser.

Source: SEST.

The SOE Statute, as mentioned, also requires the creation, by the SOEs' bylaws, of two statutory committees to advise the board of directors: an 'Eligibility Committee' (nomination committee) (art. 10) and an audit committee (art. 24 and 25).

The establishment of a fiscal council, while not compulsory for all corporations in Brazil, is compulsory for SOEs. It can have between three and five members. Its members are elected by the general assembly, and article 161 of the Corporations Act allows (i) preferred stockholders to elect one member and (ii) minority shareholders holding at least 10% of voting shares to elect another member. Likewise, in the case of companies partially owned by the State, article 240 of the Corporations Act guarantees minority shareholders the right to elect at least one member of the fiscal council regardless of the number of their voting shares.

4.3.3. Board nomination procedures

When the state is not the sole owner, other shareholders are able to express their opinion through their vote at the general shareholder meetings. In this regard, the Corporations Act (art. 141) allows (i) investors holding 10% of the shares to request the cumulative voting system for the election of the directors, (ii) investors holding at least 15% of voting shares to elect one director, (iii) preferred stockholders (who typically do not hold any voting right) holding at least 10% of total stock to elect another director. Likewise, if minority shareholders do not reach any of the mentioned thresholds for the election of directors, they will be able to elect one director if they have together (voting and preferred stockholders) at least 10% of total stock. Moreover, in the case of companies partially owned by the State, article 239 of the Corporations Act guarantees minority shareholders, regardless of their number of shares, the right to elect at least one director.

4.3.4. Criteria for board member selection (and independence requirements)

The SOE Statute caused an important and immediate change to the nomination of directors. Article 17 establishes that directors and those appointed for office positions, including directors and CEOs, should be citizens with "unsoiled reputation and reputable knowledge", adhering in full to the following minimum criteria: (i) minimum experience

that the person should have prior to the nomination (for example, someone with 10 years of experience as a senior executive in a privately-owned firm or SOE in the same industry would qualify according to the Statute); (ii) to have an academic background compatible with the position[26]; (iii) not to have committed any offense that gives cause to the ineligibility to hold a public office.

Moreover, the SOE Statute (art. 17) excludes the following persons and their family members from nomination as director or senior executive:

a. Official of a regulatory agency that supervises the SOE, Minister, Secretary of State, public officials that are not part of a public service career (i.e., who can be freely nominated and dismissed from their position in the Administration), senior leaders of political parties, and elected politicians from any level of the Federation;

b. Anyone who, in the last 36 months, acted as a senior leader of a political party or worked in an electoral campaign;

c. Anyone who holds a position in a Union;

d. Anyone who has closed a commercial deal with the controlling shareholder or the SOE itself in the last 36 months;

e. Anyone who has, or could have in the future, a conflict of interest with the controlling shareholder or the SOE itself.

These requirements aim to reduce the risks of political patronage and exploitation of SOEs. The Statute provides for the impediment of politicians, active party members, senior public officials that do not have tenure and union leaders. It also excludes their families, up to the third degree (including, for example, siblings and uncles)[27]. Many institutions regard this reform as an extremely positive advancement for the corporate governance and the quality of SOEs' management. The OECD mission team learned that the largest SOEs in the country are compliant with the article 17. Some SOEs at the subnational level are still non-compliant[28].

Concerns remain that the effort to impede persons with potential or actual conflicts of interest would unnecessarily exclude certain would-be candidates. For instance, it might discourage nomination of anyone from the private sector or a liberal professional that might, in the future, be in a position to provide services or work in companies in the same industry. If such an extreme interpretation were adopted (and it seems that it was the case at least once in a national SOE), the SOEs would be able to attract only career public servants and academics to fill positions in their senior leadership, which might hinder their capacity to have a diverse leadership. However, the current interpretation of the Ministry of Economy and BNDES is that the conflict of interest mentioned in art. 17 is a current – but not a future – one.

[26] Art. 62 of Decree no. 8.945/2016 regulates mentioned legal provision with a list of undergraduate and postgraduate degrees that would make the individual`s academic background compatible with the position: management, economics, international trade, accountancy, law, engineering, among others.

[27] In addition to political patronage, the nomination to positions in SOEs` boards has been used to supplement the remuneration of senior public servants who come from the private sector for salaries that are often much lower in senior roles.

[28] According to consultants to the Federal House of Representatives, the Congress expected that the Executive would have an agency to check whether the nominations to SOEs were compliant with the SOE Statute, but this agency was never created.

In relation to the fiscal council, whose existence is compulsory in SOEs, the SOE Statute succinctly reaffirms that related provisions of the Corporations Act apply to the SOEs. That is, fiscal council members should have a compatible academic background and relevant experience of at least 3 years. CVM currently operates under the assumption that article 17 of the SOE Statute applies to members of the fiscal council, but the Judiciary understands the opposite to date (in the strictly literal interpretation of the law upheld by the courts, art. 17 would apply only to board members and senior executives, but not to fiscal council members).

There are, nevertheless, differences on the rules applied to the composition of the board of directors, fiscal councils and audit committees according to the size of the revenues of the SOE as shown in the table below.

Table 4.2. Criteria for the composition of SOE bodies

	Smaller SOEs (revenues < BRL 90 million)	Major SOEs (revenues > BRL 90 million)
	Boards of directors:	
Number of directors	At least 3	Minimum 7 members Maximum 11 members
Independent directors	Not compulsory	At least 25%
Impediments to become senior executive or director	Representative of regulatory agencies, members of the Legislative and political party leaders, recent contractual counterparty to the SOE or the Federal Government and individuals who cannot be elected as public officers	All impediments for smaller SOEs, Ministers and State Secretaries, relatives of individuals who are impeded, individuals who have recently participated in political campaigns or were leaders in political parties, Union leaders
Min. experience for directors	5 years in any role or 2 years in corporate or public administration senior roles, as a scholar or in a profession	10 years in any role 4 years in corporate or public administration senior roles, as a scholar or in a profession
	Other corporate bodies:	
Fiscal Council rules	Min. 3 years of experience in a corporate or public administration senior position, face the same impediments as directors in smaller SOEs, have undergraduate degree and be independent in relation to SOEs management	Similar rules for smaller SOEs, but seniority of the experience and academic training must be relatively higher
Audit Committee rules	Cannot have been a senior executive or fiscal council member of the SOE and its external auditor (during the last 12 months) and face the same impediments as directors in smaller SOEs. One of the members must have professional experience in corporate accounting	Must be independent from the management of the SOE and its external auditor (no relationship during the last 12 months), face the same impediments as directors in smaller SOEs, cannot have been a public servant in the Federal Government for the last 12 months and mandates of 2 or three years

Source: Decree no. 8.945/2016.

4.4. Description of selected Brazilian state-owned enterprises

This section describes four of Brazil's SOE holdings that are, in each case, the largest Brazilian companies in their respective sector and, in certain cases, the largest in Latin America.

The sub-sections below provide key characteristics of these large firms and highlight certain of their corporate governance activities. SEST considers that all four are currently implementing the SOE Statute satisfactorily, assigning the highest score (level 1) in its latest IG-SEST assessment against the law (Law no. 13.303/2016, regulated by Decree no. 8.945/2016). SEST also categorises many of the company groups' subsidiaries as level 1.

4.4.1. Banco do Brasil

Banco do Brasil (BB) is the largest financial institution by assets in Latin America. It was the first company listed in Brazil's stock exchange, and is currently the only Brazilian bank listed in B3's top listing tier – Novo Mercado. Founded in 1808, it is one of the world's longest-running financial institution and is active internationally since 1941 (now present in 17 countries). It is active in commercial banking services, insurance, capital markets and asset management.

BB is subject to Brazil's most stringent listing standards (those of Novo Mercado) and B3's Certification for SOEs. The Ministry of Economy is the sole responsible for exercising the states' 50.7% direct and indirect ownership. The remaining free-float is currently shared among domestic and foreign investors. The market capitalisation of BB Group was 34.379 million USD and it employed 105 345 at the time of writing according to SEST.

BB no longer has the goal of nationwide coverage of banking branches, which used to be a significant public policy obligation in the past given the vast size of the country's territory. Yet BB is present in 99.5% of Brazilian cities and has market share of 20.6% in commercial banking.

BB's board has eight members – two of which are elected by the minority shareholders and one by employees (in accordance with the SOE Statute). The Board is advised by an audit committee with a majority of independent members, the company has a fiscal council with five members and their alternates, and the executive board is composed by the CEO and nine vice-presidents. BB has appointment and succession policies, which also apply to the members of the committees. The board oversees risk management and control through a specific committee, which, among other issues, evaluates the methodology for assessing the credit risks of clients (each client has a rating).

In June 2020, BB`s board of directors was composed by the following members:

Table 4.3. BB`s board of directors

	Elected by the Federal Govern.?	Main occupation	Gender	Independent according to the company?
Hélio Lima Magalhães (chaiman)	Yes	Director in privately-owned companies	Male	Yes
Waldery Rodrigues Júnior (vice-chairman)	Yes	Special Secretary of Finance of the Ministry of Economy	Male	No
Rubem de Freitas Novaes	Yes	BB`s CEO	Male	No
Débora Cristina Fonseca	No (employees)	BB`s employee	Female	No
Joaquim José Xavier da Silveira	Yes	Academic	Male	Yes
José Guimarães Monforte	Yes	Chairman of Eletrobras	Male	Yes
Luiz Serafim Spinola Santos	No	Director in privately-owned companies	Male	Yes
Paulo Roberto Evangelista de Lima	No	Director in privately-owned companies	Male	Yes

Source: https://ri.bb.com.br/en/corporate-governance-and-sustainability/board-of-directors/ and https://www.rad.cvm.gov.br/ENET, accessed on 8 June, 2020.

In June 2020, BB`s human resources, compensation and eligibility committee was composed by the following members:

Table 4.4. BB`s nomination committee

	Elected by the Federal Govern.?	Main occupation	Independent according to the company?	Director?
Luiz Serafim Spinola Santos (chair)	No	Director in privately-owned companies	Yes	Yes
Egidio Otmar Ames	-	Former BB executive	-	No
Paulo Roberto Evangelista de Lima	No	Director in privately-owned companies	Yes	Yes

Source: SEST and https://www.rad.cvm.gov.br/ENET, accessed on 8 June, 2020.

In June 2020, BB`s audit committee was composed by the following members:

Table 4.5. BB`s audit committee

	Elected by the Federal Govern.?	Main occupation	Independent according to the company?	Director?
Antonio Carlos Correia (chair)	-	Former BB executive and member of this committee since 2012	-	No
Luiz Serafim Spinola Santos	No	Director in privately-owned companies	Yes	Yes
Marcos Tadeu de Siqueira	-	Former BB employee	-	No

Source: SEST.

In June 2020, BB`s fiscal council was composed by the following members:

Table 4.6. BB`s fiscal council full members

	Elected by the Federal Govern.?	Main occupation
Rafael Cavalcanti de Araújo	Yes	National Treasury public servant
Aldo César Martins Braido	Yes	Chief of Staff of the Attorney General of the Ministry of Economy
Aloisio Macário Ferreira de Souza	No	Fiscal council member of privately and state-owned companies
Maurício Graccho	No	Former asset manager executive

Note: One position to be filled by an appointee of the Ministry of Economy was vacant in June 2020.
Source: SEST.

As it is possible to observe in Figure 8.1. Monthly average remuneration of directors in USD – financial sector in the Part B of this report, the remuneration of BB`s directors is significantly lower than privately-owned major financial institutions in Brazil (Santander Brazil, Itaú and Bradesco).

BB wholly owns 11 companies, controls 27, is affiliated with 50, has simple participation in 21 and sponsors 6 (according to BB). In companies under BB`s control, the Ministry of the Economy directly chooses one board member and one member of the fiscal council in each SOE. The other members of the boards and fiscal councils are usually employees and officers from the BB group. The BB holding evaluates the performance of directors of their subsidiaries and invested companies.

BB has a whistle-blower system in place, which provides a confidential channel that any employee in the group can use for direct access to an Ombudsman sitting in the holding company.

BB has been evaluating in a regular basis if the assets and enterprises they own still make sense within their strategy, exemplified by the recent liquidation of its tourism subsidiary. They always hire a second opinion on the value of the companies they buy or sell, which is presented to the corporate body that makes the final decision. As is the case for all SOEs controlled by the Federal Government, SOEs are considered related-parties for financial reporting ends. If a related party transaction (RPT) is above BRL 50 million, it must be disclosed to the market in accordance with a CVM rule applying to all listed companies. Should BB wish to offer a loan to another SOE, it must go through the corporate branch, superintendence, credit committee and finally a credit transactions committee. Depending on the amount of the loan, the approval procedure might include the analysis of the board of directors' audit committee.

A bank of the size and complexity of BB has many different sources and types of funding. While it was not possible to find comparable information on interest rates paid by listed privately owned banks in Brazil, it is possible to observe in BB`s 2019 Financial Statements that it issued a medium term note in BRL in 2019 with 7 years of maturity with a p.a. remuneration of 9.50% while a 6-years Brazilian Treasury was paying 6.49% p.a. on 30 December 2019[29].

4.4.2. BNDES

The Brazilian National Economic and Social Development Bank (Banco Nacional de Desenvolvimento Econômico e Social – BNDES) is one of the largest development banks in the world, and plays a unique role in Brazil as state-owned investor and lender. It has a formal bank license and is supervised by the Central Bank of Brazil. BNDES advises on privatisation and is responsible for related due diligence and valuation, among other critical tasks (see section 6). Ownership and control of BNDES are the sole responsibility of the Ministry of Economy. In June 2020, BNDES`s board of directors was composed by the following members:

Table 4.7. BNDES`s board of directors

	Elected by the Federal Govern.?	Main occupation	Gender	Independent according to the company?
Marcelo Serfaty (chairman)	Yes	Asset manager and director in privately-owned companies	Male	Yes
Fábio de Barros Pinheiro	Yes	Director in privately-owned companies	Male	No
Heloisa Belotti Bedicks	Yes	Director in privately-owned companies	Female	Yes
João Laudo de Camargo	Yes	Lawyer	Male	Yes
Juan Pedro Jensen Perdomo	Yes	Academic and consultant	Male	Yes
Mansueto Facundo de Almeida Junior	Yes	Secretary of Treasury of the Ministry of Economy	Male	No
Waldery Rodrigues Junior	Yes	Special Secretary of Finance of the Ministry of Economy	Male	No

[29] https://www.tesourodireto.com.br/titulos/historico-de-precos-e-taxas.htm, accessed on 10 June, 2020.

	Elected by the Federal Govern.?	Main occupation	Gender	Independent according to the company?
Walter Baere de Araújo Filho	Yes	Public Lawyer of the Federal Government	Male	No
William George Lopes Saab	No (employees)	BNDES`s employee	Male	No

Source:https://www.bndes.gov.br/wps/portal/site/home/quem-somos/governanca-controle/_colegiados_do_sistema_bndes/colegiados-bndes#consadm, accessed on 8 June, 2020.

In June 2020, BNDES` nomination and audit committee – which responds directly to the board of directors – was composed by the following members:

Table 4.8. BNDES` nomination and audit committee

	Elected by the Federal Govern.?	Main occupation	Independent according to the company?	Director?
Fábio de Barros Pinheiro (chair)	Yes	Director in privately-owned companies	No	Yes
Heloisa Belotti Bedicks	Yes	Director in privately-owned companies	Yes	Yes
Paulo Marcelo de Miranda Serrano	-	Lawyer	-	No

Source: SEST.

In June 2020, BNDES` fiscal council – which responds directly to shareholders – was composed by the following members:

Table 4.9. BNDES` fiscal council full members

	Main occupation
Vinícius Mendonça Neiva	National Treasury public servant
Eduardo Garcia de Araújo Jorge	Lawyer

Note: One full member position was vacant in June 2020.
Source: SEST

In Figure 8.1 in the Part B of this report, it is possible to see that the average monthly remuneration of a BNDES director was less than one tenth of the average remuneration of directors in two major privately owned financial institutions in Brazil (Santander Brazil and Itaú).

BNDES was founded in 1952 to provide long-term financing for infrastructure projects. By 2013, BNDES contributed around 21% of the total credit to the private sector and almost all long-term credit, increasing its participation as minority shareholder in many private firms (Musacchio and Lazzarini, 2014). BNDES gave an estimated 20 to 40% of all loans to SOEs over the last decade (Musacchio et al., 2019). It has evolved from long-term financing to encompass "support for exports, technological innovation, sustainable socio-environmental development and the modernisation of public administration". BNDES played a central role in the privatisations of the 1990's, and will reassume an important role in the privatisations slated under the current administration (see section 6).

The BNDES holding company had 182 billion USD in total assets and 36 billion USD in equity capital in the end of 2019 and, according to SEST, 2 680 employees. In BNDES` 2019 financial report, it is possible to identify the following most relevant equity holdings:

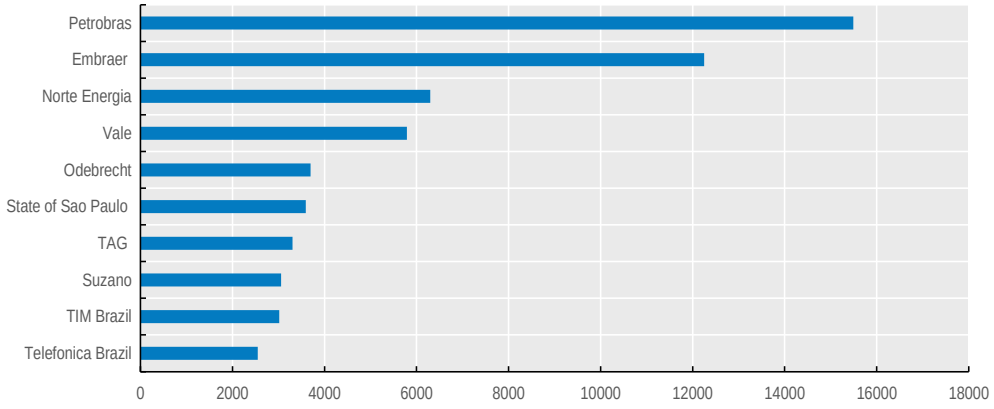
Table 4.10. BNDES's main equity holdings

	Industry	Investment in Associates	% of the company`s equity in end-2019	End-2018 (market value in thousand USD)	End-2019 (market value in thousand USD)
Petrobras	Oil & Gas	No	13.9	11 859 267	13 970 800
Vale	Mining	No	6.12	4 443 550	4 292 039
Fibria	Pulp & Paper	Yes	-	2 787 394	-
JBS	Beef	Yes	21.32	1 732 314	3 761 219
Eletrobras	Energy	No	18.72	1 623 659	2 373 154
Suzano	Pulp & Paper	No	11.04	733 671	1 493 191
Copel	Energy	No	23.96	507 120	1 118 021
Cemig	Energy	No	5.52	300 908	298 128
Marfrig	Beef	Yes	-	295 958	-
AES Tiete Energia	Energy	No	28.41	288 274	448 764
Klabin	Pulp & Paper	No	5.20	228 826	258 258
Embraer	Aircraft	No	5.37	219 192	194 466
Tupy	Iron and steel	Yes	28.19	155 462	162 604
Gerdau	Iron and steel	No	1.45	94 305	123 513
Light	Energy	No	5.96	81 063	107 057
Linx	IT	No	-	80 996	-
Copasa	Sanitation	No	3.46	67 788	73 981
Engie Brasil Energia	Energy	No	0.95	66 653	98 453
Ouro Fino Saúde Animal	Animal Care	No	12.26	56 789	70 438
Totvs	IT	No	-	52 108	-
Brasiliana Participaçoes	Energy	N/A	53.85	N/A	N/A
Carbomil	Mining	N/A	30.00	N/A	N/A
CEG (local SOE)	Oil & Gas	N/A	34.56	N/A	N/A
Nilza	Food & Beverage	N/A	35.00	N/A	N/A
LBR	Food & Beverage	N/A	30.28	N/A	N/A
Netuno	Food & Beverage	N/A	33.28	N/A	N/A
Sunew	Energy	N/A	30.36	N/A	N/A
Taum Chemie	Petrochemicals	N/A	36.36	N/A	N/A
TBM	Textiles	N/A	35.30	N/A	N/A
Unitec	TI	N/A	33.02	N/A	N/A
Total Equity Holdings	-	-	-	26 907 746	29 789 485

Note 1: BNDES holding only owns directly significant equity stakes of Petrobras and Eletrobras. The other investments are mostly directly owned by BNDESPar.
Note 2: Tupy S.A. is not a listed company and, therefore, there is no market value for the shares owned by BNDES group. The value presented in this table is the one included in BNDES` financial reports and is based on the equity method.
Note 3: Shares of Linx, Totvs and Marfrig were sold in 2019 and shares of Fibria were swapped by shares of Suzano in the same year.
Note 4: This table does not include the equity holdings BNDES indirectly has through PE&VC funds managed by third-parties. In some of these funds, nevertheless, BNDES has representatives in investment committees that make investment decisions on behalf of the fund.
Note 5: Information on the classification as associates and equity value is not available in the financial statements for the smaller equity holdings.
Note 6: Participations in the fourth column are over total equity, including common and preferential shares.
Source: BNDES Holding IFRS 2019 Financial Reports. The financial reports are only available in BRL and, therefore, values were converted to USD using the official Central Bank exchange rate.

It is also possible to observe in the chart below that, from 2004 until 2019, among BNDES ten main receivers of equity and debt investments were two SOEs: Petrobras and its subsidiary TAG (a gas distribution company), which was privatised in 2019. As one can see in the chart below, the others are three Brazilian privately-owned listed companies (Embraer, Vale and Suzano), one private construction company (Odebrecht), one SPV with majority investment from SOEs and pension funds sponsored by SOEs (Norte Energia), two multinational telecoms (TIM and Telefonica) and a subnational government (the State of Sao Paulo).

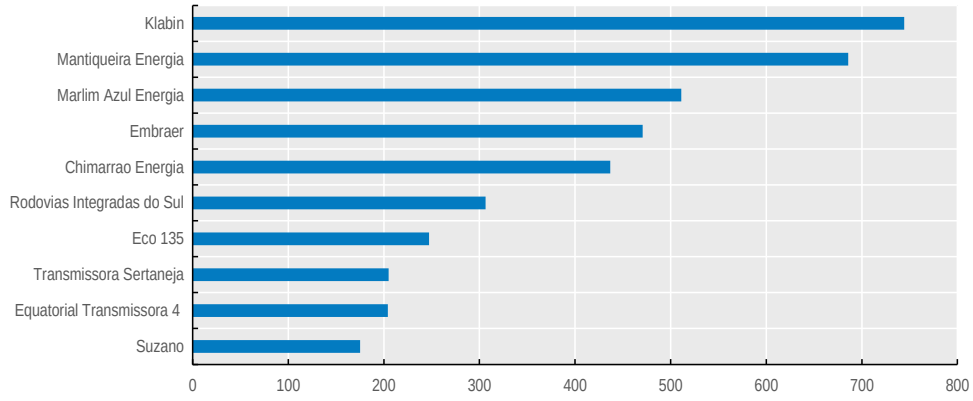
Figure 4.1. Equity and debt financing by BNDES (in million USD) – 2004 to 2019



Note: Values were converted from BRL to USD using the Central Bank`s foreign exchange rate on 31 December, 2019.
Source: https://www.bndes.gov.br/wps/portal/site/home/transparencia/consulta-operacoes-bndes/maiores-clientes, accessed on 10 June, 2020.

Looking exclusively to 2019, there was no SOE among the 10 biggest recipients of debt and equity. As one can see in the chart below, there are three privately owned listed companies (Klabin, Embraer and Suzano) and private companies that explore infrastructure projects (most of them SPVs owned by asset managers and construction companies).

Figure 4.2. Equity and debt financing by BNDES (in million USD) – 2019



Note: Values were converted from BRL to USD using the Central Bank`s foreign exchange rate on 31 December, 2019.
Source: https://www.bndes.gov.br/wps/portal/site/home/transparencia/consulta-operacoes-bndes/maiores-clientes, accessed on 10 June, 2020.

The Inter-American Development Bank considers BDNES as a rarity, affecting Brazil's centralised model of governance because of its sheer size and ability to apply management techniques and policies that differ from others' (IDB, 2016). BNDES' main base interest rate was, until the end of 2018, the TJLP, which is some basis points lower than the Central Bank's basic rate and thus even lower than private banks' market interest rates. For example, in the last quarter of 2017 the TJLP was 7% a year, while the Central Bank`s basic rate was 7.5% a year. Depending on the credit risk and duration of the loan, BNDES would charge a rate effectively higher than the TJLP, but it was often smaller than what privately owned banks would charge in similar circumstances. The subsidised rate promoted an overreliance on BNDES loans. In January 2018, BNDES's new long-term interest rate (TLP) came into force and replaced its predecessor. TLP`s calculation methodology is set to initiate with the TJLP in place on the 1st of January 2018 and converge to a market-based rate in 2023. The change was welcomed for its potential to support diversification in infrastructure investment and open up private financing.

BNDES has one subsidiary that invests in equity, which is named BNDESPAR (only 38 employees) and is also overseen by the Ministry of Economy. It has invested in small and medium companies with the reported goals of providing finance for their growth and governance improvement. BNDESPAR reported that it does not currently have controlling power in its invested companies, although they do have shareholder agreements in some cases (e.g., in the energy sector AES Tiete Energia S.A. and Vale S.A. in the mining sector) and equity stakes above 20% in many other cases, which would give the bank – if not controlling power – a significant degree of influence.

The governing bodies of BNDESPAR decided in 2019 to sell most of the shares it owns in listed companies, such as in Marfrig and Petrobras, because they do not see that the role of a development bank should be to invest in mature companies. BNDESPAR effectively sold its stake in Marfrig in 2019, but, according to information obtained by the mission team, progress has been slower than envisaged due to administrative inertia and resistance by corporate insiders.

4.4.3. Eletrobras

Eletrobras is Latin America's largest electricity company – operating in energy generation, transmission and commercialisation. It controls eight subsidiaries, a holding company (Eletropar), a research centre that is a private association (Cepel) and 50% of Itaipu Binacional. It has direct and indirect interests in 137 special purpose entities (Eletrobras Market Newsletter, 3Q19). It holds approximately 30.2% of Brazil's installed generation capacity, has a market value of 8 728 million USD and employs 14 641 people. The State owns 63.08% of Eletrobras and exercises this ownership jointly through the Ministry of Economy and the Ministry of Mines and Energy.

Eletrobras has a board of directors with 11 positions (each one with a two-year mandate), of which: (i) seven are nominated by the Ministry of Mines and Energy ("MME"); (ii) one is nominated by the Ministry of the Economy; (iii) one is an employees` representative; (iv) one is elected by the minority shareholders, and; (v) one is elected by preferential stockholders. Eletrobras' board of directors is advised by nomination, audit and strategy committees, which also oversee the activities of the holding and all the subsidiaries. The directorate of compliance also reports every quarter to the board on integrity-related controls. In June 2020, Eletrobras` board of directors was composed by the following members:

Table 4.11. Eletrobras` board of directors

	Elected by the Federal Govern.?	Main occupation	Gender	Independent according to the company?
José Guimarães Monforte (chairman)	Yes	Director in SOEs and privately-owned companies	Male	Yes
Wilson Ferreira Junior	Yes	Eletrobras` CEO	Male	No
Bruno Eustáquio Ferreira Castro de Carvalho	Yes	Deputy Executive Secretary at the MME	Male	No
Daniel Alves Ferreira	No	Lawyer	Male	Yes
Felipe Villela Dias	No	Consultant	Male	Yes
Luiz Eduardo dos Santos Monteiro	No (employees)	Director of Eletrobras	Male	No
Marcelo de Siqueira Freitas	Yes	Head of Special Advisory to the Minister of Economy	Male	No
Mauro Gentile Rodrigues Cunha	Yes	Director in SOEs and privately-owned companies	Male	Yes
Ricardo Brandão Silva	Yes	Public Lawyer of the Federal Government	Male	No
Ruy Flaks Schneider	Yes	Director in SOEs and privately-owned companies	Male	Yes
Vicente Falconi Campos	Yes	Consultant	Male	Yes

Source: https://eletrobras.com/en/Paginas/Boards-and-Councils.aspx and https://www.rad.cvm.gov.br/ENET, accessed on 9 June, 2020.

The CEO is directly selected by the MME and is also a member of the board of directors. All senior leadership appointments must go through an integrity check done by the compliance directorate within Eletrobras. The head of this directorate is – according to the company`s bylaws – appointed directly by the board of directors based on a list of three names proposed by a head-hunter.

In June 2020, Eletrobras` nomination committee – which responds directly to the board of directors – was composed by the following members:

Table 4.12. Eletrobras` nomination committee

	Elected by the Federal Govern.?	Main occupation	Independent according to the company?	Director?
Marcelo de Siqueira Freitas (chair)	Yes	Head of Special Advisory to the Minister of Economy	No	Yes
Ruy Flaks Schneider	Yes	Director in SOEs and privately-owned companies	Yes	Yes
Vicente Falconi Campos	Yes	Consultant	Yes	Yes

Source: SEST and https://www.rad.cvm.gov.br/ENET, accessed on 9 June, 2020.

In June 2020, Eletrobras` audit and risk committee – which responds directly to the board of directors – was composed by the following members:

Table 4.13. Eletrobras` risk and audit committee

	Elected by the Federal Govern.?	Main occupation	Independent according to the company?	Director?
Mauro Gentile Rodrigues Cunha (chair)	Yes	Director in SOEs and privately-owned companies	Yes	Yes
Daniel Alves Ferreira	No	Lawyer	Yes	Yes
Felipe Villela Dias	No	Consultant	Yes	Yes
Luis Henrique Bassi Almeida	-	Consultant	Yes	No

Note: In Brazilian companies, member of committees do not necessarily need to be members of the board of directors.
Source: SEST and https://www.rad.cvm.gov.br/ENET, accessed on 9 June, 2020.

Eletrobras` fiscal council – which responds directly to shareholders – is composed by five members and their alternates, including two appointed by the MME, one by the National Treasury and two by non-controlling shareholders (one by minority shareholders and one by owners of preferential shares). In June 2020, it was composed by the following members:

Table 4.14. Eletrobras` fiscal council

	Elected by the Federal Govern.?	Main occupation
Eduardo Coutinho Guerra (full member)	Yes	Manager in the National Treasury
Thaís Márcia Fernandes Matano Lacerda (full member)	Yes	Legal advisor to the Minister of Mines and Energy
Márcio Leão Coelho (alternate)	Yes	Manager in the National Treasury
Dario Spegiorin Silveira (alternate)	Yes	Legal advisor in the MME
Giuliano Barbato Wolf (full member)	No	Consultant
Patricia Valente Stierli (full member)	No	Private bank executive
Gaspar Carreira Junior (alternate)	No	Consultant

Note: In June 2020, the Ministry of Mines and Energy had one full member and one alternate member positions to fill, and owners of preferential shares had one alternate member vacancy to fill.
Source: SEST and https://www.rad.cvm.gov.br/ENET, accessed on 15 June, 2020.

In Figure 8.2 in Part B of this report, it is possible to see how the remuneration of Eletrobras` directors is considerably smaller than the remuneration of directors in other companies in the energy sector (for example, about one fifth of the average remuneration in the privately owned Energias do Brasil).

Previously providing a high degree of separation from its subsidiaries, Eletrobras has recently tried to decrease this separation by appointing executives from the holding company as directors in the subsidiaries (such as Furnas, Chesf and Eletrosul). Still in relation to the subsidiaries (and, for that matter, to the special purpose vehicles that Eletrobras co-controls), Eletrobras asserts that they are fully compliant with article 17 of the SOE Statute in the appointment to their boards of directors and fiscal councils. Likewise, they have a program of performance and corporate governance targets with their subsidiaries and follow its implementation monthly.

Eletrobras has a written policy on RPTs, which includes the constant review by the auditing committee of the conditions of the RPT. Likewise, the company discloses RPTs above 50 million BRL according to CVM regulation.

Eletrobras pursues public policy goals – for instance, it executed the programme Luz para Todos ("Light for Everyone"), which promoted affordable access of electricity to households, schools and community wells in rural areas. The programme was financed by

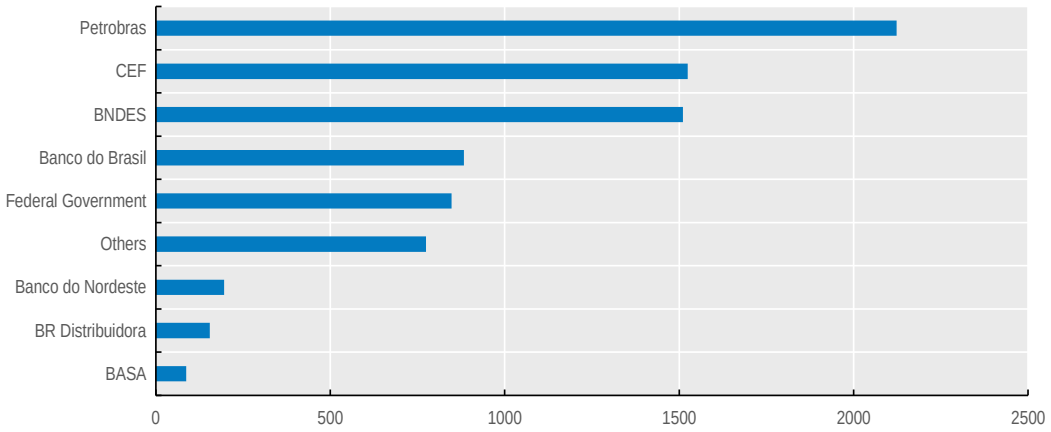
a public fund named CDE ("Conta de Desenvolvimento Energético"), endowed by a tax on electricity bills. While Eletrobras should have been fully compensated for implementing the program Luz para Todos according to relevant regulation, it was reported that the calculation of the compensation might not have included all the actual costs.

Eletrobras is, at the time of writing, slated for privatisation (see section 6). Eletrobras had already been divesting some of its assets in recent years. The company currently has 137 special purpose vehicles, down from 160 in 2016. Eletrobras has no more distribution companies and is completely focused on the generation and transmission of electricity.

A source heard by the OECD team mentioned that one of Eletrobras` biggest burdens of being an SOE is to have a procurement regime that lends little flexibility and difficulty in dismissing employees when needed. In the past, they simply could not dismiss anyone without cause, but in 2019 they closed a new agreement that allows the company to dismiss employees whenever it can prove that private sector companies execute the same activity with fewer employees.

At the end of 2019, the Eletrobras Group`s average cost of short-term financing in BRL was, according to its 2019 Financial Statements of 5.40% p.a. (explanatory note 22), while a one-year Brazilian Treasury was paying 4.54% p.a. on 30 December 2019[30]. As one can observe in the chart below, most of Eletrobras Group`s debt – including loans, trade credit and compensation owed to the State as a Concession Granting Authority – came from the Federal Government and SOEs controlled by it.

Figure 4.3. Eletrobras` short and long-term debt (in million USD) – 2019



Note 1: Values were converted from BRL to USD using the Central Bank`s foreign exchange rate on 31 December, 2019.
Note 2: "Others" above include a Brazilian subnational SOE, a Chinese SOE and private financial institutions. All companies identified in this chart are SOEs controlled by the Federal Government, while BR Distribuidora is a Petrobras` subsidiary privatised in 2019.
Source: Eletrobras` 2019 Financial Statements.

4.4.4. Petrobras

Petrobras – the oil and gas behemoth – is 42.7% owned by the government, holding a market value of 46 billion USD as of the 2nd of October 2020 and has 60 176 employees[31].

[30] https://www.tesourodireto.com.br/titulos/historico-de-precos-e-taxas.htm, accessed on 10 June, 2020.

[31] Accounting for Petrobras Group, except BR Distribuidora.

The Petrobras group has changed its corporate structure in recent years through mergers and sell-offs of certain subsidiaries, but the Federal Government still has a majority of voting shares.

Petrobras was at the helm of the Car Wash corruption investigations that began in 2014. Petrobras has since made fundamental changes to governance arrangements, and its risk management and compliance system. It has, for instance, an anonymous whistle-blower complaints channel, run by an external firm. The channel received 2 396 complaints in 2018.

The composition of Petrobras' board of directors has significantly changed. Transitioning from a high concentration of senior public officials, Petrobras' board now has senior executives from the private sector and 40% independent members. Recruiters send a list of three candidates for each independent director position to the Ministry of Mines and Energy. The directors conduct self-evaluations on a consistent basis with the help of an external consultancy (Russel Reynolds). Recruiters also propose C-level executives from the private sector (40%), with all senior leadership candidates passing through a background check by the board's nomination committee. This process applies equally to the Corporate Governance and Compliance Officer, who can only be dismissed by the board of directors with the vote of at least one director elected by the minority shareholders. One of the Officer's many functions is to issue a quarterly report to the board of directors. Moreover, in line with SOE Statute's Article 17 and its integration into company bylaws, Petrobras and its subsidiaries must meet minimum criteria for the nomination of directors, C-level executives and representatives of the audit committee and fiscal council. In June 2020, Petrobras` board of directors was composed of the following members:

Table 4.15. Petrobras` board of directors

	Elected by the Federal Govern.?	Main occupation	Gender	Independent according to the company?
Eduardo Bacellar Leal Ferreira (chairman)	Yes	Retired Military	Male	No
Roberto da Cunha Castello Branco	Yes	Petrobras` CEO	Male	No
Danilo Ferreira da Silva	No (employees)	Petrobras` employee	Male	No
João Cox Neto	Yes	Director in privately-owned companies	Male	Yes
Marcelo Mesquita de Siqueira Filho	No	Asset Manager	Male	Yes
Maria Cláudia Mello Guimaraes	Yes	Consultant	Female	Yes
Nivio Ziviani	Yes	Academic	Male	Yes
Sônia Júlia Sulzbeck Villalobos	No	Director in privately-owned companies	Female	Yes
Walter Mendes de Oliveira	Yes	Pension Fund Manager	Male	Yes

Source: https://www.rad.cvm.gov.br/ENET, accessed on 9 June, 2020.

Petrobras has an audit committee for the holding company as well as one that supervises auditing and related issues in all controlled companies without their own. The holding company has a specialised committee that is responsible, among other activities, for reviewing RPTs that should be approved by the board of directors. All RPTs above 60 million USD should be reviewed by the auditing committee as well. The committee has two independent directors and a third member that is not a director but who is independent. Likewise, the holding company has a human resources committee that is responsible,

among other activities, for reviewing if nominations to the board of directors and key executives position comply with legal requirements.

In June 2020, Petrobras` nomination committee – which responds directly to the board of directors – was composed by the following members:

Table 4.16. Petrobras` nomination committee

	Elected by the Federal Govern.?	Main occupation	Independent according to the company?	Director?
Marcelo Mesquita de Siqueira Filho	No	Asset Manager	Yes	Yes
Sérgio Luiz de Toledo Piza	-	Senior executive in a privately-owned company	-	No
Tales José Bertozzo Bronzato	-	Senior executive in a subnational SOE	-	No

Source: SEST and https://www.rad.cvm.gov.br/ENET, accessed on 15 June, 2020.

In June 2020, Petrobras` statutory audit and risk committee – which responds directly to the board of directors – was composed by the following members:

Table 4.17. Petrobras` audit committee

	Elected by the Federal Govern.?	Main occupation	Independent according to the company?	Director?
Walter Mendes de Oliveira	Yes	Pension Fund Manager	Yes	Yes
Maria Cláudia Mello Guimaraes	Yes	Consultant	Yes	Yes
Sônia Júlia Sulzbeck Villalobos	No	Director in privately-owned companies	Yes	Yes

Source: SEST and https://www.rad.cvm.gov.br/ENET, accessed on 9 June, 2020.

Petrobras` fiscal council – which responds directly to shareholders – is composed by five members and their alternates, including three appointed by the Federal Government (at least one by the National Treasury) and two by non-controlling shareholders (one by minority shareholders and one by owners of preferential shares). In June 2020, it was composed by the following members:

Table 4.18. Petrobras` fiscal council full members

	Elected by the Federal Govern.?	Main occupation
Eduardo Cesar Pasa (chaiman)	Yes	Senior executive at Banco do Brasil
Daniel Alves Ferreira	No	Lawyer
José Franco Medeiros de Morais	Yes	Deputy Secretary in the National Treasury
Marcelo Gasparino da Silva	No	Director in privately and state-owned companies
Marisete Fátima Dadald Pereira	Yes	Deputy Minister of Mines and Energy

Source: SEST.

As it is possible to see in Figure 8.2 in Part B of this report, the average remuneration of Petrobras` directors represent between 21% and 70% of the average remuneration of directors in privately-owned companies in the Oil and Gas sector (respectively, in those

two extremes, Enauta and Dommo Energia). It should be noted, however, that those privately-owned companies are much smaller than Petrobras.

The company's bylaws were amended on the 15th of December 2017 to institute that the company should be compensated by the Federal Government for any cost in implementing public policies (i.e., for the higher costs or smaller revenues that it might face due to obligations that privately-owned firms do not bear). It is not clear whether this bylaws` provision will stand, given the lack of clarity of the aforementioned provision of the Corporations Act (art. 238) about subsidising pursuit of public policy goals. In its annual letter on public policy goals, Petrobras declared its compliance with its 2017 provision. In 2018, truck drivers threatened to go on strike because of the increase in the price of diesel and the government created a program to fund the reduction in the diesel prices without any costs to Petrobras. Specifically, Petrobras was compensated for the difference between the price that the Federal Government defined in the program and the price that it would charge if there were no intervention (based on the international prices of the oil).

In the end of 2019, the Petrobras` cost of financing was the following in Brazilian Reais:

Table 4.19. Petrobras` debt financing cost - 2019

Maturity in	Average interest rate in BRL (fixed and floating)	Fixed rate of Fed. Gov. Treasury Bonds in BRL
2021	4.1%	4.54%
2022	4.5%	5.29%
2023	4.3%	5.82%

Note 1: Petrobras` average interest rate is for all outstanding debt on 31 December, 2019, which includes debt instruments and contracts closed in different moments in time, and at both fixed and floating rates.
Note 2: Treasury`s fixed rates are the ones market participants were willing to receive for the three maturities when the market opened on the 30 December 2019.
Note 3: Petro Rio S.A., which is the only Brazilian listed company with business activities similar to Petrobras, did not disclose information in its financial statements that would be comparable to Petrobras, because most (if not all) Petro Rio`s debt is contracted in USD.
Source: Petrobras` 2019 Financial Statements and https://www.tesourodireto.com.br/titulos/historico-de-precos-e-taxas.htm, accessed on 9 June, 2020.

On 25 September, 2019, according to its 2019 Financial Statements, Petrobras issued 730 million USD of debentures nominated in BRL with the following rates on book building: 1st series with 2 029 maturity for inflation plus 3.6% p.a.; 2nd series with 2 034 maturity for inflation plus 3.9% p.a. On the same day, market participants were willing to buy Federal Government Treasury bonds in BRL linked to the same inflation index for the following rates: with 2 026 maturity for inflation plus 2.88% p.a.; with 2 035 maturity for inflation plus 3.38% p.a. In 2019, just as a reference, S&P assigned a BB- global rating both to Brazil and Petrobras.

Still in relation to Petrobras` debt financing, it is possible to observe in its 2019 Financial Statements the following sources of debt nominated in BRL as of 31st December of 2019 (in millions of USD): 5 322 from the banks (49.6%); 3 468 from capital markets (32.3%); 1 927 from development banks (18%); 13 from others (0.1%).

Based on the information publicly available, it is possible to conclude that bond investors consider that Petrobras has the same credit risk as the Federal Government due to the legal guarantee that the State provides against bankruptcies of SOEs. In fact, bond investors required a premium to buy Petrobras debentures in relation to the sovereign rate in September 2019.

Chapter 5. Recent and ongoing reform

The 2016 SOE Statute (Law no. 13.303, regulated by Decree no. 8.945/2016) heightens corporate governance standards for SOEs, notably strengthening provisions that aim to better mitigate risks of conflict of interest by strengthening board autonomy and performance, among others.

5.1. Illustrating the need for reform: concerns about integrity[32]

The SOE Statute came largely in response to the corruption scandal that broke in 2014 and has had major social, economic and political implications for the country. The "Operation Car Wash" investigation uncovered an extensive transnational bribery scheme involving more than a dozen firms, including state-owned oil company Petrobras at the centre stage, and has implicated hundreds of individuals including politicians on both sides of the political spectrum. The scheme primarily involved bribes to politicians for securing public works and infrastructure projects, most often through campaign contributions to influence public decisions. The investigation has been of monumental proportions not only for Brazil but also for the region.

After Operation Car Wash shed light on corruption schemes involving SOEs, public institutions, private companies, political parties and private and public agents, measures were taken in order to promote integrity in different sets of organizations. In what concerns SOEs, such efforts were initially implemented through legislative reforms, encompassing laws and presidential decrees.

These advancements are crucial for the fight against corruption, since they require companies to work in line with high standards of transparency and governance. However, questions remain as to the capacity of this legislation to respond to the actual challenges faced by SOEs. This is especially relevant considering the role of political influence over such companies: the root of every major corruption case revealed in the last few years was the common practice of political appointments of individuals to high-level positions within SOEs to build parliamentary support.

5.1.1. Regulatory environment

In Brazil, integrity in SOEs is primarily regulated by two acts: Law no. 12.846/2013, known as the Anticorruption Law; and the SOE Statute. The first one is directed to any company that causes harm to the public administration, imposing sanctions on illegal conduct. The second one, as previously mentioned, sets out a series of governance standards that SOEs must follow. SOEs' personnel may also be subject to the Administrative Improbity Law (Law no. 8.429/1992), which defines punishment for illicit enrichment and loss caused to the public treasury.

[32] This section on corruption scandals in Brazilian SOEs is primarily based on a note kindly developed by the office of Transparency International in Brazil to the OECD team. Any errors remain the sole responsibility of the OECD Secretariat.

The SOE Statute focuses on raising integrity and governance in companies, creating standards to prevent corruption acts similar to the ones happened in Petrobras. This is done by imposing new standards in three dimensions: risk control and management, transparency and governance.

One of its main outcomes is the obligation of SOEs to have an Integrity Programme, as stated by article 9, paragraph 1. This is something that was already present in the Anticorruption Law, supplemented by Decree no. 8.420/2015, but in this case it was not mandatory – the Anticorruption Law determined that companies with Integrity Programmes would have the right to milder sanctions. This is a specific compliance-oriented measure, including provisions on internal mechanisms and procedures of integrity, auditing, enforcement of codes of ethics and conduct and incentive to whistleblowing. The goal of this policy is to prevent, detect and remedy fraud, embezzlement and other irregular and illegal conducts.

While the abovementioned legal reforms are promising, the challenge of an effective implementation remains, with efforts being made by government agencies to assess SOEs` compliance to the legislation and their general level of integrity and transparency.

5.1.2. Assessment efforts

Evaluating the governance standards and the level of compliance in public companies is a difficult task, especially because the most relevant piece of legislation on the matter is no more than 5 years old, so implementation is still underway. Even so, one case of assessment deserves mentioning. When it comes to SOEs, the most relevant indicator available – as previously mentioned – is the IG-SEST, a governance index that has been run on a continuing basis by SEST (with the exception of this year due to the Covid-19 outbreak). It analyses companies in three dimensions: auditing and risk control, transparency and management structure (i.e., councils, committees and boards). As a result, it categorises companies across four levels of governance, in which Level 4 is the lowest and Level 1 is the highest.

So far, the IG-SEST has had four evaluation cycles. The first two, concluded in November 2017 and May 2018, focused on the level of compliance with the SOEs Act and the correspondent decree. In this way, it looked forward to promoting and supporting SOEs' initiatives in order to fulfil their duties under the reform. The third and fourth cycles, in November 2018 and August 2019, on the other hand, focused on analysing the effectiveness of implemented governance structures, based on legislation and best practices. Also, as of the third round of evaluation, SOEs were offered the possibility of submitting their subsidiaries to the programme.

As shown by the most recent results, governance appears to be improving in national SOEs. In the fourth cycle, 14 out of 61 SOEs received the maximum score. The average score increased by 16%, compared to the previous cycle. For that reason, in 2019, the IG-SEST had the largest number of SOEs ranked as Level 1, whilst no company was listed as Level 4.

5.1.3. Corruption cases in SOEs

Cases of corruption in federal SOEs have a variety of characteristics. Normally, they can be categorised into two groups: (i) cases of 'systemic corruption', encompassing situations of overpricing, bribery and embezzlement of large amounts of money in favour of company directors, entrepreneurs, politicians, electoral campaigns and parties – reinforcing an unethical governance model based on corruption; and (ii) personal embezzlement schemes, with cases of bribery and diversion of funds for particular advantages of company directors

and employees – from company funds to individual pockets – with amounts that may vary depending on the company. This distinction is based on how the individuals benefitted from each type of scheme and by their relation to the larger political picture – i.e., the proportion in which they relate to the preservation of political support in Congress or to the maintenance of adjustments with private agents.

1. Systemic corruption

Cases of systemic corruption, in general, involve federal SOEs in overpriced or fraudulent contracts that trigger bribery, diversion and money laundering schemes. These are the cases revealed by Operation Car Wash, such as those involving Petrobras, Eletrobras and their respective subsidiaries. In any case, situations with less media coverage deserve to be included in this category, such as those of corruption in state-owned banks.

In the case of Petrobras, a corruption scheme was uncovered by the Car Wash Taskforce and became popularly known as 'Petrolao'[33]. It consisted of a system of bribery, embezzlement and money laundering through overpriced contracts with construction companies. Such privately owned companies would form a cartel and compete in bidding processes with higher prices than necessary, then part of their payment would be diverted through fake contracts and irregular financial operations. These funds were later laundered and partially converted into bribes to Petrobras' directors; another part was sent to bank accounts abroad. In this way, public prosecutors estimate that a total of 20 billion USD was embezzled from the company. Investigations are still ongoing, focusing primarily on facts developed between 2004 and 2012.

Eletrobras went through a similar case of corruption. As in the case of Petrobras, bribes were paid and funds were embezzled through overpriced contracts with a cartel of construction companies[34]. This included Eletrobras subsidiaries, such as Eletronorte, Chesf, Eletrosul, Furnas and Eletronuclear. The total amount of losses is estimated in 9 billion BRL.

In another case related to Operation Car Wash – this one, involving much smaller figures – the Brazilian Company of Urban Transportation (CBTU)[35] had its former CEO accused of bribing a congressman – who then was also charged with money laundering –, with values estimated in 106 thousand BRL, in exchange for keeping him in the position.

A different set of cases is that of corruption in financial SOEs, such as CEF and Banco do Nordeste (BNB). In the first company[36], a group of former employees and directors were involved in a scheme of credit concession in exchange for bribes redirected to a political party. Politicians, businesspeople and civil servants were also involved and reparations and

[33] https://exame.abril.com.br/brasil/como-funcionava-o-esquema-de-corrupcao-na-petrobras/ and https://brasil.elpais.com/brasil/2015/01/29/politica/1422486029_742863.html

[34] https://oglobo.globo.com/brasil/lava-jato-investiga-eletrobras-15-empresas-do-setor-eletrico-17001095 ; https://www.dw.com/pt-br/eletrobras-admite-perdas-de-mais-de-r-300-milh%C3%B5es-com-corrup%C3%A7%C3%A3o/a-36020476 ; https://economia.uol.com.br/noticias/reuters/2019/01/02/odebrecht-pagara-r162-milhoes-para-eletrobras-em-novo-acordo-de-leniencia.htm

[35] https://g1.globo.com/politica/noticia/2019/10/08/primeira-turma-do-supremo-torna-arthur-lira-reu-por-corrupcao.ghtml and https://oglobo.globo.com/brasil/stf-torna-lider-do-pp-na-camara-arthur-lira-reu-por-corrupcao-passiva-24004322

[36] https://g1.globo.com/politica/noticia/policia-federal-indicia-16-pessoas-por-fraudes-na-liberacao-de-creditos-da-caixa.ghtml ; https://www1.folha.uol.com.br/mercado/2018/10/mpf-apresenta-4-denuncias-contra-esquema-criminoso-na-caixa-e-pede-r-3-bi-em-multa-e-reparacao.shtml

damages are estimated at 3 billion BRL. BNB, on the other hand, has a series of cases like this: in one of them, the bank's directors offered, in 2013, fraudulent loans to 11 companies in exchange for bribes, amounting to over 600 million BRL in losses[37]; in another case, employees were bribed to approve a total of 8 million BRL in loans[38]. A different case of BNB is one of fraudulent loans that were offered to a brewery, Petropolis Group, and then sent to construction company Odebrecht, resulting in illegal campaign donations in the 2014 elections[39]. That case, although related to a fraudulent loan, was discovered by investigations of the Car Wash Taskforce.

2. Personal embezzlement schemes

Personal embezzlement cases originate in irregularities in smaller contracts and involve more limited amounts of money and less relevant actors than systemic corruption.

On the federal level, one case recently revealed was that of the Brazilian postal SOE, Correios[40]. In this scheme, employees negotiated with third parties to operate through contracts with their companies owned by them whilst underbilled or unbilled shipments were transported by Correios. Therefore, such employees were able to keep part of the profits for themselves as the company held the burden. These developments were reported to have occurred in 2018, but investigations are still ongoing.

5.2. Ownership and corporate governance reforms

Structurally, the 2019 creation of the so-called 'super ministry' (of Economy) has placed multiple secretariats involved in exercising ownership of SOEs under one roof. The Ministry of Economy amalgamates the Ministries of Finance, of Planning, of Labour and of Industry and Trade.

Individually, actors that are key to corporate governance in Brazil continue to promote advancements that are driving improvements in the professionalisation and, ideally, the integrity of SOEs. In 2015, the IBGC published Brazil's Corporate Governance Code through joint development with a working group of 11 influential actors (see section 3.1). The guidelines encompass the State's roles as regulator and controlling shareholder, the role of senior executives and directors, and Fiscal Boards, transactions with related parties, internal controls and compliance, transparency, and information disclosure. In the same year, the stock exchange (B3) launched the SOE Governance Program (www.bmfbovespa.com.br,) focusing on transparency, internal controls, board composition, and the obligations of the Public Controlling Shareholder.

As will be discussed in the following chapter, the goal of improving the efficiency of SOEs – from the perspective of the current administration of the Federal Government – will be fulfilled by the privatisation of many of those SOEs.

[37] http://g1.globo.com/ceara/noticia/2016/06/mp-e-mpf-apontam-fraude-de-r-683-milhoes-em-emprestimo-no-bnb.html

[38] https://g1.globo.com/pe/pernambuco/noticia/2019/06/11/policia-federal-realiza-operacao-e-cumpre-mandados-no-grande-recife.ghtml

[39] https://www.otempo.com.br/politica/fraude-do-banco-do-nordeste-do-brasil-com-cervejaria-1.1556428

[40] https://politica.estadao.com.br/blogs/fausto-macedo/pf-desmonta-fraudes-de-r-13-mi-nos-correios/; http://agenciabrasil.ebc.com.br/geral/noticia/2019-09/policia-federal-deflagra-operacao-de-combate-corrupcao-nos-correios

Chapter 6. Privatisation

6.1. Legal and regulatory framework for privatisation

The Brazilian Constitution provides for two rationales for government direct intervention in economic markets: national security or relevant public interest. If these reasons are deemed to no longer exist, an SOE may enter the pipeline for privatisation. This approach applies to both small and large SOEs, and links inherently to the justification for an SOEs' creation. The concepts of national security and relevant public interest, however, allow for different interpretations depending on the ideological perspective or the political context. They are not therefore a useful guidance for deciding which SOEs to privatize.

The National Congress must be consulted before the privatisation of certain holding companies listed in article 3 of Law no. 9.491/1997. These are some of the largest national SOEs (BB, CEF, Petrobras and Eletrobras) and financial SOEs with a regional focus (e.g., Banco do Nordeste). For all other SOEs, a decision making process is already foreseen in Law no. 9.491/1997 and Congress does not need to approve the privatisation of each SOE.

An important legal differentiation in Brazil is between privatisation stricto sensu (in this report, referred to simply as "privatisation") and divestment:

- **Privatisations** are the sale of the controlling stake of an SOE directly owned by the state, turning it into a privately owned company. Privatisations are the focus of this chapter and they have to follow the strict procedures foresaw by Law no. 9.491/1997.
- **Divestments** are the sale of the controlling stake of an SOE indirectly owned by the state or, in other words, companies controlled by other SOEs (typically their subsidiaries). A divestment could also be the sale of an asset owned by an SOE, such as a power plant and the concession to explore an oil field. Divestments have to abide by principles applied to the public administration, such as the duty to guarantee fair competition among bidders, but they do not have to follow the strict procedures of Law no. 9.491/1997 (they have instead, in the case of partially-privatised SOEs, to follow the more flexible procedure established by Decree no. 9.188/2017).

6.2. Privatisation arrangements and responsibilities

There are multiple public sector agencies and other actors involved in the privatisation process. They include:

- The Investment Partnership Program Council (CPPI). The CPPI is a council of ministers that approves strategic concessions and all privatizations of directly controlled SOEs in the Federal Government. This involves the President of the Republic, the Minister-Chief of the Presidency, the Minister of the Economy, the Minister of Infrastructure, the Minister of Mines and Energy, the Minister of the Environment, the Minister of Regional Development and the Minister of the Secretariat of Government, as well as the CEOs of BNDES, CEF and BB. The

Secretariat of the CPPI came under the command of the Ministry of Economy in February 2020 (Decree no. 10.218/2020).

- Brazil's National Development Bank (BNDES). BNDES is appointed by CPPI as both the advisor to the Federal Government and the responsible for driving the sales process. The bank is considered the only entity possible of fulfilling this role for SOEs that are included in the National Program of Divestment of National Public Assets regulated by Law no. 9.491 of 1997 ("PND"). In these cases, the role of BNDES is to co-ordinate the entire privatisation process. For its role in the privatisation process, BNDES is remunerated by a fee of 0.2% of the net sale value of the stock owned by the State (i.e., the value received by the State minus operational costs of the privatisation process) and the bank is also compensated for its costs hiring third parties (most importantly, consultancies, law firms and investment banks who advised on the structure of the privatisation and who supported the operationalisation of the sale)[41].
- The SOE and its supervisory Ministry, which engage in frequent meetings with BNDES during the whole process (every one or two weeks depending on the specific case and step of the process).
- Oversight actors including the Supreme Audit Institution (TCU) and the Office of the Comptroller General (CGU).
- Service providers and third parties. BNDES takes part in the whole process but hire auditing firms, law firms, financial advisors, engineering firms and investment banks to do the bulk of the work.

The privatisation of an SOE is a complex process, separated in different stages, and involves multiple public sector bodies and authorities. Along the process, several decisions are taken by authorities based on studies, technical reports, financial and economic analysis, and legal opinions, which are filed according to rules applicable to administrative proceedings. At the national level, the privatisation of SOE holdings broadly involves the steps below:

- A proposal for privatisation is either initiated by the CPPI (with or without the agreement of the line ministry responsible for the SOE).
- The CPPI evaluates the proposed privatisation. Its recommendation is forwarded to the President of the Republic for a final decision on whether to proceed.
- BNDES evaluates and reviews all economic, financial and legal aspects related to a possible privatisation, proposes corporate and regulatory reforms prior to the privatisation (e.g., restructuring the company or altering sectorial regulation to ensure a healthy competitive environment) and suggests a method of sale.
- CPPI approves BNDES' preparatory reforms and sale`s method.
- TCU evaluates and approves, ex ante, the conditions for privatisation and the preparatory work done by BNDES (the Supreme Audit Institution has 150 days for its decision). The scope of TCU`s analysis is comprehensive and detailed in its internal regulation but, overall, it contains both an evaluation whether the privatisation process complied with the law and its value-for-money. Specifically, it includes a review of the valuation of the SOE, whether the biding process is effectively competitive and if any condition for the bidder`s capacity is reasonable.
- CGU evaluates ex ante the possible impact of the privatisation on the provision of services by the SOE (i.e, if the market would be able to provide the same essential

[41] BNDES` remuneration is established by article 21 of Law no. 9.491/1997.

goods and services) and on the competitive environment (in the case the SOE has relevant market power), and presents its evaluation for CPPI consideration.

- BNDES performs all the necessary tasks for operationalising the privatisation (e.g. the 'road shows', data room organization, marketing and bidding), under supervision of the CPPI, the relevant line ministry and the Ministry of Economy, and in cooperation with SOE`s top management.
- Ex post, CGU and TCU might have the role of auditing the whole privatisation process, but there is not yet a clear plan on how it will be done.
- Depending on the revenues of the buyer and the seller, CADE has to be notified and might have to approve the acquisition.

In 2011, Brazil enacted the Freedom of Information Act (Law no. 12.527/2011), which establishes the right of access to information regarding administrative proceedings to any citizen as the general rule. Any citizen can present an online application requesting access to documents on public records, with few exceptions. One of these exceptions is the protection of the authorities' decision-making process. The statute establishes that access to preparatory documents or information contained therein, used as a basis for an administrative act, will be ensured after the act is performed. In the privatisation process, after every stage of the process, the documents showing the rationale of the decision-making can be accessed by any citizen following procedural rules of the Transparency Act.

The studies at the final stage of the process, elaborated by BNDES with the support of external consultants, are available to CPPI, the President of Republic, the line ministry, CGU, and TCU. After the studies with valuation and proposed structure of the sale of the control of an SOE are approved by CPPI for privatisation, these documents are not immediately available to the general public due to sensitive information regarding strategic information of an SOE. However, all the studies and documents related to decision-making, including valuation, financial and economic analysis, contingencies, and modelling are included in the data room managed by BNDES and can be accessed by any potential buyer signing a non-disclosure agreement.

In any case, when CPPI decides that an SOE will be privatised, a Notice for Public Bidding ought to be published in the Official Gazette of the Federal Government[42] with the following information:

- Justification for the privatization;
- Share of the equity that will be sold;
- Most relevant financial information of the SOE in the last five years;
- Summary of the valuation of the SOE, including a description of the methods used;
- Method of sale and minimum value of the shares to be sold;
- If the creation of Golden Shares is planned, a description of its special powers.

Finally, after the privatization is concluded, all documents created and collected during the process become available to the general public and could be the base for an auditing by TCU or CGU. Both institutions could audit every privatisation, but a selection of the most relevant ones is the most likely scenario, according to government sources, if a great number of privatisations take place at the same time.

[42] Article 11 of Law no. 9.491/1997.

6.3. Rationales for state-owned enterprise ownership and privatisation

The publicly stated rationale for Brazil's current administration for currently slated privatisations is to reduce government's direct intervention in the market and to foster more private sector engagement. The Ministry of Economy additionally cited, during OECD team`s mission in the country, the potential for privatisation to mitigate risks associated with SOEs, including the risk of inefficiency, corruption and distortions to the market or competition. Also during OECD team`s mission, BNDES officers asserted that the main goal for the Federal Government in the current push for privatisation is to provide better services for citizens. Brazilian legislation requires that proceeds of privatisation be earmarked for fiscal debt reduction. The ongoing privatisation of Eletrobras illustrates how such objectives play out (Box 6.1).

The OECD is informed that currently there is no intention of selling any SOE without maximizing the value of the transaction. Partial state ownership will remain an option on a case-by-case basis, mainly due to political sensitivities. According to the law, employees and retirees of companies controlled directly or indirectly by the Federal Government are guaranteed a minimum 10% offer of part of the shares representing their stock.

The Brazilian Constitution requires specific congressional approval for the creation of a directly controlled SOE. Accordingly, it is understood that the privatization of directly-controlled SOEs would require congressional approval. At the same time, the congressional approval does not need to be deliberated on case-by-case basis[43]. The Congress, when enacted Law no. 9.491 in 1997, allowed the Government to privatize all national but a selection of SOEs mentioned above in this report (e.g., Banco do Brasil, CEF, Petrobras and Eletrobras).

At the national level, the National Program of Divestment of National Public Assets ("PND") was enacted by Law no. 8.031/1990, which was subsequently substituted by Law no. 9.491/1997, which currently details the procedures and the legal framework for the privatisation process. Since then, privatisation processes have been implemented based on such "broad" congressional approval.

According to the Brazilian Constitution, any governmental decision and public policy must be guided by the principles of legality, impersonality, integrity, transparency, and efficiency. Therefore, legislative control and judicial review of administrative acts are exercised by examining the motivation of the policies that shall be found in written public record.

The process for reviewing an SOE's operations, market, and feasibility for privatization is, as mentioned, conducted by CPPI, which advises the President of the Republic on these matters on three occasions. The first one is when an SOE or an asset is qualified for inclusion on PPI`s pipeline. At this stage, CPPI will demand studies and will evaluate alternatives to the business, which can be achieved with partnerships with the private sector, divestment of assets, or privatisation of the entire company. After an initial evaluation, CPPI can propose to the President of Republic the inclusion of the SOE on the National Program of Divestment of National Public Assets ("PND"). After the President decides to include the SOE on the PND, CPPI appoints Brazil's National Development Bank (BNDES) as manager and coordinator of the process, which will perform studies for structuring the privatization process and valuation of the company.

[43] In the 1990s, the Brazilian Supreme Court, when examining privatization cases, ruled that congressional approval can be established through a broad legislative act regulating the procedure that the Executive Branch must follow to complete the privatization process.

CPPI issues resolutions communicating the rationales for the privatisation. For example, the resolution no. 20/2017 that allowed the divestment of the energy distribution companies owned by Eletrobras takes into consideration the regulatory framework studies and issues that require the shareholders` approval. It also sets some rules on how the privatisation should be conducted: regarding debts of these companies, amount of shares that would remain with Eletrobras and other issues.

If the studies indicate that privatisation is the best arrangement, then BNDES will submit to CPPI a proposal for the type of sale, minimum price, corporate restructuring, among other aspects. If CPPI approves the privatisation plan proposed by BNDES, the Council will publish a detailed resolution delineating all conditions, characteristics, and specifications of the sale, which will be subsequently submitted to public hearings. The entire process and findings will be then submitted to TCU for approval before the release of the Public Notice for Bidding.

After the privatization plan is approved by CPPI and before releasing the Public Notice for Bid, Law no. 9.491/1997 requires a stakeholder consultation, which is also conducted by BNDES. External consultants can also work to set up public hearings´ proceedings, but BNDES holds the legal authority to conduct these hearings.

Public hearings must be held at the city where the company is headquartered or at the state capital, and usually occur in a large auditorium. At a minimum of 10 business days before the hearings, detailed information about the hearings must be published in a large local newspaper, a national newspaper, and at the Federal Gazette. The hearings start with presentations by (i) BNDES, (ii) the consultant firm that performed the studies on how to privatise, and (iii) a line Ministry representative. These presentations must comprise all the relevant material about the privatisation. Any person can participate and raise oral or written questions, but usually most of attendees are employees of the SOE and unions` representatives. The hearings must be video recorded. After the hearings, a detailed report containing all questions and answers is released. An audit firm oversees the proceedings in order to certify compliance with all legal requirements. All material must be released on BNDES` website.

As explained, Congress is not required to approve the sale of SOEs, except for a list of companies (among others, Banco do Brasil, CEF, Petrobras and Eletrobras), since there is a delegation of powers to the Executive regarding privatisations with Law no. 9.491/1997. However, the Legislative Branch has two important roles on the issue. First, there is the external audit by TCU, as an auxiliary body to the Congressional Oversight Committee. Second, Legislative Branch can pass a resolution repealing a presidential decree by a vote of both chambers of Congress, which might impede the privatization that the President authorized through a decree. Third, a privatisation might require previous legal reforms (for ex., it is the case of Eletrobras), which will demand approving bills in Congress.

6.4. Overview of the privatisation landscape

Brazil undertook a series of privatisations in the 1990s. All processes were at the time centralised under BNDES – from proposing SOEs for privatisation to structuring and eventually selling the SOE. A council of ministers decided on those privatisations proposed by BNDES itself, after which BNDES proposed a schedule for the process and could ask for the intervention of the council should any Ministry delay the process without adequate reasons.

The current government plans that have been made public include a list of SOEs. It is not clear how privatisations are prioritised, noting that the government is beginning privatisation with two SOEs that have legal monopolies: Eletrobras Group with nuclear

energy (Box 6.1) and Correios with the service of letters. The President of the Republic has publicly stated that BB, CEF and Petrobras will not be privatised[44].

The current administration has been able, however, to sell the control of indirectly controlled SOEs and to sell blocks of shares that are not needed for the Federal Government to keep the direct control of some other SOEs (see Table 6.1).

6.4.1. Recent transactions and decisions

The divestments between January 2019 and April 2020 have reached BRL 134.9 billion (or USD 33.5 billion), of which BRL 29.5 billion (or USD 7.3 billion) are accounted by the first four months of 2020[45]. It includes stakes in listed companies, such as IRB (re-insurance corporation) and Banco do Brasil. It also includes divestments made by the five biggest SOEs – BNDES, Petrobras, Eletrobras, Banco do Brasil and CEF through the sales of assets and subsidiaries with a view to focus on their core businesses. Proceeds of the divestments of subsidiary SOEs go to the parent company and are not necessarily transferred to the State in the form of dividends.

Petrobras is aiming at reducing its indebtedness and the cost of capital by divesting its non-core businesses, mostly on-shore and shallow waters assets in the oil & gas sector, distributors, refineries and thermoelectric generation, and keeping oil exploration and production in deep and ultra-deep waters as its main activity. Recently the company divested around BRL 70.7 billion (or USD 17.5 billion), including the divestment of the subsidiaries Transportadora Associada de Gás (TAG), Belem Bioenergia Brasil, Liquigás, Petrobras Frade Inversiones (PFISA), its participation in Paraguayan distributors and the Pasadena refinery in the US.

On December 31, 2018, the Eletrobras group had 172 Special Purpose Vehicles ("SPV"). 39 SPVs were divested, settled and merged during 2019 and 2020 and that number was reduced to 133 SPVs. Most of the SPVs that were sold exploited wind-power generation and electricity transmission lines. Among the SPVs still owned by Eletrobras at the time this report was written, there are 2 SPVs abroad and 40 in Brazil in process of sale. 62 SPVs remain controlled by Eletrobras subsidiaries.

Likewise Banco do Brasil and CEF have recently divested their stakes in Petrobras and IRB and also reduced their participations on affiliate assets, resulting in a BRL 20.6 billion (USD 5.1 billion) sell-off since the beginning of 2019. The BNDESPar – BNDES subsidiary that manages most of the bank's equity participations portfolio on listed and non-listed companies – was estimated in BRL 120-130 billion (c. USD 31 billion) and it has already sold BRL 38.3 billion (USD 9.5 billion) since the beginning of 2019, including an BRL 25.6 billion stake in Petrobras (USD 6.3 billion).

Finally, the National Treasury divestments since January 2019 amount to BRL 4.3 billion (USD 1 billion) with sell-offs of non-controlling stakes in IRB and Banco do Brasil.

The table below presents the privatisations (selling the control of SOEs) and disinvestments (selling non-controlling stakes and assets) during 2019 and up to April 2020:

[44] https://forbes.com.br/negocios/2020/05/bolsonaro-fala-em-privatizacoes-mas-descarta-caixa-bb-e-nucleo-da-petrobras/, accessed on 22 July 2020.

[45] All the information on recent transactions was extracted from the following presentation by the Deputy Minister for Privatisation from the Ministry of Economy: https://www.gov.br/economia/pt-br/centrais-de-conteudo/apresentacoes/2020/abril/a-reconstrucao-do-estado-seddm-22-04-2020-1.pdf/view, accessed on 22 July 2020.

Table 6.1. Privatisation and disinvestments in 2019 (whole year) and 2020 (until April)

Holding	Privatisation		Disinvestment	
	Company	Value of transaction in million USD	Company/asset	Value of transaction in million USD
Petrobras	Distrib. Paraguai	372	Maromba oil field	74
	Pasadena	422	Enchova e Pampo oil field	794
	TAG	8 312	Baúna oil field	620
	BR Distribuidora	6	Polo Macau oil field	174
	Belém Bioenergia	2 382	Ponta do Mel e Redonda oil field	7
	Liquigás	918	Campos de Pargo, Carapeba e Vermelho oil field	328
	PFISA	99	Polo Lagoa Parda oil field	9
			Bacia Posguar oil field	273
			Tartaruga Verde oil field	1 265
			POG B.V.	1 489
Eletrobras	Amazonas Energia	1		
	Batchs of SPVs	253		
	CEAL	1		
CEF			IRB	620
			Petrobras	2 109
			Banco PAN	124
			Banco do Brasil	769
Banco do Brasil			SBCE	1
			Neoenergia	447
			IRB	1 042
Federal Government			IRB	794
			BB	273
BNDES			Petrobras	6 352
			Fibria	1 985
			Marfrig	496
			Vale	223
			Rede Energia	149
			TOTVS	99
			Light	
			Linx	87
			SINQIA	7
			Cipher	7
			BR Malls	2
			AES Tietê	2
			LOG	2
			Cosan	1
			SBCE	1
			Kleper Weber	1
			Rossi	1
Total sales		12,766		20 627

Note 1: Values converted into USD by the exchange rate on 31st December 2019.
Note 2: In this table, privatisations means *selling the control of SOEs* and disinvestments stands for *selling non-controlling stakes and assets*.
Source: https://www.gov.br/economia/pt-br/centrais-de-conteudo/apresentacoes/2020/abril/a-reconstrucao-do-estado-seddm-22-04-2020-1.pdf/view, accessed on 22 July 2020.

The total of sales – including privatisations and disinvestments – in 2019 and 2020, as shown in the table above, was equal to 33 393 million USD, and compares to a value of directly owned SOEs of 180 849 million USD in the end of 2018 as presented in Figure 2.1. Brazil SOEs among the world's largest 500 enterprises (by annual revenue). The values are not perfectly comparable, because there were variations in the market value of listed companies and the exchange rate in the period, but it is possible to observe that the sales during 2019 and the first quarter of 2020 represent about 18% of the value of directly owned SOEs before the new administration started in January 2019.

Box 6.1. Planned privatisation of Eletrobras

The privatisation of Eletrobras (for information on the company, see page 60) is aimed at increasing the share of the private sector in power generation, allowing the company to invest and grow (the company has already sold some subsidiaries with concession contracts to operate transmission lines). The government cites that the reasons that led to Eletrobras` incorporation no longer exist in this industry, and government has no financial resources to invest in the company.

According to Eletrobras, the necessary legal bill is already in Congress and the next step is a political decision. In terms of restructuring, the Eletrobras group will need to spin-off the following two companies before the privatisation: (i) Eletronuclear, which is the subsidiary that manages the nuclear power plants in Rio de Janeiro, because the Federal Constitution states that all nuclear power plants in the country should be controlled by the Federal Government, and; (ii) Itaipu Binacional, which is not even formally a corporation, but rather an entity regulated by an international treaty between Brazil and Paraguay to manage the biggest hydropower plant in the region.

The privatisation will have a follow-on offering – supported by BNDES – that will dilute the participation of the Federal Government to a minority participation in the equity of the company. The Federal Government would not sell the shares it owns in mentioned public offer, but the legal bill would authorise the government to sell all the Eletrobras shares it owns afterwards. Proceeds collected from the sale in the offer (estimated at BRL 14 billion) will be used for Eletrobras to increase investment and maintain its current market share in the generation business (about 30% nationwide).

While the government's intention is for Eletrobras to become a corporation with limited state ownership, it is possible that the Federal Government will still be able to effectively control – or at least have a high degree of influence over management – the company with this minority participation. The current plan is to change the company's bylaws to include a ceiling of 10% on the number of votes that an individual or a group of coordinated shareholders would be able to cast in the general assembly so that there will not be the chance of the company falling under the control of a private investor or a foreign government.

6.4.2. Future perspectives

According to BNDES, public auctions will be used for most privatisations. In those cases the minimum price for the auction will be determined by external appraisal firms. BNDES will hire two appraisal firms. If the difference between appraisals is more than 20%, they will hire a third firm. BNDES reviews the appraisals to assess whether they are reasonable.

The government is currently pursuing the following preparatory steps for its privatisation push:

- The Ministry of the Economy is, at the time of writing, evaluating whether it would propose a legal bill to create a fast track for privatisation.
- The federal government began in 2019 a campaign directed at the general population and inside the government in order to foster a better understanding of the advantages of privatisation. The strategy aims to convince citizenry that public resources invested in SOEs can be redirected to education, health and public security.
- Restructuring assets before sale. For example, Correios, which has a legal monopoly over the national postal service, is undergoing restructuring in order for it to be sold.

The government's Special Secretary of Denationalisation, Divestment and Markets has been communicating by publishing presentations and schedules of the government's privatisation plans and making semi-annual press conferences about the institutional agenda. The communication policy is grounded by uncovering all of federal government's state-owned controlled and minority equity participation giving total transparency to the SOEs and their assets that are being privatized.

In the table below, it is possible to see the SOEs included in the PND (i.e., SOEs already chosen by CPPI to be privatised or liquidated) as of the 26th of June, 2020:

Table 6.2. SOEs currently in the PND

SOE	Sector	Year of inclusion in the PND	CPPI`s proposition
ELETROBRAS	Electricity	2018	Privatisation
NUCLEP	Machinery	2020	Privatisation
CASEMG	Food storage	2000	Liquidation
CEASAMINAS	Food distribution	2000	Privatisation
CEAGESP	Food distribution	2019	Privatisation
CEITEC	Semiconductors	2020	Liquidation
CODESA	Port	2019	Privatisation
CODOMAR	Port	2018	Liquidation
SERPRO	IT	2020	Further Study
DATAPREV	IT	2020	Privatisation
CMB	Minting	2019	Privatisation
ABGF	Insurance	2019	Privatisation
EMGEA	Holding	2019	Privatisation
CBTU	Urban transportation	2019	Privatisation
Trensurb	Urban transportation	2019	Privatisation

Note: Information valid as of 26 June 2020.
Source: SEST.

6.4.3. BNDES` internal processes and capacity

During the first fact-finding mission, the OECD team heard from a reliable source that BNDES lacks the expertise and capacity to manage a large number of complex privatisation transactions. While it may have had that kind of expertise in the 1990s, given the long interruption it has not had a recent track record advising on the privatisation of SOEs.

CGU has not formed opinion on BNDES capacity to support privatisation processes, but at the time of writing CGU was analysing the following aspects of BNDES:

- Personnel, in quantitative terms (number of people to conduct projects) and qualitative (training of these people to conduct projects);
- Processes, considering, for example, (a) procedure for hiring external advisors; (b) quality of the review carried out by the Bank on the documents supporting the process, produced by the hired advisors; (c) level of documentation and process traceability; (d) existing controls to mitigate risks of fraud, corruption and conflict of interests; and (e) information exchange flows with stakeholders and level of documentation.
- Systems that support the process and the security level of sensitive information.

BNDES has been operating for decades with the structure of denationalization projects (privatisation and concession of public services or exploration of public assets). Since the 1980s, the institution has played a leading role in the execution of the PND, which has resulted in the privatization of several companies in various sectors of the economy, both at the federal and subnational levels.

From 1980 to 2018, the BNDES coordinated 112 denationalisation projects of various types with the Federal Government, including 38 concessions, 41 privatizations, 26 sales of minority equity stakes and 7 port leases. Most recently, however, these denationalisation projects mostly involved the concession of public services, and not privatisation of SOEs. The sectors of activity were diverse, including, for example, electricity, highways, airports, telecommunications, ports, railways. The transaction value of these privatizations was approximately USD 100 billion according to BNDES.

Since its incorporation in 1952, BNDES has adapted its structure to implement the federal government's investment policies. In 2006, the Bank created a unit dedicated to structuring denationalisation projects with specialization in concessions and PPPs. This unit was strengthened and soon became the Project Structuring Area (AEP), with three departments and several teams dedicated to supporting the public sector in carrying out projects in partnership with the private sector.

Currently, BNDES has three areas dedicated to structuring denationalisation projects, linked to two different Directorates, with almost 180 professionals working on different types of sales:

- One manages the relationship with customers (the teams of the Government and Institutional Relations Area);
- Another manages privatization projects involving the sale of SOEs and/or their assets (Company Structuring and Divestment Area);
- Another manages concessions and PPPs (Investment Partnerships Structuring Area); and
- Legal activities are in charge of the Legal Department for Privatization and Structuring of Partnerships, linked to the Legal Directorate.

The structuring of a denationalisation project goes through six distinct stages, and by the respective divisions responsible within BNDES. The following six steps are based on the chronological milestones of a given project. Each stage requires specific information and uses respective management systems:

1) *Perspective* - phase in which BNDES and the client (which, in the case of the Federal Government, would be CPPI) discuss the possibility of structuring the project. It ends with the publication of a CPPI Resolution dealing with the qualification of the project under the PND;

2) *Preparation of studies* - phase in which BNDES and the client negotiate the scope of the service to be performed and the contractual conditions of the project. It ends when a Presidential Decree is issued including the project in the PND;

3) *Preparation of studies* - phase in which BNDES coordinates the performance of technical studies. In this phase, the bank hires four types of consultants: (i) a consortium of a consultancy firm with a law firm responsible for the most relevant studies and reports from the first day of the project until the privatisation is closed; (ii) an auditing firm that will audit the SOE`s financial reports; (iii) another consultancy/advisory firm that will give its fairness opinion on the valuation provided by the main consultancy firm working in the project; (iv) in this phase, an investment bank might be hired to conduct an initial exploration on the feasibility of the proposed structures. Likewise, as previously mentioned, a third consultancy/advisory firm will be hired if the two valuations offered to BNDES have a difference of more than 20%. This phase ends with the delivery of studies to CPPI;

4) *Post-decision* - phase in which CPPI presents its decision on the scenario to be followed based on the studies delivered, beginning the activities of support to the auction, which involve audience and/or public consultation, presentation of the project to TCU, among others. This phase ends with the publication of the Auction Notice;

5) *Auction* - phase that consists of the execution of the auction and ends with the signing of the privatisation contract by the Federal Government and the winning private entity. The main service provider in this phase will be an investment bank, which will manage the road show among other efforts to attract investors. The stock exchange B3 is hired by BNDES to manage the auction, if this is the method of sale; and

6) *Closing* - the projects still have a stage after the Auction, in which BNDES` team prepares final reports of the projects, final payments are made to the consultants and the BNDES receives its remuneration. In the case the privatisation does not happen, CPPI pays to BNDES only its costs with external service providers, but not any compensation for the bank`s internal costs.

BNDES has created specific Committees with important attributions for denationalisation projects:

- Project Structuring Committee ("**CEP**" in Portuguese) is a committee formed by senior managers, with the task of assessing the project's eligibility after the end of step 1, that is, the effective entry of a project in the BNDES structuring portfolio. This committee is also responsible for monitoring the financial and operational performance of the portfolio and the redirection of development efforts.
- Collegiate of Project Structuring Senior Executives ("**CDEP**" in Portuguese) approves the executive summary of the denationalisation projects, acting as the final assessment body for the structuring of projects coordinated by BNDES.

The BNDES' Board of Directors participates in different moments. It is responsible for approving the hiring of consultants who will support the structuring of the project and for approving BNDES` contract with the client, after the eligibility assessment by CEP.

Likewise, the Executive Board – which congregates all senior executives – will also be responsible for approving the public notice for the sale of the asset.

Specifically in relation to the process of hiring of consultants, BNDES adopts integrity safeguards included in the Terms of Reference (TR) elaborated for choosing contractors. In the TR, there is an express prohibition stating that the consultant will not be able to participate directly or indirectly in the bidding for the SOE. However, while BNDES` top management has been discussing the issue, currently there are no rotation requirements for consultants (e.g., requiring that a consultant could not be hired for two privatisation processes in the same year).

The purpose of the provision is to avoid undue competitive advantages in the context of the subsequent bidding for privatization, given that, as a result of immersion in the execution of services, the contractors and subcontractors will have more specific and in-depth knowledge of the business, able to cause competitive imbalance in the bid to privatize the enterprise, to the detriment of other potential interested parties.

In addition, the notices of hiring specialised consultants require the signing, by the contractors and their subcontractors, of a confidentiality agreement, through which they become obliged to keep confidential the reserved information obtained during the execution of the, except with express authorization by BNDES.

6.5. Sale options

At the planning stage, there is no previous decision regarding privatisation options. BNDES is entitled to study a company, in order to evaluate and review all the SOE's assets, debts, business plan´s prospects, and all financial and legal aspects. After performing such a study, with the possibility of external consultants' help, BNDES would summarise all findings in a report with a proposal that can be either: (i) privatisation, (ii) liquidation, or (iii) maintaining the activities as an SOE.

When the proposal is for privatisation, the planning of the whole process will consider company`s characteristics, market structure, the legal and regulatory framework in which the company operates, whether there are private shareholders. Law no. 9.491/1997 (article 4) establishes the following sales options: (i) auction of all the shares owned by government; (ii) auction of a block of controlling shares owned by government; (iii) Initial Public Offerings; (iv) capital stock increasing upon public subscription of common shares; or (v) concession of public utilities, which can be combined with one of the previous options. One of these sale options is then submitted for the approval of CPPI.

Usually a public auction is used to offer all the shares or a block of controlling shares owned by government for investors. When an IPO or a primary equity follow-on offer is chosen, shares will be sold to all investors that have subscribed to the offer, considering the pre-emptive rights of the existing shareholders. Any type of sale must be public and non-discriminatory so that management/employee buy-outs, business-to-business sales, or trade sale transactions are not considered possible options. The public auction and offers (IPO, follow-on or secondary offer) are operationalised in B3`s electronic systems, which are the same used for public offers and auctions of shares of privately-held companies. B3`s systems are reputed as trustworthy and able to prevent the leak of offers.

Moreover, the structure for the privatisation approved by CPPI is submitted to TCU, which evaluates and approves the conditions for privatisation. TCU can use a considerable period of time to examine the privatization structure (at least 150 days, but an extension of the period is possible in exceptional cases), with a special focus on the minimum price and the existence of appropriate competition. After that, BNDES releases the Public Notice for Bidding previously mentioned in this report.

Law no. 9.491/1997 states that at least 10% of the shares owned by government must be offered to employees and retirees of the company. The rationale for this provision – according to SEST – is to allow employees and retirees, who dedicated their work to the development of the company, to benefit from the expected appreciation of the stocks. Moreover, one might pragmatically argue that this is also an effective strategy to enhance employee`s support to the privatisation.

6.6. Allowances for market restructuring and monopolies

In the 1990s, Brazil went through a series of market reforms and restructuring of SOEs in preparation for privatisations. The telecommunications sector, for example, used to be a monopoly under a federal state-owned conglomerate named Telebras. Before the privatisation of Telebras` subsidiaries and assets, a reform broke the monopoly, opened the market for competition, and created an independent regulatory agency for the telecom market (ANATEL). A similar phenomenon happened with the energy sector (oil & gas and electricity sectors).

A recent example is the reinsurance market. Until January of 2007, the SOE named Instituto de Resseguros do Brasil (IRB) detained the monopoly of the reinsurance market. The 2007 legal reform that ended the State's reinsurance monopoly was the first step of a reform movement that was completed with the privatisation of IRB in 2013.

Pursuant to the constitutional monopoly for the exploration of nuclear energy, there are no plans in sight to privatise Eletronuclear. To the contrary, the bill sent to congress to address privatisation of Eletrobras demands to restructure the company in order to keep state`s ownership of Eletronuclear and Itaipu. The spin-off of these two entities would happen before the privatisation and in accordance with the Corporations Act, which requires a decision at the general assembly of shareholders for spin-offs.

The situation is different regarding Correios (ECT). The company was qualified for the Investment Partnership Program, in August 2019, by a presidential decree. It means that now the Secretariat of PPI will demand studies and will evaluate alternatives to ensure its economic and financial sustainability, which can be achieved with partnerships with the private sector, divestment of assets or privatisation of the entire company. An inter-ministerial committee was created to oversee the elaboration of the studies and submit them to the approval of the CPPI. Depending on the proposal of the studies, a market reform of the postal services will be necessary. Accordingly, the Government would need to send a bill to Congress to remove the monopoly and create a regulatory framework.

6.7. Changes to privatisation in Brazil

The Brazilian Constitution enacted in 1988 expressly adopted the principles of free enterprise and competition, also establishing that the role of the State in the economy would be subordinate to the role of the private sector. In light of the new Constitution, the PND was created by Law no. 8.031/1990 with an ambitious privatisation plan. The first wave of privatisations (1990-1996) included SOEs in the chemical, petrochemical, fertilizer, metallurgy, textile, and mining sectors. The program was managed by an Executive Committee reporting directly to the President of Republic and the legal framework was very simple.

The privatisation program was completely reformulated by Law no. 9.491/1997, which is a much more comprehensive legal statute. The Executive Committee was substituted by a more complex governance structure: decision-making conducted by a National Privatization Council ("CND") formed by five Ministers, who advised the President.

Likewise, BNDES was formally appointed as the manager and coordinator of the privatization process. The development bank became responsible for performing the valuation studies, with the support of two external consulting firms for each SOE to be sold. The second wave of privatisations (1997-2002) focused on utilities like electricity (generation, transmission and distribution), railroads, highways, ports, and telecommunications, which demanded market reforms and the creation of regulatory agencies.

Some of the practices of the 1990s are not used anymore. For example, in the 1990s the federal government accepted as payment for the controlling stakes in SOEs value-impaired treasury bonds and other sovereign bonds issued in the 1980s and 1990s, like Agrarian Debt Bonds (TDAs), debts with the National Housing Program (Letras CEF), and others known as "rotten" or "junk" bonds. In 2016, Congress passed a bill stating that only currency can be accepted as payment for privatisation.

Another characteristic of privatisations in the 1990s was that in some cases the buyers of an SOE received loans from BNDES to finance the transaction, typically at long-term lower-than-market interest rates. Currently, the Fiscal Responsibility Act (Law 101/2001) proscribes state-owned banks to finance the privatisation bid.

Likewise, Law no. 8.031/1990 established that a foreign investor could not acquire more than 40% of the voting shares unless expressly authorized by Congress. That provision was abolished by Law no. 9.491/1997, and foreign bidders can now acquire up to 100% of the voting shares of an SOE.

In 2016, two statutes also changed the course of SOEs sales. First, on the governance side, there was the creation of PPI and CPPI, which is the substitute of the former CND. The new council, which is a collegiate body that evaluates and recommends the President of the Republic the projects that integrate the PPI, is formed by the President of Republic, 7 ministers, and the CEOs of BNDES, Banco do Brasil, and CEF. PPI is an enhanced program that coordinates and oversees not only privatisations but also concessions and public-private partnerships. The PPI Secretariat is a permanent staff structure created to coordinate, monitor, evaluate, and supervise the actions of the PPI and support the sectoral actions necessary for its execution.

The second statutory reform in 2016 was Law no. 13.303, which authorizes the selling of assets or shares owned by SOEs, including controlling stakes in SOEs` subsidiaries. The procedure for divestments by SOEs at the federal level is detailed on Decree no. 9.188/2017. The procedure of divestment shall be public, competitive, and transparent, although a formal bidding process is not required.

The Brazilian Supreme Court ruled for the constitutionality of Decree no. 9.188/2017 in 2019. The court´s opinion considered that the divestment of assets of the SOEs and the controlling shares of their subsidiaries does not require congressional approval nor a formal bidding process. However, the procedure must be competitive and transparent, allowing external auditing bodies, like CGU and TCU, to audit the entire process after it is completed (nevertheless, it must be noted that CGU has not audited the divestment of subsidiaries recently). In any case, the SOEs have some flexibility for defining their internal procedure for divestment, which must follow the guidelines of the Supreme Court's opinion and Decree no. 9.188/2017. Besides, the Supreme Court decided that selling the controlling shares of the holding company requires a traditional privatization process in accordance with Law no. 9.491/1997.

Part II. Review against the OECD Guidelines for State-Owned Enterprises

Chapter 7. Rationales for State Ownership

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

7.1. Articulating the rationales for state ownership

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

Art. 173 of the Brazilian Federal Constitution, which determines that the State is only allowed to own an SOE if the ownership is "necessary to the imperatives of national security or relevant collective interest", can be interpreted in disparate ways because the concepts of "national security" and "collective interest" could be read differently depending on the ideological perspective or the current political context.

Likewise, if the SOE takes the form of a corporation (as almost all do, as shown in the landscape session), it must have the profit as at least one of its goals (art. 2 of the Corporation Act). Finally, article 238 of the Corporations Act allows the State to orientate the SOE away from the objective of increasing profits in order to fulfil public policy goals that justified its incorporation.

While the overall framework in Brazil (Constitution and Corporations Act) is aligned with the principle, the legislation applicable to individual SOEs and their bylaws still need to be improved. Laws that allowed for the incorporation of national SOEs are seldom clear in relation to the public policy objectives that justify their existence.

The alternative solution imposed by the SOE Statute (article 8, item I), to require that the board of directors should annually state – in a public letter – which public policy objectives will be fulfilled by the SOE in the following year, is not an ideal one. The Federal Government – and not the directors of its SOEs – is much better positioned to evaluate which portfolio of public policies would maximize value for society and how SOEs could contribute to the overall goals set by the Federal Government`s leadership.

If the law that allowed the incorporation of the SOE is not sufficiently clear and a change of the law is politically challenging, the Federal Government should be the one to provide greater clarity on which are exactly the public policy goals to be implemented by the SOEs it owns.

The orientation of the Federal Government to SOEs in relation to their public policy goals, as will be better detailed below, should be written, public and forward-looking, in order to guarantee the accountability of all parties involved and guide the expectations of private market participants. Likewise, in order to preserve the system set by the Constitution and the Corporations Act, the orientation of the Federal Government should stay within the scope of what is reasonable to interpret from the law that allowed the incorporation of the SOE, including the context when such law was enacted.

Clearer rationales for all national SOEs have at least three benefits: (i) to avoid conflicting goals for SOEs supervised by different line ministries; (ii) to provide clearer overall guidance for SOEs` directors and senior executives in the absence of specific orientation from its supervisory ministry; (iii) to offer CPPI a clear set of rationales that would serve as the basis for its decisions on which SOEs to privatise, making those decisions easier and more coherent.

7.2. Ownership policy

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

The Brazilian government does not have a specific ownership policy. As mentioned earlier, SEST is currently in the process of developing an ownership policy, but its content is not publicly disclosed, nor has it been shared with the OECD mission team.

The Brazilian authorities argue that the SOE Statute goes a long way toward establishing elements of a de-facto ownership policy. The Law affects the operational environment of all SOEs that pursue economic activities (including activities subject to legal monopoly or linked to the provision of public services). As mentioned earlier, the law establishes some ground rules for the exercise of ownership powers and corporate governance of the SOEs, including with regards to the following: disclosure and transparency; board responsibilities; statutory committees and nomination of directors.

While there are some decrees that regulate the roles and responsibilities of government offices involved in the governance of SOEs (one decree for each ministry and council), a single ownership policy would make any gaps or overlaps in how government offices organize themselves clearer. For example, during the first fact-finding mission, the OECD heard from one of the line ministries involved in the governance of national SOEs that SEST would review the background of individuals appointed for senior positions in SOEs, whereas in fact SEST only reviews the background of individuals appointed by the Ministry of the Economy.

7.3. Ownership policy accountability, disclosure and review

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

This principle does not apply. As mentioned, SEST is currently preparing an ownership policy in cooperation with other offices of the administration. The OECD mission team is informed that it will be developed taking as examples the existent ownership policies of a number of other countries.

At this stage, SEST has not mentioned plans to open the draft ownership policy to public consultation. Public consultation – including private sector representatives and trade union representatives – however, would be advisable in order to facilitate acceptance of the ownership policy by market participants and key stakeholders.

7.4. Defining SOE Objectives

D. *The state should define the rationales for owning individual SOEs and subject these to recurrent review. Any public policy objectives that individual SOEs, or groups of SOEs,*

are required to achieve should be clearly mandated by the relevant authorities and disclosed.

As mentioned earlier each SOE is incorporated pursuant to a specific law. This law might establish a rationale for ownership that is mostly anchored in the public policy objectives or public services that the SOE is required to provide. Examples of SOEs with explicit ownership rationales are those providing low-cost commuter rail service (CBTU and TRENSURB), basic health services and education (GHC, HCPA, and EBSERH), and research & development (EMBRAPA, AMAZUL and INB). However, in some important cases, the establishing law cannot be said to adequately establish an ownership rationale (e.g., Eletrobras). In this case, defining its public policy goals is essentially in the hands of the ownership ministry.

Further information can be gleaned from the current administration's ambition to shrink the public sector and attract private investment. By implication, state-owned enterprises that have been included in the PND for privatisation are of a nature where a rationale for state ownership (or full ownership) is no longer considered compelling (as previously mentioned, the CPPI is the council responsible for advising the President of the Republic on which SOEs to include in the PND). For example, this is the case of Eletrobras, which has been included in the PND: the Federal Government has a long track record of successful concession contracts for generation, transmission and distribution of electricity that indicates that it does not need to own an SOE to support the development of the sector.

Proposals regarding privatisation of holding SOEs must also be submitted to the National Congress. For most SOEs, there is prior authorisation foreseen in Law no. 9.194/1998. In any case, as established by Law no. 9.491/1997, BNDES – the public development bank that coordinates all privatisation processes of national SOEs – must conduct public consultations before any SOE is privatised.

As noted in the landscape session, public policy objectives are communicated by the line ministries to the SOEs they supervise – as a general rule – informally (for example, a call or a meeting between the Minister and the CEO). This informality is not desirable because it reduces the accountability of both the public officials when defining the policy goals for the SOE and the corporate officers while implementing them. It also makes it more difficult for market participants, SOEs` employees and citizens to adjust their expectations in relation to how the SOEs will act in the future.

The SOE Statute (article 8, item I), with the goal of increasing the transparency of the public policy objectives of the SOEs, requires that the board of directors should annually state – in a public letter – which policy objectives will be fulfilled by the SOE in the following year. This solution is not ideal because the Ministry – and not the directors of its SOEs – is the one most capable to evaluate which portfolio of public policies would maximize value for society.

Finally, it should be highlighted that it is a very uncommon (if not non-existent[46]) practice in the Federal Government to establish financial goals for the SOEs it owns (for example, ROE or leverage rations). Since the Federal Government decided to use the corporate form for most SOEs it owns and to make some of them public, the maximisation of profits is

[46] In some SOEs, there are financial targets set by the board for the payment of variable remuneration to senior executives. Likewise, in the case of SOEs dependent on the fiscal budget, there are estimates of revenues, which will be an input in the definition of how much the dependent SOE will receive from the fiscal budget. These targets are not, however, set by the government in a structured way and followed by the political leadership and the citizens, as it would be advisable according to the SOE Guidelines.

arguably a central goal for many of national SOEs. Therefore, in order to fully exercise its ownership rights, clear financial goals for the national SOEs would also be important.

Chapter 8. The State's Role as an Owner

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

8.1. Simplification of operational practices and legal form

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

As mentioned earlier, SOEs may operate as limited liability companies, as joint stock companies ("JSC" or "Sociedades Anonimas" in Portuguese) or as statutory corporations. According to the authorities, all national SOEs but CEF are JSC, which is the same legal form used by public companies.

CEF must comply with the Corporations Act and the SOE Law but there a number of important exceptions to the general rules applicable to privately-held companies and other SOEs. CEF Law defines that its equity is not divided into shares and the same statute determines that regulation enacted by the President of the Republic will establish the structure and prerogatives of the CEF`s bodies. Moreover, CEF`s CEO is directly appointed by the President of the Republic, and not by CEF`s board. Probably as a direct effect of that rule, a source heard by the OECD team confirmed that the Government does not provide strategic guidance to CEF`s board but it is rather the Minister of the Economy who directly interact with the CEO for guidance.

SOEs ("Estatais" in Portuguese) may be classified, in Brazil, as partially owned SOEs ("Sociedades de Economia Mista" in Portuguese) or as fully owned ("Empresas Públicas" in Portuguese). They are both subject to the same legal determinations as privately owned companies, including civil, commercial, labour and taxation duties and rights, as defined in the Constitution (art. 173, § 1º, II). There are, however, three differences that were detailed in Part A and should be noted again here.

First, Decree-Law 200/1967 (art. 26) allows, according to the government`s interpretation of the legislation, the Minister responsible for the supervision of the SOE to directly appoint senior executives, including the CEO. Likewise, in the specific case of Banco do Brasil, Law no. 4.595/1964 (article 21) states that the CEO of the bank should be appointed by the President of the Republic.

Second, SOEs are excluded from procedures of insolvency or bankruptcy of private companies (Law no. 11.101/2005). SOEs that are not financially sustainable should become dependent on the fiscal budget, be privatised or liquidated.

Third, since the Federal Constitution establishes that SOEs` employees can only be hired through public exams, the Judiciary has been interpreting that SOEs do not have the right to freely dismiss employees. SOEs have to thoroughly motivate the dismissal in a way that proves that there was not discrimination against an individual (or a group of employees), which has been proved especially burdensome.

8.2. Political intervention and operational autonomy

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

If applicable law is fully implemented, there is little scope for political intervention in Brazil's SOEs. The SOE Statute (art. 14) mandates the controlling shareholder of the state-owned and the state-controlled enterprise to "preserve the independence of the board of directors in the performance of their duties".

The state may exercise its wills as a shareholder in the general shareholder meetings, and the ownership ministries might set financial and non-financial objectives for the SOEs. As mentioned in Part A, some authorities from ownership ministries have declared that they give instructions directly – and informally – to SOE directors and senior executives, and PGFN informed the OECD team during the first mission that mentioned practice would be lawful. This practice, however, is not aligned with the principle above.

The President of the Republic and his ministers should refrain from intervening in SOE management and define SOE objectives in a transparent manner. One example that might be followed is the National Council of Energy Policy ("CNPE"), which communicates public policy objectives to Eletrobras through written and public decisions (although a source heard by the OECD mentioned that Eletrobras` supervisory ministry still informally intervenes in management decisions of the company).

As examples of relatively recent political interventions in national SOEs, the Securities and Exchange Commission (CVM) is investigating three possible unlawful acts of the Federal Government in listed-SOEs: (i) apparent intervention under the Rousseff administration in the pricing policy of Petrobras, between 2011 and 2014, for the gasoline and diesel, without any compensation or a clear public policy objective that the company would be authorised to pursue; (ii) the request for dismissal by a senior executive responsible for the marketing unit of Banco do Brasil, which might have been triggered by pressures from the Federal Government because of an advertisement that caused reactions from some religious groups, and; (iii) the nomination of some BB's senior executives despite apparent conflict of interests. While the first case under investigation took place under a previous Federal Government leadership and before the enactment of the SOE Statute, the other two took place during the current administration.

8.3. Independence of Boards

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

The Corporations Act (art. 142) establishes that boards of directors have the authority to (i) define the strategy of the company, (ii) nominate and dismiss the C-level executives, (iii) control the acts of the executives, (iv) choose the external auditors and (v) decide on issues whenever the bylaws require it. As previously already noted in this Part B, however, boards in national SOEs do not have the authority to nominate and dismiss the C-level executives.

The SOE Statute has one provision that, if fully implemented, would better align Brazil with the aforementioned principle. Article 17 establishes that directors and those appointed for office positions, including directors and CEOs, should be citizens with "unsoiled reputation and reputable knowledge", adhering in full to the following minimum criteria: (i) minimum experience that the person should have prior to the nomination (for example, someone with 10 years of experience as a senior executive in a privately-owned firm or

SOE in the same industry would qualify according to the Statute); (ii) to have an academic background compatible with the position; (iii) not to have committed any offense that gives cause to the ineligibility to hold a public office. Moreover, the same provision blocks the following individuals and their family members from nomination as directors or senior executives:

a. Official of a regulatory agency that supervises the SOE, Minister, Secretary of State, public officials that are not part of a public service career (i.e., who can be freely nominated and dismissed from their position in the Administration), senior leaders of political parties, and elected politicians from any level of the Federation;

b. Anyone who, in the last 36 months, acted as a senior leader of a political party or worked in an electoral campaign;

c. Anyone who holds a position in a Union;

d. Anyone who has closed a commercial deal with the controlling shareholder or the SOE itself in the last 36 months;

e. Anyone who has a conflict of interests with the controlling shareholder or the SOE itself.

Article 17, however, does not fully apply to SOEs with revenues smaller than 90 million BRL a year and, according to the prevalent interpretation in the Judiciary, to members of advisory committees – such as the nomination committee – who are not directors.

According to some government authorities, Ministry officials on boards vote independently and do not receive instructions on how to vote. These officials are not supposed to communicate confidential or commercial business information to the Ministry as a consequence of their duty of loyalty established by article 155 of the Corporations Act. The OECD team has not been able to establish whether and to what extent this rule is upheld in practice. For example, the OECD team heard from a government official that SOEs` fiscal council members nominated by the Treasury would keep Ministry of the Economy`s officials informed on the business of the SOEs (it was not clear, however, whether this would include pieces of information that should be kept confidential). Likewise, a director from an SOE confirmed that the Federal Government would intervene in boards` decisions through the non-independent directors appointed by the Government. Moreover, the aforementioned investigations by CVM raise suspicions about the opportunities for the state owner to undermine rules meant to mitigate undue influence of board responsibilities and their monitoring of companies' executive management.

8.4. Centralisation of the ownership function

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

As mentioned in Part A, Brazil has a dual ownership model with some degree of co-ordination by SEST. Other than its sole oversight of 24 SOEs (including almost all financial SOEs), the Ministry of the Economy oversees SOEs jointly with line ministries in all other cases. Involvement of line ministries varies according to the market and business of the SOE (see Annex A).

SEST has greater leverage in relation to the remuneration of directors and senior executives and to employment policy, retirement and health insurance issues in SOEs because,

according to art. 98 of the Decree no. 9.745/2019, it is the secretariat responsible for providing guidance to the vote to be casted on behalf of the Federal Government on those issues in national SOEs` shareholders meetings. Likewise, SEST has a central role in coordinating and planning the liquidation of SOEs when CPPI decides that an SOE should be liquidated. Apart from that, the role of SEST – although relevant – has more an advocacy nature: for example, providing SOEs model bylaws that could be adopted or publishing the results of IG-SEST (an indicator of the level of compliance of individual SOEs with applicable legal and regulatory rules, and the adoption of some corporate governance good practices).

SEST's workforce consists of 116 employees and the Secretariat has a budget of USD 2 871 244 for 2020 (about USD 25 000 per capita a year and USD 62 000 per majority-owned SOE a year).

The co-ordination aspects of Brazil's Federal ownership became somewhat blurred when the 'super Ministry' (of Economy) was created in early 2019. Prior to the reform, when SEST was anchored in the Ministry of Planning, SEST derived many of its co-ordination powers and authority from the fact that SOE investment plans had to be submitted for SEST approval. Now, SEST is one of several secretariats within the Ministry that hold some degree of co-ordination responsibility, including PGFN (responsible for representing the Federal Government in shareholders meetings) and the National Treasury (formally responsible for evaluating the fiscal risks SOEs might pose to the Federal Government).

Likewise, it was not possible to find any evidence that the National Treasury (or any other body of the Federal Government, for that matter) effectively supervises leverage ratios, financial results and the dividend policies of the SOEs or to confirm that actions are taken when those financial issues present a risk for the sustainability of an individual SOE. The development of an ownership policy would be an opportunity to be crystal clear which office is responsible for such an important attribute of the Federal Government acting as the owner of SOEs.

Presidential decrees generally define the competencies of each ministry, secretariat and council involved in ownership of SOEs (in the case of the Ministry of the Economy, it is the Decree no. 9.745/2019). These decrees, however, are long pieces of regulation that list all attributions of public bodies and it is a gargantuan task to elaborate a clear picture of how all involved parties should interact in the supervision and control of national SOEs. Just recovering examples covered in greater detail in Part A:

- Petrobras: SEST works to increase efficiency and transparency, coordinating personnel policies, social security issues and financial monitoring. The Treasury and PGFN advise the Minister of the Economy, respectively, on financial and legal issues regarding Petrobras. MME, by its turn, has its own department that coordinates all processes related to Petrobras and direct the government policies that should be persecuted by the company. Board of directors are appointed by Ministry of Economy and Ministry of Mines and Energy. The CEO is directly selected by the MME and is also a member of the board.
- Banco do Brasil: because it is a financial SOE, the Ministry of the Economy also works as a line Ministry. In this case, the Treasury and PGFN are again focused on, respectively, financial issues and legal advising. The board of directors are appointed by Ministry of Economy (the majority of members), employees (one director) and minority shareholders.

The duality between the Ministry of the Economy and line ministries is also subject sometimes to interventions by the Office of the Presidency where large and systemically important SOEs are involved.

8.5. Accountability of the ownership entity

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

The various elements of the ownership function are not formally, or at least not directly, accountable to relevant representative bodies. All ministries are indirectly accountable to the legislature through the political responsibilities of their ministers, and also insofar as the they are subject to audits by the Federal Court of Accounts (TCU).

According to article 50 of the Federal Constitution, the lower and the upper houses of Congress can summon ministers to provide information on any issue, including on the exercise of ministers` ownership duties. This is not often done, but it is a potential powerful instrument for Congress to make ministers politically accountable when a major problem becomes public.

TCU is formally an auxiliary body to the Congressional Oversight Committee that, in turn, relies on its input for holding the public sector accountable. By virtue of the public sector external audit process, ministries should be evaluated on the fulfilment of responsibilities and achievement of objectives, including those pertaining to the exercise of state ownership. In addition to conducting systematic audits of individual ministries, TCU has the mandate to conduct transversal audits on exercise of ownership across the federal administration.

Further below in this Part B, one recent audit report by TCU will be summarised and might serve as a good example of the role that the supreme audit institution can play in improving the corporate governance of SOEs in Brazil.

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

F1. Being represented at the general shareholders meetings and effectively exercising voting rights;

The Corporations Act and company bylaws define which subjects are to be treated and voted upon in general shareholder meetings (e.g. appointment of board members and the approval of annual financial reports). A general shareholders meeting should be held annually, however an extraordinary meeting can be convened by the board or if requested by shareholders accumulating at least 5% of the shares (smaller thresholds apply for listed SOEs depending on their equity capital). A communication for the shareholders meeting should be made public 8 days in advance, if the SOE is not listed, or 15 days if it is listed.

PGFN represents the Federal Government in general shareholder meetings. PGFN receives technical, economic and political guidance from other entities within the government in advance (including line ministries and secretariats within the Ministry of the Economy) and reports to the head of SEFAZ – a special secretary that responds directly to the Minister of the Economy –, who has the final say on how PGFN should vote. In the first quarter of 2020, the head of SEDDM – the special secretariat that oversees SEST –received the power to have the final say on how the Federal Government should vote in shareholders meetings of SOEs that were included in the PND for privatisation or liquidation.

While the process of defining the vote to be casted on behalf of the Federal Government could be streamlined (an ownership policy would have such a benefit), the lack of representation at general shareholders meetings does not seem to be a problem in national SOEs in Brazil.

F2. Establishing well-structured, merit-based and transparent board nomination processes in fully or majority-owned SOEs, actively participating in the nomination of all SOEs' boards and contributing to board diversity;

The SOE Statute, introduced in 2016, overhauled board nomination procedures. The changes aimed at better managing risks of conflict of interest and advancing professionalisation of SOE boards. As described in the landscape section, boards have a maximum of 11 members and minimum of seven (or three, for SOEs whose revenue is less than BRL 90 million). The board is typically composed of several members designated by the sectoral ministry (established in bylaws), one by the Ministry of Economy, one elected by the employees (if the SOE has more than 200 employees) and at least one representative of the minority shareholders (for partially privatised SOEs).

The public entity responsible for appointment must send to the Chief Staff Office of the Presidency of the Republic (Casa Civil), for prior approval, the names and data of all candidates proposed for board positions in SOEs or in companies in which the Federal Government holds, directly or indirectly, minority shares. According to the authorities, the Chief Staff Office does not receive names or data of those whose nomination is not the responsibility of Federal Administration (e.g. employee representatives).

The Decree regulating the SOE Statute (no. 8.945/2016) requires that those responsible for nominating both C-level executives and board members should prepare a preliminary analysis of the requirements and prohibitions established by the new legislation before forwarding the nominations to SOEs' nomination committees. These committees are responsible for giving their opinion on the nomination made for the positions under discussion in order to assist the Board of Directors and the General Assembly in the decision making.

As mentioned in the landscape section, minority shareholders of listed companies may elect one or two board members by separate vote, if they hold at least 15% or more of the voting capital or at least 10% of non-voting preferred shares. In the case of SOEs, minority shareholders have the right to elect one representative to the Board with no minimum ownership requirement. However, the state retains its right to appoint members even in certain cases of minority ownership by the state if established in the terms of a shareholder agreement or in the bylaws. The terms may allow for golden share participation with special prerogatives. Wherever these rights exist, they are used to systematically justify the state's participation in that business. Two cases are highlighted:

- *Embraer:* The Federal Government holds a golden share that infers veto powers over: I. change in the name of the Company or its corporate purposes; II. modification and/or use of the Company's logo; III. creation of and/or changes in military programs involving the Federative Republic of Brazil or otherwise; IV. technological training of third parties in connection with military programs; V. discontinuance of a supply of spare parts to service military aircraft; VI. change in a controlling interest in the Company; and VII. any amendments to specified sections of the bylaw itself.
- *Vale:* The Federal Government holds exclusive 'special-class' preferred shares (e.g. golden shares). This confers the right to vote in the general shareholders meetings with the same political rights as common shares. They are moreover

granted the right to elect and dismiss a member of the Fiscal Council and its alternate, and to vet changes to the company's name, headquarters' location or line of operations (mining industry), or to vet the liquidation of the company.

Full implementation of the SOE Statute and Decree no. 8.945/2016 is still a challenge. The OECD team has had access to the summary of an audit report developed by TCU`s team in Rio de Janeiro – between 2018 and 2019 – focused on national SOEs headquartered in the city (the full report is still a confidential document). The audit report ("TCU Audit Report") focuses on the compliance of 13 national SOEs with conditions and impediments provided by the SOE Statute and Decree no. 8.945/2016 to the nomination of their directors, senior executives and members of fiscal councils. Among those 13 SOEs are Petrobras, Eletrobras and BNDES, and, in total, they represent 46.3% of the assets of all SOEs owned by the Federal Government.

In the TCU Audit Report, the biggest incongruities with the applicable legislation and regulation are the following:

- Seven out of 13 analysed SOEs (or 54%) do not have the minimum number of seven directors required by the SOE Statute;
- Seven SOEs` boards are not compliant with the rules related to the 25% quota for independent board members or the requirement for employees and minority shareholders` representatives in the board of directors;
- Four out of 13 analysed SOEs (or 31%) were not able to prove that their senior corporate officers had the professional experience required by the SOE Statute;
- Two SOEs (Transpetro – a Petrobras subsidiary – and Casa da Moeda – the Mint SOE) were not able to prove that their senior corporate officers had the knowledge and academic training necessary for their role;
- One senior executive of Petrobras would be in a situation of conflict of interests that would not allow him to be nominated according to the SOE Statute;
- Seven SOEs could not prove that they offer annual trainings on corporate law, internal controls and the code of conduct to their senior leadership;
- Two SOEs could not prove that their nomination committees reviewed the names of individuals appointed as senior corporate officers as required by the SOE Statute since its enactment.

Finally, as observed in Part A, the choice of who to appoint to leadership positions in SOEs is often made within the professional network of the ownership Minister and his or her most trusted advisors. The use of professional staffing agencies is uncommon with the notable exception of Eletrobras in recent times. This might explain why – at least in the boards analysed in Part A – there is a lack of international experience (some have studied abroad but it was not possible to identify a director in Banco do Brasil, BNDES, Eletrobras and Petrobras who has had significant experience working abroad) and gender balance in boards (currently, just one female director in Banco do Brasil and BNDES, two in Petrobras and none in Eletrobras). Directors and senior executives with private sector experience, however, have become more common in recent years.

F3. Setting and monitoring the implementation of broad mandates and objectives for SOEs, including financial targets, capital structure objectives and risk tolerance levels;

As explained in Part A, SOEs' broad policy-related objectives are sometimes laid down in the law that allowed their incorporation and specified in their bylaws. However, as already

noted both in Part A and in this Part B, the written policy objectives in the legislation and the bylaws are often not clear or even inexistent.

The most common practice is for Ministers and the President of the Republic to informally communicate the policy objectives to SOEs` leadership. This practice is not aligned with the SOE Guidelines, which states that "the government as a shareholder should avoid redefining SOE objectives in a non-transparent manner.

Once again, it must be noted that assigning the responsibility for defining the policy objectives to the board of directors – as article 8 of the SOE Statute does – is not either a practice aligned with the SOE Guidelines. It is the State – and not SOEs` boards – that must set mandates and objectives for SOEs.

In relation to financial targets (e.g., rates of return and capital structure), the OECD team was not able to find evidence that the Federal Government sets targets in a clear and structured way for the SOEs it owns. If any of the public bodies involved in the ownership of national SOEs sets financial targets, it does through informal means, which would not be compatible with the SOE Guidelines.

F4. Setting up reporting systems that allow the ownership entity to regularly monitor, audit and assess SOE performance, and oversee and monitor their compliance with applicable corporate governance standards;

The SOE Statute strengthened the reporting requirements of all SOEs regardless of corporate form or structure. The minimum transparency requirements, for listed an non-listed SOEs, are:

- Preparation and disclosure of an "Annual Charter" (annual letter) signed by the members of the Board of Directors, explaining the public policy objectives of the public company and its subsidiaries, in order to meet the collective interest or the imperative of national security that justified the authorization for their respective creations, with a clear definition of the resources to be used for this purpose, as well as the economic and financial impacts of the achievement of these objectives, measurable through objective indicators;
- Timely and up-to-date disclosure of material information, particularly those related to activities carried out, control structure, risk factors, economic and financial data, management comments on performance, corporate governance policies and practices and description of the composition and management remuneration;
- Preparation and dissemination of a disclosure policy, in accordance with current legislation and best practices;
- Preparation of a dividend distribution policy, in the light of the public interest that justified the creation of the SOE;
- Disclosure, in an explanatory note to the financial statements, of the operational and financial data of the activities related to the achievement of purposes of collective interest or national security;
- Elaboration and disclosure of the policy of transactions with related parties, in accordance with the requirements of competitiveness, compliance, transparency, fairness and commutativity, which shall be reviewed at least annually and approved by the Board of Directors;
- Annual disclosure of integrated or sustainability report.

SEST uses published accounting information, governance indicators and questionnaires to monitor and benchmark SOE performance. For instance, SEST developed an indicator assessment tool (IG-SEST) to measure the governance practices established in the SOE. At the time of writing, about 25% of SOEs subject to categorisation by IG-SEST had reached the highest level (level 1).

The grades in IG-SEST are solely based on a questionnaire sent to the SOEs. The questionnaire is a check-list to appraise SOE`s compliance to the SOE Statute and implementation of some corporate governance good practices.

The review process of the IG-SEST questionnaire is done not only by SEST, but it also has the support of an independent commission composed by the University of Brasilia (UnB) – a public university –, Dom Cabral Foundation (FDC) – a private academic institution –, the Brazilian Stock Exchange (B3), Institute of Applied Economic Research (IPEA) – a think-tank solely funded by the Federal Government –, Brazilian Institute of Corporate Governance (IBGC) and Getulio Vargas Foundation (FGV) – a private academic institution. The OECD Secretariat has contacted one of the members of the independent commission, who mentioned that they have evaluated the answers by some SOEs. However, this member of the independent commission mentioned that they did not know if and how SEST took their evaluation into account in the evaluation process.

Likewise, SEST publishes every quarter a bulletin with the following summarised information on national SOEs:

- Number of SOEs and their distribution by economic sector;
- Approved and executed budgets for the SOEs as a whole, and individually for the most relevant ones and for the SOEs dependent on the Fiscal Budget;
- Aggregate profits, dividends and debts for national SOEs as a whole, and individually for the most relevant ones;
- Market values in the last four years for listed SOEs;
- Number of SOEs` employees and their remuneration every year during the last decade (overall and individually for the SOEs with the greatest number of employees).

Most notably, the abovementioned bulletin does not provide a systematic benchmarking of SOE performance, with private or public sector entities, both domestically and abroad.

F5. Developing a disclosure policy for SOEs that identifies what information should be publicly disclosed, the appropriate channels for disclosure, and mechanisms for ensuring quality of information.

The SOE Statute lists minimum transparency requirements of SOEs, but requires that SOEs develop and disclose a 'disclosure policy' in line with current legislation and best practices (no. 13,303/2016). To guide and encourage the elaboration of disclosure policies, SEST created and published a model policy on the Ministry of the Economy's website.

The SOE Statute also requires SOEs to comply with rules for bookkeeping and preparation of financial statements contained in the Corporations Act (no. 6.404/1976), and the rules of the CVM, including the requirement of external auditing by a registered auditor. This applies equally to listed and unlisted SOEs. The SOE Statute stipulates that these companies must prepare quarterly financial statements and disclose them on the internet. Moreover, amendment to the Corporations Act (no. 11,638/2007) aligned Brazil with international accounting standards through subscription to the IFRS.

SOEs are required to have a structure of internal controls and risk management, and internal audit in addition to the Audit Committee, Fiscal Council and Board of Directors, which include those assigned to ensure the quality of the financial statements.

F6. When appropriate and permitted by the legal system and the state's level of ownership, maintaining continuous dialogue with external auditors and specific state control organs;

There is no law that precludes state owners from exchanging information with external auditors, but, according to SEST, this is a practice not followed by government.

Indeed, a World Bank report suggested that the Federal Government does not play a big role in oversight or supervision of external audit practices of SOEs (World Bank, 2014). The SOE guidelines stipulate, however, that for wholly owned SOEs when the ownership entity is the sole representative in the annual general meeting, the ownership entity is expected to communicate with the external auditors.

As regards to the state auditor, a minimum exchange must occur between ownership ministries and the state external auditor, the TCU, given they too feature as the subject of their external audits. Insofar as the audit touches upon their role as owners, a dialogue specifically about SOEs could naturally arise. The OECD would thus infer, based on the government's denial of engagement between external auditors and the state, that engagement would be limited to ministries obligations as an auditee but does not include dialogue regarding audit findings on SOEs).

F7. Establishing a clear remuneration policy for SOE boards that fosters the long- and medium- term interest of the enterprise and can attract and motivate qualified professionals.

Remuneration policies differ depending on the financial autonomy of SOEs. Director and officers of the 18 directly held SOEs that depend on the National Treasury receive a maximum equivalent to the wages of the members of the Brazilian Supreme Court (currently, 39 293 BRL – or 7 630 USD – before taxes a month).

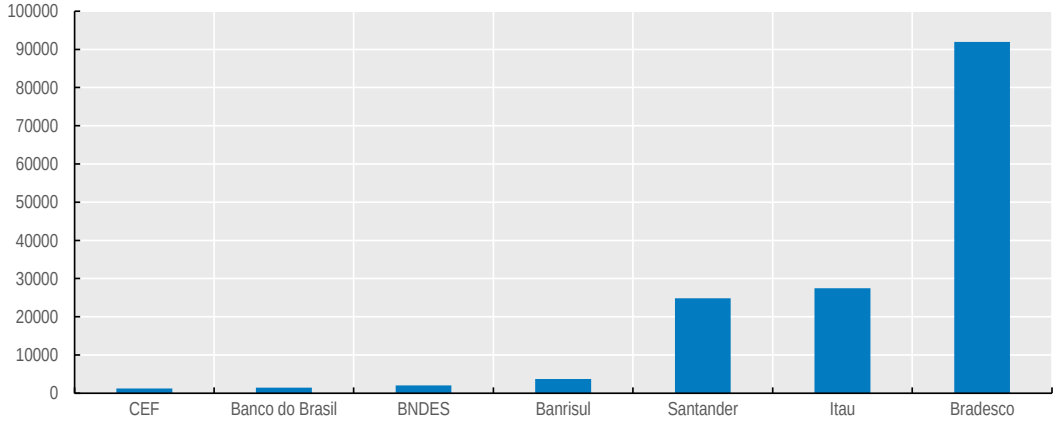
For SOEs that are not dependant of the government's budget, board remuneration is set by the boards themselves up to the overall limit approved by the shareholders meeting. It is generally lower than what private companies pay.

The remuneration for SOE directors has both a fixed and a variable portion. The variable remuneration of directors might include both stock options and a share of profits. If directors are entitled to a share of profits, the total amount received as a participation in the profits cannot be higher than 10% of the profits nor bigger than the directors` fixed remuneration (article 152 of the Corporations Act).

There is also a legal ceiling for the remuneration of directors and fiscal council members of SOEs, which is equivalent to 10% of the average remuneration of C-level executives. This is actually the floor for the remuneration of fiscal council members in privately-held corporations according to the Corporations Act.

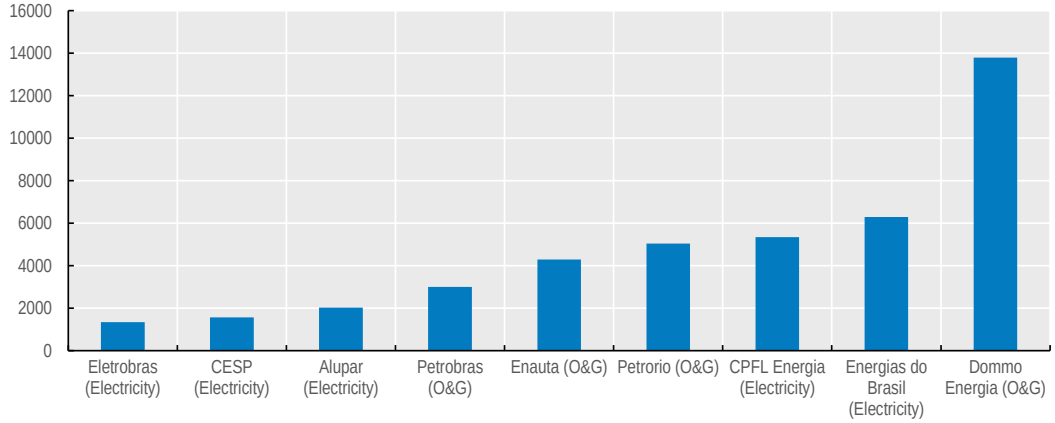
The figures below show how the remuneration of board members of Brazilian national SOEs are not aligned with private sector practices.

Figure 8.1. Monthly average remuneration of directors in USD – financial sector



Note 1: Remuneration for CEF`s, Banco do Brasil`s and BNDES` board is the one authorised for 2020 and the remuneration for the other companies is the actually paid in 2019.
Note 2: Banrisul is a subnational SOE.
Source: SEST in June, 2020.

Figure 8.2. Monthly average remuneration of directors in USD – energy sector



Note: Remuneration for Eletrobras` and Petrobras` board is the one authorised for 2020 and the remuneration for the other companies is the actually paid in 2019.
Source: SEST in June 2020.

Chapter 9. State-Owned Enterprises in the Marketplace

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

9.1. Separation of functions

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

The Ministry of Economy and the line ministries exercise ownership rights over SOEs, and TCU, CGU and regulatory agencies are responsible for regulating and exercising controls over SOEs to varying degrees. In addition to the competition agency CADE, there are eleven sectoral regulators in Brazil. Some of Brazil's largest SOEs are regulated by ANP (oil and gas), ANEEL (electricity generation, transmission and distribution), Anatel (Telecommunications), ANM (mining) and ANTT (ground transport). The financial sector is regulated by the CVM, Central Bank, SUSEP (insurance) and PREVIC (pension) – all four of which operate under the CMN (see more in Part A, section 3).

All regulatory agencies have boards with fixed mandates and other protections against the intervention by the central government. However, regulatory agencies do not have budgetary autonomy or, in other words, their budget is proposed by the President of the Republic and approved by Congress. As elaborated earlier, risks of conflicts of interest exist for CVM insofar as public lawyers working at the regulator are subordinate to the Lawyers Office of the Federal Government. As mentioned, however, the OECD team was informed that this risk has never materialised.

Indeed, Brazilian regulatory agencies were created as institutions that are legally independent of executive departments or ministries. The purpose of delegating regulatory powers to independent agencies was to safeguard the process of rulemaking and oversight process from political influence. Thus, these agencies must be impartial government bodies and regulate all agents with the same rules, regardless of being private or state-owned companies. Having a credible separation of functions was particularly important to successfully attract private investment in sectors where SOEs are relevant players, such as Oil & Gas and Electricity sectors.

The ministries overseeing SOEs play roles in both policy formulation and ownership. Numerous SOEs in Brazil are used as vehicles for industrial, regional and sectoral policies[47]. Given that SOEs' main objectives are for relevant collective interest or national security, SOEs' responsibilities for public policy implementation are significant. In many

[47] According to SEST, they are: ABGF, Amazul, BASA, BB, BNB, BNDES, CEF, CMB, Ceasaminas, Eletrobras, Ceitec, CBTU, Codeba, Codevasf, Ceagesp, CPRM, CDC, Codesa, Codesp, CDP, CDRJ, Codern, Conab, EBC, PPSA, ECT, Hemobras, Infraero, Embrapa, EBSERH, EPE, EPL, Dataprev, Emgepron, Emgea, Trensurb, Finep, HCPA, GHC, Imbel, INB, Nuclep, Petrobras, Serpro, Telebras and Valec.

cases, public policies aim to grant or enlarge an activity or service that is provided by an SOE. While some ministries have departments or teams dedicated to exercising ownership on behalf of the state, as observed in Part A, there is no clear separation between public officials responsible for ownership functions and others responsible for sectorial public policies.

For example, in the Ministry of Infrastructure, there is no unit or department exclusively focused on the ownership of SOEs. Depending on the sector in which each of the SOEs operate, a different unit within the Ministry is responsible for the ministerial supervision and to assist the Minister in the fulfilment of his functions in relation to the SOE. In the case of airports, it is the National Civil Aviation Secretariat; in the case of the waterway and port transport sector, it is the National Secretariat of Ports and Waterways Transport; in the land transport sector, it is the National Secretariat of Land Transportation; in the case of research and planning, it is the Secretariat for Promotion, Planning and Partnerships.

Even where there is some degree of separation between public officials responsible for the ownership of SOEs and those focused on public policies (e.g., ministries of Regional Development and Defence), the role of the team responsible for the ownership is strictly responsible for the nomination of directors and senior executives. Objectives for the SOEs are supposedly set by the same units engaged in the development of sectorial public policies.

9.2. Stakeholder rights

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

Brazilian legislation generally allows no distinction between SOEs and other corporate entities. Stakeholders such as creditors, employees and competitors are free to seek legal redress if they consider that their rights have been violated. Specifically regarding arbitration, companies' bylaws may establish that any disputes between the shareholders and the corporation, or between the majority shareholders and the minority shareholders may be resolved through arbitration under the terms specified by the bylaws, according to the Corporations Act (art. 109, para. 3).

9.3. Identifying the costs of public policy objectives

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

The 2016 SOE Statute obliges SOEs to publicise an annual letter, signed by all board members (art.8.I). The annual letter should contain the following: (i) specification of the public policies that will be implemented to fulfil the public interest that justified the incorporation of the SOE; (ii) clarification of the resources that will be used to implement mentioned public policies; (iii) objective evaluation of the financial and economic impact on the company of the implementation of the mentioned public policies. As a complement to the annual letter, SOEs must include in their financial reports explanatory notes with

operational and financial information of the activities related to the fulfilment of the collective interest that justified the incorporation of the SOE[48] (art.8.VI of the SOE Statute).

Despite the abovementioned provision, not all Brazilian national SOEs that engage in both public policy and competitive activities have structural separation that can facilitate the process of identifying, costing and funding public policy objectives.

As detailed in Part A, Petrobras holding's 2018 annual letter, signed by all directors in May 2019, provides a good example of how public policy goals can be clearly identified and their costs identified. Banco do Brasil (BB) holding's 2018 annual letter, however, provides a counter-example on how the recognition of public policy costs could be clearer.

9.4. Funding of public policy objectives

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

There is no obligation, in the Brazilian legislation, for costs related to SOEs` public policy objectives to be funded by the state budget. Actually, article 238 of the Corporations Act – as detailed in Part A – allows the State to set public policy goals related to the collective interest that justified the incorporation of the SOE.

Petrobras creatively amended its bylaws in 2017 to institute that the company should be compensated by the Federal Government for any cost in implementing public policies (i.e., for the higher costs or smaller revenues that it might face due to obligations that private firms do not bear). However, it is extremely questionable whether this provision in the bylaws would stand in court if the Federal Government would impose a public policy related to the collective interest that justified Petrobras` incorporation without funding it with the fiscal budget.

In any case, it is important to note that the costs related to public policy objectives have been in some cases funded by the state budget (e.g. subsidies to diesel sold by Petrobras in 2018). These costs, however, may also be borne by SOE themselves, and, in the absence of transparent dividend policies, it is not clear what the budgetary impact of this will be.

The SOE Statute's requirement for SOEs to issue an annual letter that elaborates on fulfilment of policy objectives and associated costs is meant to provide grounds for appropriate compensation of SOEs' policy undertakings. However, as already mentioned, the clarity of SOE objectives and the difficulties for SOEs to separate policy-related activities from commercial ones (whether in terms of accounting, function or corporate separation) suggests that compensation for policy pursuits will continue to be difficult in practice.

Moreover, SOEs may be disadvantaged by certain attributions inferred by their status as SOEs. For instance, SOEs pursuing economic activities must apply state requirements for public procurement. Likewise, SOEs must mandatorily use public examinations in order to hire new employees.

9.5. General application of laws and regulations

E. As a guiding principle, SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulations. Laws and regulations should

[48] Those explanatory notes shall include – as the item II of paragraph 2 of article 8 clarifies – the revenues and costs of those activities.

not unduly discriminate between SOEs and their market competitors. SOEs' legal form should allow creditors to press their claims and to initiate insolvency procedures.

All SOEs are subject to a similar legal and regulatory regime as private firms – including the application of the Corporations Act. However, certain SOEs have tax exemptions to carry out public policy objectives. This is the case of Correios and Casa da Moeda, which have tax exemptions for their monopolistic activities as public services providers (respectively, delivering letters and printing cash). It is currently unclear as to whether the exemptions equate to compensation calibrated to the actual costs of fulfilling any well-defined objectives, as opposed to offsetting financial or operational inefficiencies.

Likewise, as detailed in Part A, the Brazilian bankruptcy law (Law no. 11.101/2005) establishes that SOEs cannot go bankrupt. Whenever an SOE becomes commercially inviable, the State has three alternatives: (i) make a transfer from the Fiscal Budget to the SOE, and then begin to treat the SOE as dependent on the National Treasury; (ii) it can be wound-up and liquidated with the State covering any difference between the value of liquidated assets and liabilities; or (iii) the SOE can be privatised.

In order to evaluate whether the aforementioned implicit guarantee from the State to SOEs` creditors (if the SOE is liquidated, the State pays for unsettled debts), Part A analysed the costs of financing for some of the biggest SOEs. Ideally, the comparison should be between debt instruments of different companies with similar duration and credit risk, but, since not much information is publicly available (and notably Eletrobras and Petrobras are quite unique companies in the Brazilian capital markets), the second-best comparison used was to make a comparison with Brazilian Treasury notes. In all analysed cases, the cost of financing of the SOE was higher than the sovereign one, as follows:

- BB issued a medium term note in BRL in 2019 with 7 years of maturity with a p.a. remuneration of 9.50% while a 6 years Brazilian Treasury was paying 6.49% p.a. on 30 December 2019;
- in the end of 2019, the Eletrobras Group`s average cost of short-term financing in BRL was of 5.40% p.a., while a one-year Brazilian Treasury was paying 4.54% p.a. on 30 December 2019;
- on 25 September, 2019, Petrobras issued 730 million USD of debentures nominated in BRL with the following rates on book building: 1st series with 2029 maturity for inflation plus 3.6% p.a.; 2nd series with 2034 maturity for inflation plus 3.9% p.a. On the same day, market participants were willing to buy Federal Government Treasury bonds in BRL linked to the same inflation index for the following rates: with 2026 maturity for inflation plus 2.88% p.a.; with 2035 maturity for inflation plus 3.38% p.a.

While it is not possible to assert based on the information above that the implicit State guarantee to SOEs creditors imbedded in the Brazilian bankruptcy law does not have any impact on SOEs` cost of financing, this impact does not seem to be significant. Perhaps, because the liquidation process is so long and complex, creditors might value less the guarantee, which would materialise only in the end of the liquidation. Alternatively, because the three analysed companies are so prevalent in the Brazilian economy, creditors might infer that, if they were ever to be liquidated, the Brazilian Government at that point would be incapable of paying what it would owe to SOEs` creditors.

9.6. Market consistent financing conditions

F. SOEs' economic activities should face market consistent conditions regarding access to debt and equity finance.

1. In particular:

F1. SOEs' relations with all financial institutions, as well as non-financial SOEs, should be based on purely commercial grounds.

9.6.1. Provision of financing from the state or state-owned financial institutions

The primary sources of funding for Brazilian national SOEs are the equity markets, financial institutions including federally controlled financial institutions, foreign trade credit agencies, state funds and other non-financial SOEs (mainly due to trade credits and related commercial transactions). As mentioned in Part A, BDNES' new market interest rate – established in 2018 – was welcomed for its convergence towards market rates following concerns about years of lending at distorting rates. While BNDES does not lend in priority to SOEs (and other state-invested firms) the latter are nevertheless perceived as having benefited disproportionately from its past low-interest practices.

As detailed in Part A (see figures 4.2 and 4.3), Petrobras, its subsidiary TAG and a SPV with majority investment from SOEs and pension funds sponsored by SOEs (Norte Energia) were among the ten biggest recipients of equity and debt financing from BNDES from 2004 to 2019 (the others were the State of Sao Paulo, Embraer, Vale and other privately-held Brazilian and foreign companies). In an apparent sign of change in focus, there was no SOE among the 10 biggest recipients of debt and equity from BNDES in 2019 (see page 56 for detailed information).

Among the major SOEs analysed in Part A, only Eletrobras Group demonstrates an overreliance on credit from the Federal Government and national SOEs (see Figure 4.4). Petrobras is its main creditor (due to contracts of provision of natural gas for electricity generation) and the other three biggest ones are CEF, BNDES and Banco do Brasil. This overreliance might indicate that national SOEs have offered to Eletrobras lower funding costs than other privately-owned companies would in similar circumstances.

F2. SOEs' economic activities should not benefit from any indirect financial support that confers an advantage over private competitors, such as preferential financing, tax arrears or preferential trade credits from other SOEs. SOEs' economic activities should not receive inputs (such as energy, water or land) at prices or conditions more favourable than those available to private competitors.

SOEs are generally subject to the same tax regimes as private firms, but there are exceptions. It is alleged, but not independently verified by the OECD team, that Correios and Casa da Moeda – as previously mentioned – are the only two exceptions to the rule.

Based on information provided by the authorities, the relevance of trade credits from one SOE to another is variable and dependent on company characteristics. For most SOEs, such credits are not relevant. However, there are some SOEs whose main customer is another SOE - in which cases, trade credits may be relevant (as mentioned above, trade credits are relevant for Eletrobras). SEST claims that it did not identify debts in substantial arrears among SOEs in company accounts as of December 2018. In cases of default among SOEs, those issues are discussed commercially or even judicially, if necessary, autonomously by the companies.

According to the authorities, it is not common for the ownership function in Brazil to transfer capital from one SOE to another. In theory, such a transfer would occur only

through an equity investment of an SOE into another one (e.g., a financial SOE such as BNDES into another national SOE).

Petrobras' 2018 financial report (explanatory note 8.4) disclosed that Amazonas Energia (a then subsidiary of Eletrobras) had a trade debt of 14.5 billion BRL to Petrobras (as creditor). Most locations in the North of Brazil are not connected to the central electric power distribution system, so there are thermoelectric plants to provide energy for those locations, using combustible oil and natural gas as fuel. As Petrobras is the main Brazilian supplier of those fuels, this company has commercial relations with all of Eletrobras' subsidiaries that have thermoelectric plants, including those in Northern of Brazil. The laws regulating these relations are the same as those applied to all electric sector companies. There is an agreement between Petrobras and Eletrobras (holding), for the payment of long-overdue debts from Eletrobras' subsidiaries.

F3. SOEs' economic activities should be required to earn rates of return that are, taking into account their operational conditions, consistent with those obtained by competing private enterprises.

SOEs engaged in competitive activities and that are not dependent on the government's budget can have variable remuneration programmes for directors. According to SEST, such programmes are guided by targets and indicators that always include an indicator for return on investments. The targets are set according to market expectations, previous results and competitors' achievements. Brazilian ownership entities are generally updated on these indicators through the publication of the annual financial reports and when preparing the documents to support the annual general meeting of shareholders (see Annex 1.B for inform on ROE in national SOEs). There is no evidence, however, that public bodies involved in ownership functions effectively follow and compare the ROE (or equivalent rates of return) of national SOEs and, if they do, there is no indication either that actions are taken as a consequence (for example, changing the composition of the board of directors in poorly-performing SOEs).

The entities involved in the ownership function exert limited influence on SOEs' dividend policies. They are set primarily by the Corporations Act, which defines minimum dividend policies (according to art. 202, the dividend should represent at least 25% of net profits), and secondly through bylaws that can further detail specificities. The state can influence dividend policies through exercising its vote on bylaws at general shareholder meetings, as well as by voting on the profit distribution during meetings dedicated to the subject.

Major changes in capital structure are often an independent decision of the boards of directors of SOEs, and they must be reflected on the audited financial reports. SEST and CGU have a more active role in analysing the capital structure when evaluating whether an SOE should be considered dependent on the Fiscal Budget.

9.7. Engagement of SOEs in public procurement

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

The Brazilian Constitution (article 173, § 1º, III) establishes that federal law should define bidding and contract procedures specially designed for SOEs that undertake economic activities in the market. However, until 2016, SOEs had to follow the same procurement rules applied to all other public bodies (Law no. 8.666/1993), which are extremely strict and comprehensive.

The SOE Statute brought several changes regarding procurement. This Law comprehends the statute required by article 173 of the Constitution in order to allow SOEs that supply products and services in the market a specially designed set of rules that provide simultaneously flexibility and transparency.

Some practical changes arose from the SOE Statute. First, instead of following the rules of the Law no. 8.666/1993, each SOE must approve and disclose bidding and contract procedure regulations, which should be periodically reviewed and updated. Second, the SOE Statute provides a detailed and comprehensive description of direct contracting, which is the procedure conducted on the assumptions of exemption, unenforceability, or inapplicability of a bidding process.

Among the exemptions to public procurement procedures introduced by the statute, three are particularly important to provide flexibility to SOEs to compete in the market: (i) rendering of products and services directly related to their core corporate activities; (ii) buying and selling of equity and debt instruments of companies or subsidiaries and (iii) choice of partners for specific and defined business opportunities. It should be noted that in these specific cases, there are some criteria that have to be observed.

These rules provide the legal framework for the corporate restructuring and divestment programs that allowed, for example, Petrobras and Eletrobras to sharply reduce their debt.

While granting more flexibility to SOEs regarding procurement practices, the SOE Statute also allowed the introduction of standards and requirements that increase transparency in their transactions. The statute requires, for example, SOEs to disclose all their contracts and transactions on their websites. In the case of direct contracting, in addition to regular control mechanisms, these contracts are submitted to the internal auditors, who are supervised by the audit committee. Likewise, these contracts are also examined by external audit bodies, like CGU and TCU, which have an online direct and updated channel with full access to the contracts and all the documents regarding procurement processes.

Recent audits conducted by CGU in national SOEs found a relatively high level of compliance of the internal regulations for bids and contracts with the provisions of the SOE Statute (for a summary of those audits, see Annex 1.E).

Apparently, there is no preferential treatment when SOEs bid for concession contracts with the public administration, like oil & gas exploration licenses or public utilities licenses. In these cases, SOEs can compete for licenses or concession contracts with other privately-owned companies under the same rules. The only exception for this rule is the legal framework for oil & gas exploration licenses for the pre-salt basin. Until 2017, Petrobras was the mandatory operator of the pre-salt blocks. Since then, Petrobras has only the preferential right to act as an operator in the consortia formed for the exploration of blocks to be licensed under the regime of production sharing. In any other auction conducted by ANP, Petrobras competes under the exact same rules with any other bidder.

Chapter 10. Equitable treatment of shareholders and other investors

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

10.1. Ensuring equitable treatment of shareholders

A. The state should strive toward full implementation of the OECD Principles of Corporate Governance when it is not the sole owner of SOEs, and of all relevant sections when it is the sole owner of SOEs. Concerning shareholder protection this includes:

2. A1. The state and SOEs should ensure that all shareholders are treated equitably.

10.1.1. Potential source of advantageous "dividend" pay-outs to the state

Non-state shareholders in SOEs have the same legal rights as shareholders in privately-owned companies. The Corporations Act guarantees legal protections to minority shareholders against the abusive use of controlling power, including a majority of minority provision in case the shareholders meeting must decide on an issue that can privately benefit the controlling shareholder (articles 115-117 of Law no. 6.404/1976). The SOE Statute moreover guarantees the following:

- the nomination of at least one board member by minority shareholders regardless of the number of shares they own;
- insider trading is prohibited;
- all shareholders have pre-emptive rights.

It is notable that, in certain cases, the state retains golden shares or shareholder rights that extend beyond its ownership stake. The privileges inferred are meant to be clearly defined in relevant shareholder agreements. In the cases of Embraer and Vale, as detailed in Part A, the powers guaranteed to the Federal Government do not amount to controlling powers, but, in some contexts, they might be relevant for the companies: in the case of Embraer, if there is a change in control; in the case of Vale, if it wants to change its headquarters.

Rules for transactions between SOEs are derived from the Corporations Act, which stipulates that "officers of a corporation may not favour an associated, controlling or controlled corporation to the detriment of their own corporation and shall ensure that the transaction between the corporations, if any, shall be equitable or be compensated by adequate payment; they shall be liable to the corporation for any loss resulting from an infringement of the provisions of this article" (art. 245).

According to the authorities, boards establish specific rules, presumably in line with relevant legislation, and approve procurement regulations and contracts between SOEs, between SOEs and private companies and between SOEs and Federal Government. The shareholder is not meant to interfere with procurement regulations nor the management of each SOE.

The general legislation – that is, the Corporations act – provides for redress in case of abuse of power by the controlling shareholder and the instrument of derivative action (art. 246 of Law no. 6.404/1976).

A2. SOEs should observe a high degree of transparency, including as a general rule equal and simultaneous disclosure of information, towards all shareholders.

The SOE Statute outlines the minimum transparency requirements by which SOEs must abide. Article 8 of the Law requires SOE boards to develop a disclosure policy. Moreover, all SOEs have to disclose their financial statements on the internet. Listed SOEs have to maintain an Investor Relations website where they have to publish all relevant information and abide by CVM`s rules for listed companies.

It is true, however, that it has not been uncommon for senior public officials who are not corporate officers but who have significant influence over SOEs (for ex., Ministers) to disclose information that is material for listed SOEs through means that are not the ones included in the SOEs` disclosure policy (for example, to a particular journalist in an interview). In order to avoid such an unequal disclosure of information, item I of article 14 of the SOE Statute requires the national and subnational governments to include in their codes of conduct and integrity[49] that senior public officials cannot disclose any information that might impact the business of the SOEs without the prior authorisation of the competent body within the company. The Federal Government made the alteration in its code of conduct and integrity in August 2020 as the SOE Statute requires.

A3. SOEs should develop an active policy of communication and consultation with all shareholders.

The SOE Statute specifies which pieces of information should be disclosed, and requires SOEs to develop a disclosure policy in line with the law in force and best practices. Likewise, as previously noted, the Corporations Act determines that the most relevant issues (for ex., distribution of dividends and approval of the financial reports) should be decided in a shareholders meeting, where any minority shareholder can have a voice.

SOEs must follow the Access to Information Law no. 12.527/2011, allowing any person (even if not a shareholder) to demand and receive unclassified information immediately, or within 30 days if the information is not readily available. This said, whether SOEs' compliance with relevant legislation translates into an 'active policy of communication and consultation' is not altogether clear.

A4. The participation of minority shareholders in shareholder meetings should be facilitated so they can take part in fundamental corporate decisions such as board election.

According to the authorities, minority shareholders are active in general shareholder meetings of listed SOEs. The Corporations Act and CVM`s regulation make the active participation of minority shareholders in shareholders meeting possible in the following ways:

- Shareholders can vote *in absentia* and through electronic means;
- Minority shareholders can make use of cumulative voting and, in the specific case of SOEs, can elect at least one board member regardless of the number of shares they own;
- Certain issues can only be approved only by qualified majorities;

[49] In the case of the Federal Government, the code of conduct and integrity is a Presidential Decree.

- The State cannot cast a vote in relation to an item in the agenda if in a situation of conflict of interests (for example, in the case of a transaction between the SOE and the State, it would be necessary a majority of the minority shareholders to approve the RPT).

A5. Transactions between the state and SOEs, and between SOEs, should take place on market consistent terms.

The SOE Statute (art. 8, VII) establishes that both fully and partially owned SOEs must develop and disclose a "Related party transaction policy, which also covers operations with the Federal Government and other SOEs, in accordance with the requirements of competitiveness, compliance, transparency, fairness and commutability, which shall be reviewed at least annually and approved by the Board of Directors".

CVM also requires detailed and frequent disclosure of RPT from all listed companies both in CVM`s website and in the financial reports. Individual information must be provided on RPT above 50 million BRL: summarized but sufficient to allow minority shareholders to evaluate whether they are in market consistent terms.

In Banco do Brasil, Eletrobras and Petrobras, which were analysed in detail in Part A, there are systems in place to reduce the risk of RPT inconsistent with market terms. For example, they include the analysis of RPTs above a certain value (for ex., in the case of Petrobras, above 60 million USD) by the auditing committee, which, in the case of Eletrobras and Petrobras, is composed exclusively by independent members.

10.1.2. National corporate governance codes

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

Listed SOEs are required to adopt the Brazilian Code of Corporate Governance, according to CVM's 2017 rule n. 586. The Code is applied on a comply-or-explain basis.

All SOEs, listed or not, must follow the same corporate governance standards contained in the Corporations Act, and the SOE Statute and guidance issued by the CGPAR. Unlisted SOEs, however, do not need to abide by the Brazilian Code of Corporate Governance.

10.1.3. Disclosure of public policy objectives

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

SOEs have to disclose an annual letter – signed by the members of the board – clarifying their commitments to achieve public policy objectives, in compliance with the collective interest or the national security imperative that justified the authorization for their respective creations, with a clear definition of the resources to be employed for this purpose, as well as the economic and financial impacts of the achievement of these objectives, measurable through objective indicators (art. 8, I, of the SOE Statute).

As previously mentioned, the board of directors must follow the policy objectives set by the State and is not in the best position to clarify what those objectives are. Likewise, it was also noted in Part A that some of those annual letters are clearer than others (Petrobras` letter is a good example, while BB`s one could be improved). However, given the absence in many cases of written and public information on public policy objectives, the annual letter required by the SOE Statute has been an advancement.

10.1.4. Joint ventures and public-private partnerships

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

The authorities informed the OECD of a major increase in recent years in SOE involvement in co-operative projects. Those public-private partnerships are conducted primarily thorough jointly owned special purpose vehicles. The rights of the partners are formalised mostly through shareholders' agreements, which predicts mechanisms to solve disputes in a fair and timely manner (e.g. through arbitration proceedings).

The conflicts of an SOE with private parties on a partnership can be solved through the court system or alternative dispute resolution methods, such as mediation or arbitration. The Brazilian Constitution provisions provide guarantees that the SOEs private partners will have access to an unbiased court due process when they consider that their rights have been violated. The Constitution establishes that SOEs are subject to the same legal framework as other privately-owned companies without any preferred treatment for SOEs. The enforcement of a court order against an SOE follows the same procedures of any other court injunction.

Below, summaries of some of the most important recent disputes involving SOEs are provided.

Eletrobras

Eletrobras and its subsidiaries CHESF and Eletronorte hold a total of 49.98% of the shares of SPE Norte Energia S.A. ("NESA"), which operates Belo Monte hydroelectric plant (one of the biggest in the world). In 2016, Eletrobras had a conflict with the other shareholders of NESA regarding the interpretation of clause 6.7 of the Shareholders' Agreement. The clause establishes a preference right for Eletrobras to purchase 20% of the average firm energy at the price of BRL 130.00/MWh (in April 2010). Some NESA shareholders – including privately owned companies – claimed that Eletrobras had an obligation to acquire that amount energy, while Eletrobras sustained it had a pre-emptive option. If Eletrobras was not successful in the arbitration proceeding, it might face a loss of about USD 500 million (estimation of Eletrobras management in its 2016 Market Letter).

Since the shareholders' agreement had an arbitration clause, Eletrobras filed a request for arbitration, which took place at one of the most prestigious arbitration institutions in the country (FGV Mediation & Arbitration Chamber). In 2018, the chamber decided in favour of Eletrobras.

Petrobras

All the contracts signed by Petrobras with the Oil & Gas Agency (ANP), either under the production-sharing regime or under the concession regime, follow the industry best practices (Association of International Petroleum Negotiators), including a provision that points arbitration as the preferred dispute resolution method. The same applies to other private contracts and shareholder agreements entered into as a result of the auctions conducted by ANP for oil & gas exploration licenses.

The arbitrations that involved Petrobras and its partners usually deal with issues related to the management of the partnership or discussion about financial obligations.

Accordingly, Petrobras engaged in arbitration with ANP in which they discussed the limits of exploration rights in a group of blocks licensed under the regime of concession.

Petrobras opposed a Resolution of ANP and filed a request for arbitration in 2014. The procedure was conducted by the International Chamber of Commerce, following the arbitration clause stipulated in the concession contract. Petrobras and ANP finally resolved this dispute through a settlement in 2019, putting an end at the arbitration procedure and other lawsuits in Brazilian courts. Petrobras agreed to pay an additional 5.1 billion BRL (or USD 1.27 billion) to Federal Government based on the value of the oil production, in accordance with the concession contracts' stipulations on higher than expected production volumes.

BNDES

The arbitrations involving the BNDES Group and its holdings follow the procedure provided for in Brazilian legislation and, for reasons of confidentiality, cannot be disclosed. Regarding the legal demands with related parties, BNDES does not have privilege in dealing with issues in the Judiciary, both in formal and in material terms.

Just as an example, Vicunha Siderurgica S.A. – a privately-owned company – filed a lawsuit against BNDESPAR due to a difference in interpretation of a contractual clause between the two parties on the number of shares that BNDES would receive as a consequence of a conversion right it had of debentures issued by Vicunha for share issued by Companhia Siderúrgica Nacional. This process has been in progress for 13 years in the 6th Business Court of Rio de Janeiro with alleged losses of BRL 606 861 364 (or c. USD 150 million).

Chapter 11. Stakeholder relations and responsible business

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

11.1. Recognising and respecting stakeholders' rights

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

Brazil's laws and administrative practices establish no specific rights for SOEs' creditors and clients, but the general laws applying to the corporate sector should, when properly implemented, provide adequate safeguards. SOE executives are subject to legal action if their companies do not obey the law and, recognising that legal enforcement can be cumbersome and time consuming, the oversight bodies CGU and TCU are also mandated to take action. In terms of employee rights, every SOE with more than 200 employees must have one employee representative in their boards of directors.

As elaborated before in this report, SOEs must disclose timely and up-to-date material information, in particular related to the activities carried out, control structure, risk factors, economic and financial data, management's comments on corporate governance performance, policies and practices, and description of the composition and management remuneration.

Article 9 of the SOE Statute requires SOEs to maintain a whistle-blowing channel for employees and individuals outside the company, which should protect whistle-blowers against retaliation from corporate officers (more information on Brazilian SOEs` whistle-blowing channels below in this Part B).

11.2. Reporting on stakeholder relations

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

Law no. 13.303/16 states that SOEs must produce and disclose a number of documents related to corporate governance, including an annual sustainability report (article 8, IX). Likewise, article 27 of the SOE Statute requires SOEs to adopt social and environmental sustainability practices that are compatible with the market in which they operate. In other words, according to mentioned provision, SOEs should adopt environmental and social practices that are higher than what is required by law if commonly adopt by private competitors.

The SOE Statute (Article 7, point VIII) also states that each SOE must publish "a report on the compliance, within the company's business, with the social and environmental conditions established by environmental bodies". This stipulation is clearly relevant in

respect of implementing the SOE Guidelines, but it is mostly related to legal and regulatory compliance rather than to an individual corporate commitment to stakeholder engagement.

Finally, during the first mission, it was reported to the SOE team by public officials that one of the main concerns of the Ministry of Mines and Energy in relation to Petrobras are safety measures that should be adopted to avoid an environmental disaster or risks to employees.

11.3. Internal controls, ethics and compliance programmes

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

As previously mentioned, a core responsibility of SOE boards is to implement and supervise the risk management and internal control systems established for the prevention and mitigation of the SOEs' main risks.

Relatedly, the SOE Statute requires all Brazilian SOEs (including subsidiaries) to develop a Code of Conduct and Integrity, including, at least:

- Principles, values and mission of the state-owned company, as well as guidelines on the prevention of conflict of interest and prohibition of acts of corruption and fraud;
- Internal instances responsible for updating and applying the Code of Conduct and Integrity;
- Whistleblowing channels that enable the receipt of internal and external complaints related to non-compliance with the Code of Conduct and Integrity and other internal ethical and mandatory standards;
- Protection mechanisms that prevent any kind of retaliation against the person using the whistleblowing channel;
- Sanctions applicable in case of violation of the rules of the Code of Conduct and Integrity; and
- Provisions for periodic training, at least annually, on the Code of Conduct and Integrity, for employees and managers, and on the risk management policy, for managers.

The SOEs' compliance and internal audit functions are responsible for monitoring an SOE's adherence to the Code. Their independence and capacity to fulfil this role was meant to be strengthened through the introduction of a resolution for timely rotation of related posts – not only for the heads of internal audit, but also for internal control and risk management, compliance, company ombudsman and internal affairs (CGPAR Resolution 21). The Resolution places a limit of three years on these posts, with only one extension possible. According to the authorities, the goal is to have more efficient operation and commitment to the interests of shareholders and society.

Government auditors – be it TCU or CGU – can conduct audits on the adoption and implementation of the code of conduct as well as on the performance and accuracy of the internal audit function, and the functioning of internal control and risk management processes more globally. Notably, CGU is the Federal Government body responsible for the Internal Control in the Federal Executive (art. 74 of the Constitution). It thus performs

activities for the federal government related to internal control, public audit, correction, prevention and combating corruption. It also provides a national ombudsman service. While CGU`s audit findings are not binding, it follows the implementation of its recommendations and, if audited units (including SOEs) disregard relevant recommendations, CGU informs competent authorities that have enforcement power, such as TCU and the Public Prosecutor`s Office.

The public is invited also to monitor the corporate behaviour of SOEs. A platform integrating the roles of the national Ombudsman and the Access to Information rules (Fala.BR) has been established as a channel to manage reports such as denunciations, complaints, requests, suggestions or praise of SOEs. CGU manages the platform and ensures that the reports are forwarded to the relevant authorities. The use of Fala.BR has been quite active: in 2019 more than 40 000 reports were received, covering the entire ground from denunciations to expressions of high regards. Importantly, some SOEs have opted out from the use of Fala.BR and instead maintain their own reporting channel to receive any type of feedback from the public.

According to materials reviewed by the OECD mission team, most SOEs do have Codes of Conduct which include the sections required by art. 9, § 1, of the SOE Statute.

It can however be argued that the whistleblowing provisions do not go quite far enough: reporting channels and whistleblower protection are provided for, but little is said about the policies and procedures that should be adopted in consequence of the information received, nor how in practice confidence in the efficiency of these channels can be established.

In the context of assessing SOEs' integrity programs, CGU assessed the structuring and use of the whistleblowing channels in some of the most important national SOEs (see Annex 1.F for a summary of CGU`s audits of the whistleblowing channels). While Petrobras` whistleblowing system was evaluated as robust and complete by CGU, there are still many deficiencies to be solved in other SOEs such as CEF and Eletrobras.

The OECD team was informed that compliance programmes are often not well thought and do not respond to the actual risks of the SOEs. This can be the case in many countries where risk management approaches are copied without tailoring to specific risks of the SOE or sector of operation. Effective implementation of the SOE Statute’s provisions on internal control and risk management is critical to mitigating the materialisation of risks of corruption that were observed in recent years.

Art. 9 of the SOE Statute emphasizes that SOEs must create and maintain the internal audit function. According to paragraph 3 of that same article, the internal audit must (i) be linked to the board of directors, directly or through the audit committee and (ii) be responsible for assessing the adequacy of internal control, the effectiveness of risk management and governance processes and the reliability of the process of collecting, measuring, classifying, accumulating, recording and disclosing events and transactions, with a view to preparing financial statements.

According to art. 15 of Decree no. 3.591/2000, SOEs' internal audits, as a rule, are subject to the normative guidance and technical supervision of CGU, which acts as the central audit body of the Federal Government. Thus, for example, the SOEs' internal audits are subject to the provisions of the Technical Reference for the Government Internal Audit Activity of the Federal Executive Branch (Normative Instruction CGU no. 3/2017).

In addition, the annual plans of SOEs' internal audit units must be presented to CGU. CGU seeks, based on the analysis of the plans presented, to ensure the integration between its planning and that of the SOEs.

Likewise, the appointment, designation, exoneration or dismissal of the head of SOEs' internal audit unit must be submitted by the entity's CEO to the approval of the board of directors and, afterwards, to the approval of the Comptroller General of the Federal Government (the head of CGU).

According to CGU, it (i) does not impact the administrative link of SOEs' internal audits, which, as a rule, are hierarchically linked to the boards of directors, directly or through audit committees and (ii) does not remove from the SOEs the prerogative to select the head of the internal audit.

In the table below, it is possible to observe the resources used and activities developed by CGU and internal audit units of three national SOEs in 2018.

Table 11.1. Internal audits and CGU`s audits in 2018

	Auditors available to the internal audit unit	Audits completed by the internal audit unit	CGU auditors	Audits completed by CGU
Banco do Brasil	490	216	5	2
Petrobras	222	174	18	9
Correios	53	25	5	2

Note: The numbers are for audits completed in 2018, and, in the case of CGU, include the number of auditors who worked in those audits in the previous year as well and who were not necessarily full-time working in any individual SOE.
Source: CGU in June 2020.

11.4. Responsible business conduct

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

As mentioned earlier, the SOE Statute (art. 27) requires that SOEs should adopt environmental sustainability and social-corporative practices compatible with the market in which they operate. The expectation is that SOEs incorporate such commitments into their Code of Conduct and Integrity. In this respect as well, the governmental audit bodies are empowered to review the practical implementation. Examples of corporate Codes are provided in the box below.

Box 11.1. Relevant provisions in selected Codes of Conduct

Examples of corporate Codes of Conduct to be provided in a later version of this document. Sources include:

BB

- https://www.bb.com.br/docs/pub/siteEsp/ri/eng/dce/dwn/ethicscode.pdf

Petrobras

- https://www.investidorpetrobras.com.br/enu/11/PetrobrasSystemsConductGuide2017.pdf

CEF

- https://www.caixa.gov.br/Downloads/caixa-codigo-conduta-empregados-caixa/Codigo_Conduta_Caixa.pdf

EBC

- http://www.ebc.com.br/institucional/sites/_institucional/files/atoms/files/codigo_de_conduta_e_integridade_-_14.12.2017_0.pdf

11.5. Financing political activities

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

The Brazilian authorities have informed the OECD that "electoral law prohibits distribution of money, values or benefits by the Public Administration to finance political activities" and, in Brazil, SOEs are legally part of the Public Administration In this context, the Attorney General of the Union is actively engaged in providing guidance to public officials on prohibited practices, including via books, newspapers and online platforms.

Moreover, high-profile scandals including the Car Wash operation have demonstrated that cash rich SOEs, such as Petrobras, were in the recent past indeed used to finance political activities – as well as for self-enrichment by individuals. As mentioned earlier, the SOE Statute and related legislation were put in place largely to prevent reoccurrence. An assessment of how well the relevant parts of the SOE Guidelines have been implemented therefore depends on how efficient the new laws have been, or will be, in addressing the identified shortcomings.

At least in terms of the adoption of policies to prevent corruption and change in internal corporate structure, it is possible to observe some advancements since the enactment of Law no. 12.846 in 2013 (Anticorruption Law). For example, in this period, as reported by CGU to the OECD team:

- *Petrobras*: (i) created the Governance and Compliance Directorate and the Compliance and Complaint Management Departments; (ii) established an independent whistle-blowing channel; (iii) reduced the stock of complaints pending investigation; (iv) established the Integrity Due Diligence policy when hiring third parties.
- *Eletrobras*: (i) created a repository, in a computerized system, containing all documentation to support the decisions of senior management, to ensure

the traceability of the deliberation process; (ii) established that sponsorship of sports teams should be endorsed by the bodies responsible for the Integrity Program; (iii) created policies to prevent fraud and other illicit acts in the relationship with the public sector; (iv) elaborated a compliance risk map and implemented qualitative and quantitative assessment of risks.

Chapter 12. Disclosure and Transparency

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

12.1. Disclosure standards and practices

SOEs disclosure takes as a starting point the minimum transparency requirements of the SOE Statute. The minimum includes, inter alia, the Annual Charter of Public Policies and Corporate Governance, information on risk factors, a dividend distribution policy, financial audited reports and annual reports of internal audit activities. It requires SOEs to develop and publish a disclosure policy. Documents resulting from the fulfilment of these transparency requirements are meant to be disclosed by SOEs on their websites.

SOEs must also comply with transparency and disclosure requirements in the Corporations Act, as well as the Corporate Governance Code in the case of listed SOEs. In addition, SOEs are subject to the public sector Access to Information Law, which obliges response when any member of the public requests unclassified information.

SOEs must observe bookkeeping and financial statements rules according to the Corporations Act and CVM rules, including the requirement of independent auditing by a registered auditor. There are no differences between SOEs and privately-owned companies accounting requirements. Amendment to the Corporations Act in 2007 (11.638/2007) brought significant changes to Brazilian accounting rules with the convergence of national practices towards IFRS. In response to questions from the OECD team, TCU was not able to name any significant aspects of IFRS that are not reflected in current Brazilian accountancy regulation.

The OECD team accessed external auditor's reports for the 2019 financial statements of Banco do Brasil, BNDES, Eletrobras and Petrobras, and could verify that all presented an unqualified opinion based on IFRS standards. Auditing firms were KPMG for BNDES and Petrobras, PWC for Eletrobras and Deloitte for Banco do Brasil.

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

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

SOEs' main objectives are disclosed to the public, mainly through two instruments: the annual letter signed by the board mentioned before in this Part A and the law that allowed the incorporation of the SOE.

The Annual Charter (or letter), signed by the members of the Board of Directors, sets out the commitments to achieve public policy objectives by the SOE and its subsidiaries, in accordance with the collective interest or national security imperative that justified its creation. As this is a document pursuant to the SOE Statute, it should be consistently published on the company's website (as mentioned previously).

As mentioned earlier, corporate objectives envisioned at the time of the SOE`s incorporation are sometimes defined in the law that allowed its incorporation but are not always very clear.

With rare exceptions (e.g., CNPE defining some objectives for Eletrobras in written and public documents), ownership entities do not provide clear and transparent public policy goals for national SOEs.

A2. Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public policy objectives;

SOEs should prepare quarterly financial statements and disclose them on their website. In the explanatory notes to the financial statements (also required), companies should disclose the operating and financial data of activities related to the achievement of the purposes of collective interest or national security imperative that justified the creation of the SOE.

The aforementioned Annual Charter is relied upon as a main conduit for communicating the costs and funding of public policy objectives. The Annual Charter is meant to disclose the commitments to achieve public policy objectives by the SOE and its subsidiaries, with a clear definition of the resources to be employed for this purpose and the economic and financial impacts of achieving these objectives, measurable through objective indicators. The requirements suggest that the disclosure is limited to resources to be employed for the objectives, but not necessarily the funding arrangements.

A3. The governance, ownership and voting structure of the enterprise, including the content of any corporate governance code or policy and implementation processes;

SOEs should disclose information about control structures, in accordance with determinations of the Corporations Act, the SOE Statute and CGPAR Resolution 18/2016. In the case of companies that have foreign financial operations or have American Depository Receipts in negotiation, the US Sarbanes-Oxley Act also applies.

A4. The remuneration of board members and key executives;

Listed and non-listed SOEs, as required by the SOE Statute (art. 12, I), must, in a timely and up-to-date manner, disclose on the Internet a description of the composition and remuneration of directors and senior executives.

In the case of listed companies (including listed SOEs), CVM has specific regulation on how information on remuneration should be disclosed (Instruction No. 480/2009). According to CVM`s rules, companies must disclose: (i) the total remuneration and benefits of the board of directors; (ii) the highest individual remuneration of a director and the lowest one; (iii) the total remuneration and benefits of senior executives ("diretores" in Portuguese); (iv) the highest individual remuneration of a senior executive (most likely, the one of the CEO) and the lowest one.

A5. Board member qualifications, selection process, including board diversity policies, roles on other company boards and whether they are considered as independent by the SOE board;

Information on SOEs` boards composition and qualification of its members available in SOEs` websites is relatively good both for listed and non-listed SOEs (in some exceptional

cases though, the composition is not up-to-date or there is no mini-CV for an individual in the senior leadership).

SOEs' bylaws should be consistent with, and facilitate implementation of, requirements on board qualifications, selection processes and composition as per relevant legislation and requirements (Corporations Act and SOE Statute). However, there is no regulatory or legal requirement for SOEs to adopt a diversity policy for their senior leadership. Part A provides detail on board appointment, roles and composition in some selected national SOEs.

The box below provides an example of how an SOE`s bylaws might elaborate on such board details.

Box 12.1. Elements of Banco do Brasil bylaws

Article 18: "The Board of Directors, an independent decision-making body, shall be composed of natural persons, elected by the General Meeting and removable by it, and shall have eight members, with a unified term of management of two years, including a Chairman and one Vice President, up to three consecutive renewals being allowed. The term of office will extend until the investiture of new members.

Paragraph 1. Minority shareholders are entitled to elect at least two board members, if more do not fit them by the multiple voting process.

Paragraph 2. The Union shall appoint, at the General Meeting's resolution, to fill six vacancies on the Board of Directors: I - the Bank's Chairman; II - four representatives appointed by the Minister of State for Economy, one of them in the form of the sole paragraph of art. 31 of Provisional Measure no. 870 of January 28

1, 2019; III - one representative elected by the employees of Banco do Brasil S.A., pursuant to paragraph 4 of this article;

Paragraph 3 - The Chairman and Vice-Chairman of the Board of Directors shall be chosen by the Board itself, in accordance with current legislation, in compliance with the provisions of paragraph 3 of article 11 of these by-laws.

(...)

Paragraph 7 In the composition of the Board of Directors, the following rules shall also be observed:

I. at least thirty percent (30%) of the members of the Board of Directors shall be Independent Directors, as defined in the legislation, B3's New Market Regulation and B3's State Governance Highlight Program, in which case the directors shall be elected pursuant to paragraph 1 of this article;

II. the status of Independent Director shall be resolved at the General Meeting that elects him, subject to the provisions of B3's Novo Mercado Regulations; (...) "

A6. Any material foreseeable risk factors and measures taken to manage such risks;

The SOE Statute sets, as a minimum requirement for transparency, the timely release of information on risk factors. The SOEs' bylaws must then comply with established legislation on corporate governance, transparency, risk management practices and internal control. While SOEs should adopt rules for risk management and internal control structures they are only required to disclose risk factors but not information on risk management processes. Only financial SOEs must publish, at minimum, annual reports that describe the

risk management structure and capital management structure (Central Bank Resolution no. 4.557, dated 23/02/2017, art. 56).

SOEs are subjected to the internal control and risk management system of the Federal Government (Joint standard MP/CGU no. 01/2016). Pursuant to this standard, "federal executive bodies and entities shall implement, maintain, monitor and review internal management controls, based on the identification, assessment and risk management that may impact the achievement of the companies' objectives". The standard encourages subscribers, including SOEs, to consider operational, reputational, legal and financial risks.

Off-balance assets and liabilities are treated according to the international financial reporting standards (IFRS), since their adoption in Brazil in 2008. As IFRS requires, if the company assumes any liability (regardless of the form of that assumption), the company should recognise the liability in its balance sheet.

A7. Any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE, including contractual commitments and liabilities arising from public-private partnerships;

The SOE Statute's minimum requirements of transparency include:

- related party transactions policy, that applies to transactions with Federal Government and other SOEs;
- annual and quarterly accounting statements, accompanied by explanatory notes;
- relevant information about issues such as financial and economic data and corporate governance, and;
- information about obligation and debts that SOEs have accrued or received in special conditions, compared to those applied to private enterprises.

For example, Eletrobras' 2018 explanatory notes included information about guarantees given by Federal Government and by Eletrobras itself to credit taken by group companies. Eletronuclear's 2018 accounting information included guarantees given by Federal Government in a loan taken from CEF.

Moreover, the Treasury publishes every quarter information on Federal Government`s guarantees to credit operations. In the report in the 3rd quarter of 2019[50], for example, it was possible to verify that the Federal Government was guaranteeing at that moment c. USD 2.6 billion of SOEs` debt (c. 70% for Eletrobras and its subsidiaries).

Disclosures may be limited by specifications regarding business confidentiality, whereby companies can be protected from being put at risk particularly when participant in the stock market.

A8. Any material transactions with the state and other related entities;

According to the SOE Statute, SOEs should develop and disclose a related party transaction policy, in accordance with the requirements of competitiveness, compliance, transparency, fairness and commutability, which should be reviewed annually at a minimum and approved by the Board of Directors. The document should be publicly and permanently published on the Internet.

Mentioned policy must contain mechanisms to secure that transactions with related parties are transparent, under strictly commutative terms, and in line with market conditions. This policy applies to transactions among SOEs and also between an SOE and the federal

[50] https://sisweb.tesouro.gov.br/apex/f?p=2501:9::::9:P9_ID_PUBLICACAO:31537, accessed on 1st July 2020.

government (controlling shareholder). Furthermore, it applies to transactions between any entity or person that has significant influence or holds a position that provides authority and responsibility for planning, direction, and control of an SOE or a controlled company of an SOE.

SOEs can adopt several strategies within their Policy on Related-Party Transactions. A common ground for all SOEs is the legal requirement (article 24 of the SOE Statute) that all related-party transactions are submitted to the audit committee, which is a body vested with powers to conduct investigations and hire independent consultants if needed. The audit committee must be composed of a majority of independent members.

Although the statutory rules provide a framework, SOEs have the flexibility to include higher standards on their internal policies for RPTs. Petrobras, for example, enacted a RTP policy in which relevant transactions involving the Federal Government, its entities, or other national SOEs must be analysed by the audit committee and the minority committee prior to submission to the Board of Directors, and should also be approved by the vote of two thirds of the directors present at the board meeting.

CEF`s RPT policy establishes that transactions that exceed a threshold defined by internal rules or by-laws require prior approval of a special body named Committee for Related-Parties, which will issue a fairness opinion to be evaluated by the Board.

Eletrobras RPT Policy requests that these transactions must be submitted to the Board after the application of two types of tests. The first is the “Fairness Test”, which compares the deal with similar ones in the market. The second test is the “Arms-length Bargain Comparison", which compares the transaction with another, hypothetical, as if it were concluded with an independent third party, that is, by verifying if the operation would be carried out in the same terms with a third party that is not a related-party. After these commutativity tests, it must be verified if the transaction is in accordance with the interests of the business organization. Finally, Eletrobras shall communicate to the capital market, through filings at the Securities and Exchange Commission of Brazil – CVM, at the US Securities and Exchange Commission (SEC), and in its website.

A9. Any relevant issues relating to employees and other stakeholders.

According to the Resolution CGPAR no. 3/2010, SOEs are required to disclose in their annual financial statements the amounts, at the date of their preparation, of the highest and lowest remuneration paid to their employees, including the benefits, as well as the medium wage of their employees. Moreover, companies have to report all purchase transactions every six months, identifying the good purchased, its price and quantity, and the name of the supplier.

12.2. External audit of financial statements

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

The SOE Statute requires external audit of the financial reports by a CVM registered auditor. It also assigns the board the responsibility to select and discharge the independent external auditor.

The CVM requires that the external auditing firms cannot audit for more than five consecutive years[51] the same publicly listed company and must wait three years in order to be able to audit the same company again. The Brazilian Corporate Governance Code aims to be more flexible, given subscribers are both listed and unlisted companies, suggesting that external auditors can be renewed if so approved by shareholder majority at the annuals shareholders meeting.

The SOE Statute's references to external control focus primarily on external state control. The government audit is carried out by two bodies, whose roles can be described in the following way:

a. TCU is the Brazilian institution for accounting, financial, budgetary, operational and patrimonial oversight of the Federal Government and the entities of direct administration and indirect administration, as to the legality, legitimacy and economy and the supervision of the application of subsidies and the waiver of revenue; and

b. CGU is responsible for assisting the President of the Republic directly and immediately in the performance of its duties in matters that, within the scope of the Executive Power, are related to the defence of public assets and the increase of management transparency, through the activities of internal control, public audit, correction, prevention and fight against corruption, and ombudsman. The CGU is also a central body of the Internal Control System and Correction System, both of the Federal Executive.

Privately-owned companies do not face the same state controls, which are more numerous than in many other countries in the region and elsewhere given the presence of both TCU and CGU.

The OECD team did not find strong evidence that there are many overlaps or relevant duplication among CGU, TCU and SOEs` internal auditing units.

TCU and CGU have been annually aligning their auditing plans and this need for alignment is now even clearer in art. 14 of Normative Instruction no. 84/2020 of the TCU.

Regarding SOE's internal audits, the risk of overlap or duplication is also low, since, according to art. 15, § 2, of Decree no. 3.591/2000, the annual planning proposals of these audit units must be sent to CGU, precisely for integration purposes. By knowing the content of these proposals, CGU (a) avoids including similar scopes in its annual planning; (b) negotiates the possibility of carrying out in a shared way or assuming the performance of any audit activity provided for by the Internal Audit, if there is a common understanding that the CGU's positioning is more appropriate to ensure objectivity and independence to the activity; and (c) proposes to the SOEs' internal audit units themes to be included in their planning. It should be noted that the suggestions for changing the scope of the annual planning of internal audits are independently validated by the corporate governance structure of the SOE.

[51] This period is extended to 10 years if the listed company has an audit committee with a number of features listed in CVM Rule 308, including a majority of independent members and an adequate budget to accomplish its goals. The rotation rule applies to the auditing firm, and not to the responsible partner of the firm.

12.3. Aggregate annual reporting on SOEs

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

SEST's website provides general information on its SOEs for the general public as well as business-oriented information on financial diagnostics, financial contributions, budget execution, employment information, frequently asked questions and answers, SOEs' profiles, document templates and guidebooks to guide SOEs, among others. However, since no concise overview report synthesising portfolio and corporate performance is produced the Brazilian authorities cannot be said to engage in aggregate annual reporting in the sense of the SOE Guidelines. Some examples of the information disclosed to the public are:

a. National SOEs Quarterly Bulletin (prepared by SEST): number of SOEs and their distribution by economic sector; approved and executed budgets for the SOEs as a whole, and individually for the most relevant ones and for the SOEs dependent on the Fiscal Budget; aggregate profits, dividends and debts for national SOEs as a whole, and individually for the most relevant ones; market values in the last four years for listed SOEs; number of SOEs` employees and their remuneration every year during the last decade (overall and individually for the SOEs with the greatest number of employees);

b. SOEs Panorama website[52]: the tool is an interactive, daily updated dashboard that gathers information provided by national SOEs in two structuring systems (SIEST and SIOP). The type of information accessible through this tool is not much different from the quarterly bulletin detailed above;

c. National Treasury Dependent Federal Enterprises Bulletin (prepared annually by SEST): the type of information is similar to the data provided in the quarterly bulletin detailed above, however with more detailed individual information on the workforce and businesses of SOEs that are dependent on the National Fiscal Budget.

Notably, the following information could not be found in the sources mentioned above: (i) benchmarking of SOEs` performance (for ex., return on equity), with private or public sector entities, both domestically and abroad; (ii) total value of the Federal Government`s portfolio; (iii) basic information on the organisation of the ownership function; (iv) overview on changes in SOEs` boards.

[52] http://www.panoramadasestatais.planejamento.gov.br/, accessed on 3 August, 2020.

Chapter 13. The responsibilities of the boards of state-owned enterprises

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

13.1. Board mandate and responsibility for enterprise performance

A. The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the enterprise's performance. The role of SOE boards should be clearly defined in legislation, preferably according to Corporations Act. The board should be fully accountable to the owners, act in the best interest of the enterprise and treat all shareholders equitably.

The board of directors` role is defined in the Corporations Act (art. 142, 6,404/1976) and includes the following attributions: (i) define the strategy of the company, (ii) elect and dismiss the C-level executives, (iii) control the acts of the executives, (iv) choose the external auditors and (v) decide on issues whenever the bylaws require it.

As previously mentioned in this report, Law-Decree 200/1967 creates an exception for the boards of SOEs and, according to the Federal Government`s interpretation, would still be valid even after the enactment of the SOE Statute. In the case of SOEs, as a general rule, it is not the board of directors who chooses the senior executives of the company (as it is the case in privately held companies), but rather the minister responsible for the supervision of the SOE.

The SOE Statute, without prejudice to the authorities provided for in the Corporations Act , adds other responsibilities specifically for SOEs` boards, as follows:

a. discuss, approve and monitor decisions involving corporate governance practices, relationships with stakeholders, people management policy and code of conduct for agents;

b. implement and supervise the risk management and internal control systems established to prevent and mitigate the main risks to which the SOE is exposed to, including risks related to the integrity of accounting and financial information and to the occurrence of corruption and fraud;

c. establish a policy of spokespersons aimed at eliminating the risk of contradiction between information from various areas within the SOE; and

d. self-evaluate the directors.

While the establishment of the board of directors might be optional for some privately held subsidiaries of SOEs with businesses that are significantly distinct from their holdings, its composition must follow the general rules applicable to SOE holdings (Decree no. 8.945/2016, art. 24), which would include, for example, a minimum of seven members. According to a source heard by the OECD team, the existence of many boards of directors

in the Eletrobras group – which is composed by many subsidiaries – was inefficient in practice.

Boards are required to issue a Director's Report along with the financial statement. They are also responsible for signing and disclosing the 'Annual Charter' (letter) – the aforementioned innovation to promote transparency around SOEs' pursuit of policy objectives. Annual performance evaluations of managers (that is, both executive management and boards of directors), should contain a minimum of:

- statement of the management acts practiced, regarding the license and the action of the administrative action;
- achievement of the objectives established in the business plan and compliance with the long term strategy.

The SOE Statute (art. 13, I) establishes that SOEs` boards of directors should have between seven and eleven members, while an exception exists for smaller SOEs to have smaller boards.

Board members can be held accountable by any infringement of their duties of loyalty and care, including when external auditors or the fiscal council detect irregularities in the companies' financial statements. There is no difference between the liabilities of different board members, whether they are nominated by the state or any other stakeholder. The Corporations Act (art. 158 and 159) sets rules regarding accountability and legal instruments available when board members are not compliant with what is stipulated in the law or in the company's bylaw (for example, the possibility of a derivative action).

13.2. Strategy setting and supervising management

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

The Corporations Act requires boards to "establish the general strategy for the corporation's business" (art. 142). Likewise, the SOE Statute prohibits the interference of the controlling shareholder in SOEs' board decisions (art. 90).

SOE boards have the authority to monitor and, if necessary, propose change in top management. They are free to recruit CEOs, but the supervisory minister has the final say on the selection (or, as previously mentioned, in the case of Banco do Brasil, the President of the Republic). This is the rule even for listed partially owned SOEs, such as Petrobras, Eletrobras and Banco do Brasil.

It is uncommon for SOEs to hire independent experts to manage the selection procedure for senior executives and directors (the notable exception has been Eletrobras in recent years for some executive positions).

There are rules previewing accountability of board members when they proceed neglectfully, recklessly or with fraud, as well as when they violate the law or the bylaw (arts. 153-157 of the Corporations Act). The sanctions may vary from civil prosecution with the need to refund the company from its losses caused by their undue decisions to criminal prosecution if they are found incurring in any criminal offense.

13.3. Board composition and exercise of objective and independent judgement

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

As mentioned in Part A, the SOE Statute overhauled board nomination rules. The changes aimed at better managing risks of conflict of interests and advancing professionalization of SOE boards. Boards have a maximum of 11 members and minimum of seven (or three for SOEs whose revenue is less than ninety million BRL). It is composed of several members designated by the sectoral ministry (established in bylaws), one by the Ministry of Economy, one elected by the employees and at least one representative of the minority shareholders where applicable.

Board members' responsibilities for their actions are individual, depending on how they expressed their votes in the collegiate decision according to the Corporations Act. Listed companies are moreover subject to CVM rules, and financial institutions to Central Bank rules.

Government public servants may serve on SOE boards in accordance with the requirements and prohibitions of the SOE Statute. Conversely, board participation is prohibited for a number of persons active in politics, including leaders of political parties and representatives in the Legislative Power of any federative entity.

Company bylaws provide further details on the nomination and appointment procedures. Vacancies are filled by the appointments of the responsible authorities. For instance, the Ministry of Economy has the right to appoint one director in each SOEs' boards.

The procedures of appointment, when a vacancy arises, are as follows:

- A responsible authority in the Ministry with the right to make the nomination proposes one person for this position.
- The applicant then completes a Standardized Form provided by the Ministry of Economy and submits the probative documentation. A prior review by the Ministry responsible for the nomination is made. If the area responsible for the previous review detects any issues or non-compliance with the nomination, it is communicated to the authority responsible for a new candidate to be selected.
- The application is then forwarded to the Office of the Presidency ("Casa Civil", in Portuguese) for approval. With the approval by the Office of the Presidency, the application will be sent to the SOE's nomination committee, which will give its opinion. The committee must verify the compliance of the process. Any nomination committee members' diverging opinions must be recorded in the meeting minutes and the minutes must be released to the nominees.
- After receiving the statement of the nomination committee, the entity responsible for the appointment (the line ministry or the Ministry of the Economy, depending on the nominee) must forward its final decision to PGFN. The entity responsible for the appointment could proceed with the nomination even if the SOE's Eligibility Committee provides a statement against the nomination.
- After a nomination procedure within the Federal Government, the election of directors occurs at the General Shareholders Meeting.

As regards to the implementation of the legislation however, a mixed picture emerges. A 2018 TCU audit focused on SOEs' compliance with board nomination rules of the SOE

Statute (art. 17). The audit found that most national SOEs are compliant with the relevant provision on nominations, concluding however that (i) some companies did not achieve the minimum number of members in the board of directors and (ii) some members of the boards are in an apparent conflict of interests.

In 2019, some SOEs submitted the names of candidates to the boards of directors for the consideration of their general shareholders` assemblies without first presenting those names to the nomination committees as required by the SOE Statute. Eventually, those companies adopted the procedure that was considered lawful by the stock exchange, B3 (i.e., to present the names to the nomination committee before giving the shareholders the opportunity to vote in them).

The monthly remuneration payable to all members of the SOE's Board of Directors is equal to ten per cent of the average monthly remuneration of the Company's senior executives The use of stock-based incentive instruments is limited in Brazilian SOEs. Generally, the compensation paid to members of board of directors, fiscal councils and auditing committee is considerably lower to the equivalent compensation in privately owned companies.

In boards analysed in Part A, there is a lack of international experience (some have studied abroad but it was not possible to identify a director in Banco do Brasil, BNDES, Eletrobras and Petrobras who has had significant experience working abroad) and gender balance in boards (currently, just one female director in Banco do Brasil and BNDES, two in Petrobras and none in Eletrobras). Directors and senior executives with private sector expertise, however, have become more common in recent years.

Another concern that comes out when analysing the boards of major national SOEs is that some of their members, while extremely capable, may not have enough time to prepare for the board meetings. It may be the case, for example, of top-level public officials (for example, a deputy minister) or a private sector practitioner with major responsibilities managing their own firm (for example, the founding partner of a sizable consultancy firm). As a source informed the OECD team, it is not unusual for SOEs` directors to receive hundreds of pages of documents before each monthly meeting, what would typically require three or four full days of preparation.

Finally, it should be mentioned that according to information obtained by the OECD mission team one of the more controversial elements contained in the SOE related legislation passed in 2016 was the measures against political representation in boards of directors. Apparently this curtailed a widespread practice of using such positions as sources of patronage and/or political influence.

13.4. Independent board members

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

SOEs` boards of directors must have at least 25% of independent members (SOE Statute). An independent Board Member is characterised by:

I. having no relationship with the SOE or with a company of its state conglomerate, except for the participation in the Board of Directors of the parent company or the participation in its equity;

II. not being a spouse or blood relative or related or by adoption, up to the third degree, head of the Executive Power, Minister of State, Secretary of State, Federal District

or Municipality or administrator of the state enterprise or company of its state conglomerate;

III. having not maintained, in the last three years, any kind of bond with the SOE or its controllers, which could compromise its independence;

IV. not being, in the last three years, an employee or director of the SOE, a company of its state-owned conglomerate or a related company;

V. not being a direct or indirect supplier or purchaser of services or products of the state-owned company or of its state-owned conglomerate;

VI. not being an employee or administrator of a company or entity that offers or demands services or products to the state company or to the company of its state conglomerate; and

VII. not receiving any other remuneration from the SOE or from its state-owned conglomerate, other than that related to the position of Director, except for the remuneration arising from participation in the company's capital.

13.5. Mechanisms to prevent conflicts of interest

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

Regarding conflict of interests` management, the authorities pointed to the aforementioned mechanism for board appointments as a safeguard for board autonomy and mitigating the risk of interference. For instance, appointments are based on previous analysis done by the nomination committee and, if any doubts persist, the Ethical Public Commission and CGU might be consulted.

The nomination committee can have members from other committees, employees, or members of the board, and the rules for their selections vary by each SOE. However, it should be noted that the limitations of article 17 of the SOE Statute do not fully apply to nominations to the eligibility committee. Moreover, as previously mentioned in this Part B, ownership entities are free to nominate the individuals they chose to leadership positions in SOEs even if the eligibility committee opines against the nomination.

The OECD team understands that the appointment and nomination of the board committees – that is, the audit committee and eligibility committee – as well as the fiscal council might differ. There is concern that differing criteria for these committees and the fiscal council allow circumvention of the mechanisms established in the SOE Statute to safeguard the rest of the board.

13.6. Role and responsibilities of the Chair

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

The communication between the government’s entity for coordination of SOEs and the SOEs is made mainly through the contact between the board itself and the entity. The board is usually represented by the Chair.

The common pathway for submitting communications to the government's entity starts with a proposal from the directors, which is evaluated by the board members and, if approved,

submitted to the government as the controlling shareholder in order to invoke a general shareholder meeting to vote that subject.

The Decree no. 8.945/16 determines the segregation between the Chair of the board and the SOE's CEO. In a majority of SOEs, the CEO is a member of the board, but cannot be its Chair.

13.7. Employee representation

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

As mentioned in Part A, employee board representation is mandated when SOEs have more than 200 employees. Employees are represented on SOE boards in Brazil, with the same duties and responsibilities of the other members. Their peers elect them, but they must also meet the criteria established in the SOE Statute in order to become a member of the board. Like fellow board members, employee representatives receive annual training to enable them to fulfil their board duties.

13.8. Board committees

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

SOEs` boards are supported by, at least, an audit committee and an eligibility committee, which is also known as a "nomination committee". Other committees functioning as subsidiary bodies to the board of directors also exist – particularly in large SOEs – including risks and human resources committees.

Members of the audit committee are appointed by the members of the board. The committee's membership is not limited to the board members themselves (the committee member who is not a director would receive a remuneration for its role as a committee member). The audit committee cannot include employees of the SOE itself or its group, nor employees of the controlling shareholder. A majority of the audit committee`s members should be independent.

The SOE Statute establishes elements of the working procedures of an audit committee and requires the establishment of a minimum criteria for selecting its members (for example, at least one of its members must have relevant experience in corporate accounting). SOEs can use its bylaws to require additional criteria.

A source heard by the OECD team mentioned that, while SOEs` audit committees have important atributions, they sometimes do not have access to necessary information and some of their members lack the minimum knowledge of accounting practices necessary for the position (even in one of the major national SOEs).

There are no legal impediments to employees and owner representatives to serve on other committees, whereby each SOE´s bylaws may establish additional requirements for the composition of those committees.

CGU suggested to the OECD team that company groups could share one audit committee. At the moment, certain SOEs, including Petrobras, have multiple audit committees.

Table 13.1. Statutory and Board Committees of the 10 largest SOEs

	Audit Committee	Eligibility Committee	Board committees
Banco do Brasil	Audit Committee	Remuneration and Eligibility Committee	Capital Risk.
Petrobras	Audit Committee; Petrobras Conglomerate Audit Committee.	Nomination, Remuneration and Succession Committee	Investment; Health, Environment and Security; Personnel; Minority Shareholder.
Eletrobras	Audit and Risk Committee	Personnel Administration and Eligibility.	Strategy, Governance and Sustainability;
CEF	Audit Committee	Eligibility Committee	Related Party; Independent Risk; Remuneration and Appointment; Internal control; Investment; Social Transfers;
VALEC	Audit Committee	Eligibility Committee	Strategic Governance; Tactical Governance; Risk and Control.
BNDES	Audit Committee	Eligibility Committee	Risk; Remuneration
EMGEA	Audit Committee	Eligibility Committee	
BNB	Audit Committee	Remuneration and Eligibility Committee	
INFRAERO	Audit Committee	Eligibility Committee	
CODESP	Audit Committee	Eligibility Committee	

Source: SEST and company websites.

13.9. Annual performance evaluation

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

SOE boards are required to carry out annual self-evaluations. SOEs can choose to use benchmarking practices or external advisors and independent experts in the process. SEST published a basic model of board self-evaluation, based on best practices, which includes, among many others, a question on the availability and investment of time of directors preparing for the board meetings.

SEST recommends SOEs to communicate the outcomes of the appraisal to the Deputy Minister of SOE's Supervisor Ministry. Resolution CGPAR nº 3 recommends the use of the information, but there is no obligation that the results of board evaluations should be used in the board nomination process.

13.10. Internal audit

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

SOEs are required by the SOE Statute to establish an internal audit function. Internal audit should be linked to the board, either directly or by means of the aforementioned audit

committee. Interaction between the internal audit function and executive management takes place in the following situations:

- Preparing the annual audit plan: the expectations of the executive management are mapped and considered in the preparation of the annual audit plan;
- In raising awareness, training, and guidance to the executive management on governance, risk management and internal controls;
- Periodic communication, for example, on open recommendations which pose potential risk to the SOE's governance, risk management and internal controls processes;
- Whenever an important weakness is found during audit work.

The SOE's internal audit function is responsible for evaluating internal control adequacy, the effectiveness of the management of risks and governance processes and the reliability of processes for the collection, measurement, classification, accumulation, recording and release of events and transactions, aiming at the preparation of financial statements.

In line with Decree no. 3.591/2000 (art. 15), SOE's internal audit units are subject to technical supervision by the Office of the Comptroller General of the Union (CGU). This manifests in a number of ways, as provided below:

- SOEs' internal audits are subjected to the Government Internal Audit Manual (Normative Instruction CGU no. 3/2017). This manual also states that SOEs' internal audit units must develop and maintain a quality assurance and improvement program that covers all aspects of the internal audit activity.
- SOEs' annual audit plans of the internal audit units are approved and monitored by CGU (art. 15, § 2, of Decree no. 3.591/2000 and Normative Instruction no. 9/2018). Therefore, CGU seeks to build its own annual audit plan based on those of SOEs' internal audit units.
- The appointment and removal of the chief audit executive in SOE shall be approved by CGU after the approval of the board of directors (art. 15, § 5º, of the Decree no. 3.591/2000 and currently regulated by Ordinance no. 2,737/2017).
- CGU has encouraged SOEs to adopt a recruitment process for selecting chief audit executive. This practice has happened in some SOEs. Relevant authorities also set the need for job rotation for the chief audit executive in SOE (Ordinance no. 2,737/2017 and Resolution CGPAR no. 21/2018), for whose appointment must also meet minimum criteria (Ordinance no. 2,737/2017).

Part III. Review of privatisation practices

Chapter 14. Review of privatisation practices

14.1. Guiding principles for privatisation

Privatisations' success is established before the privatisation starts, determined in part through the thoughtful establishment of guiding principles and preparatory measures. The Federal Government's ability to establish and control a clear narrative about the guiding principles and approaches to their current slate of privatisations may be an important indicator of future success (or failure).

While the Brazilian Constitution already provides principles for the State`s direct intervention in markets (national security and relevant public interest), those principles allow very different interpretations. A well-defined set of rationales for the State`s ownership of enterprises should always be the starting point for the privatisation of an SOE. Currently, the Federal Government lacks a clear set of guiding principles for the State`s ownership of enterprises.

The Brazilian authorities cite two goals for privatisations: to reduce government's direct intervention in the market and to foster more private sector engagement. Various stakeholders suggested to the OECD team that the main reason, in reality, is to raise revenues for the state. A focus on revenues should not come at the expense of due process and assurance to an adequate balance between guiding principles that include not only economic profitability but also integrity and the maintenance of a healthy competitive environment.

It is good practice for the government to build broad support for privatisations, actively seeking to inform citizens and other stakeholders, including investors, about the intended benefits and associated risks. However, complaints have been voiced by representatives of both stakeholder groups. The press and political opposition in Brazil have repeatedly claimed that the new government's sweeping privatization agenda has been "rushed" and conducted without sufficient public consultation.

Investors claim to have received mixed signals from government bodies from the Federal Government and subnational units about rules and regulations applying to privatisation and about risks. For instance, the Governor of Goiás said that he would revert the concession of the electricity distribution service in his state, despite it being a Federal Concession. The mayor of Rio de Janeiro eliminated tolls on one highway subject to a concession with the private sector without any previous administrative or judicial process. The President of the Republic has mentioned more than once that some of the biggest SOEs would not be considered for privatisation (for ex., Petrobras and Banco do Brasil). Likewise, the 2019 concession bidding for pre-salt blocks was structured in a way that, according to a source heard by the OECD team, kept foreign oil companies away, leaving Petrobras as the only bidder.

It would further seem that the effective privatisation of an SOE depends to a significant degree on the Ministry that supervises it, because of the many regulatory and corporate changes the privatisation might require. Since the privatisation can be initiated at the recommendation of the CPPI, which congregates several Ministers, it might endure a long

process if the supervisory ministry is against it and there is not clear support from the Presidency for the privatisation.

14.2. Measures before divesting

As mentioned in Part A, it is not clear how the government picked and prioritised the companies currently slated for privatisation. While it is true that CPPI publishes its rationale for privatizing an individual SOE, it does not need to explain why other potentially more suitable candidates were not chosen instead from a whole-of-government perspective. The government chose to start with, alongside other less important ones, SOEs that hold a legal monopoly: Eletrobras (nuclear energy) and Correios (delivery of letters). Multiple stakeholders questioned the plan to begin with more complex corporations as opposed to other listed and partially privatized SOEs that might be easier to fully privatise.

Company divestments of important subsidiaries and assets have been undertaken at the initiative of SOEs as an alternative to overcome the lack of progress in the privatisation process in other cases (see page 80 for more information). In those cases, the revenues from the divestments are received by the holding SOE and they might eventually reach the Treasury through dividends. In both cases (privatisations` revenues and dividends received from directly owned SOEs), the Federal Government must use the currency – according to the Treasury – to pay off debts.

14.3. Organising the process of privatisation

BNDES's role in executing privatisation transactions gives it a central position, making success of privatisations heavily dependent on its capacity to carry them out – and doing so in accordance with commonly accepted good practices. This could give rise to some concern, because BNDES accrued most of its expertise through privatisations conducted in the 1990s. According to some experts consulted by the OECD mission team, BNDES has lost much of this expertise, as many skilled employees have retired and been replaced by newcomers without relevant experience.

Another potential friction could arise from conflicts of interests between BNDES's sale and advisory mandates (just as an example, recommending the privatisation instead of the liquidation of an SOE because the bank would accrue sale`s fees in the first case). Moreover, since BNDES is also a creditor of some (if not all) SOEs, it might have a bias in favor of the SOE`s creditors. While BNDES already manages mentioned conflict with a Chinese Wall between the credit`s unit and the privatisation`s unit, senior executives` and board of directors` participation in some steps of the privatisation process (as detailed in Part A) partially leaves the conflict of interests unsolved. One possible way to enhance the impartiality of the process would be to provide greater autonomy to the privatisation`s unit to conduct the process without the intervention of top management except for the compliance and legal units.

Ex-ante, CGU is currently conducting an evaluation on BNDES' capacity. This will be important for identifying vulnerabilities and putting in place necessary controls. In addition, the privatisation processes will be audited and evaluated by TCU before the sale process effectively takes place. Their external audits will likely enhance the Federal Government`s capacity to conduct privatisation processes, however it remains to be seen if their ex-ante interventions will not hinder CGU`s and TCU`s impartiality to audit the privatisations after they are completed. One alternative to reduce such a risk would be to require that the unit that performed the ex-ante analysis would not be the same to audit the process ex-post (and, in the case of TCU, that the Minister Reporter will not be the same one in both cases).

BNDES`s advisory role to CPPI seems to be comprehensive enough to allow the ministerial body to adequately plan for the privatisation of an SOE. It includes, as detailed in Part A, the (i) evaluation of economic, financial and legal aspects related to a possible privatisation, (ii) proposition of corporate and regulatory reforms prior to the privatisation, (iii) appraisal of how the privatisation would impact the delivery of SOE`s services, and (iv) suggestion of a method of sale and minimum price. The only types of relevant analysis that are still missing in this body of work is an assessment of the distribution of wealth among citizens and the environment.

The requirement in Law no. 9.491/1997 for BNDES to hold a public hearing with stakeholders is laudable, since it both brings a wider scope of views to the decision-making process and provides for greater support of stakeholders. Nevertheless, the moment prescribed by the legislation for the public hearings (after the privatisation plan is approved by CPPI and before publishing the Public Notice for Bid) might be too late in the process to effectively achieve their goals. Earlier engagement with some stakeholders, such as SOEs` employees and potential investors, might therefore be advisable.

As mentioned in Part A, the sales method is chosen by the CPPI based on BNDES opinion, which takes into account several factors such as size of business, performance and market interest. The methods include auctions, IPOs and follow-on public offers, but private transactions are not possible. The main concern of mentioned decision-making process is that, due to changes in market conditions, the best sales method might change between CPPI`s decision and the moment BNDES can effectively operationalize the sale. If possible, therefore, keeping more than one sales method as an option until the end might allow the government to achieve better pricing.

It was mentioned by public authorities that the government, when planning for the privatisation of an SOE, considers as one of the options to keep a minority equity stake in the company (this is, for example, the case in the plan to privatise Eletrobras and it was the case of the privatisation of IRB in 2013, when the government kept golden shares). Since investors might lose interest in the corporation if the state continues to be a shareholder through a relevant minority stake or the owner of golden shares, the government should carefully consider if this model is aligned with the goal of achieving the best value for money and providing enough capital to the corporation. Specifically, according to the SOE Guidelines, golden shares should be (i) limited to cases where they are strictly necessary and proportionate to protect essential public interests; (ii) adequately disclosed.

In the case of public auctions to privatise SOEs, Brazilian authorities mentioned that conditions might be set to assure that investors have technical and financial capacity to operate the company. While the concern of having a capable investor operating a relevant company is reasonable, there may be risks to the fairness of the sale if public officials can subjectively block the participation of a potential bidder. Even if sound controls against abuse are in place, the discussion in the Judiciary on the equal treatment of bidders might delay for a long period the effective privatisation. Along those lines, the government should prudently evaluate whether the investment by the bidder would not be by itself an adequate signal of its technical and financial capacity and if other conditions would need to be imposed. If pre-qualification criteria for potential buyers are set, they should be as objective as possible and clearly publicised before bids can be accepted.

14.4. Steps post-privatisation

The Federal Constitution guarantees that no law can exclude the access to the Judiciary by any individual or firm that allegedly has a right violated. Unsuccessful bidders for the control of an SOE can, therefore, challenge a sale decision in the Judiciary if they consider

that their legal or contractual rights were violated. This might include, for instance, an injunction to stop the privatisation process if there is the risk that the advancement in the sale would permanently harm the bidder.

After the privatisation is completed, BNDES publishes a summary of the whole process in its website, including disclosure of revenues from the sale. Likewise, all documents created and collected during the process become available to the general public and could be the base for an auditing by TCU or CGU. The scope of ex post audits is not yet clear, both in TCU and CGU cases, because there has not been recent experience of the privatisation of national SOEs. However, it would be important for both auditing bodies to consider the inclusion of the following aspects on the scope of future auditing processes: (i) whether the sales method was able to ensure fair pricing of the shares, including measures to prevent rigging bids; (ii) if the privatisation goals established at the outset of the transaction were met. Likewise, due to a long interregnum without privatisations, it would be relevant if TCU and CGU could audit most (if not all) privatisations in the next couple of years (even if it requires some internal reallocation of resources), since it would be opportune to set adequate precedents for future privatisations.

Part IV. Conclusions and Recommendations

Chapter 15. Conclusions and Recommendations

With the adoption of the SOE Statute on 30 June 2016, the Brazilian authorities took an important step towards aligning their state ownership practices with the standards of the SOE Guidelines. For instance, the SOE Statute limits the possibility of political patronage using the boards of directors of SOEs, requires transparency on the costs of policy objectives, establishes a minimum of 25% of independent directors and requires the creation of a board audit committee. In previous years, some other initiatives have also altered the practices in national SOEs. These include notably: amendment to the Corporations Act in 2007 subscribing Brazilian listed companies to the IFRS (the SOE Statute enlarges this obligation to non-listed SOEs); greater number of SOE directors with private sector experience; CVM rule requiring detailed disclosure on RPT above BRL 50 million for listed companies.

The new legislation has not been able to address all ownership and corporate governance vulnerabilities affecting Brazilian national SOEs, but it establishes a solid legislative foundation to further reforms. Its outcome will, however, depend to a large extent on the effective and practical implementation of the SOE Statute. Hence, as a near-term priority, all relevant Brazilian public authorities and SOEs` senior leadership should ensure implementation of the SOE Statute by correcting rules and practices that are not compliant with the SOE Statute and its regulatory decree. For example, CGU`s recommendations for whistleblowing channels of individual SOEs and TCU`s findings in relation to the nomination of directors and senior executives should be fully considered. The OECD encourages the Brazilian authorities to continue working with the Working Party and its Secretariat to ensure continued alignment with the SOE Guidelines.

15.1. Near-term priorities

Development of the ownership policy. The roles of national public entities with respect to SOEs and performance objectives for the SOE sector in general are not currently clear in Brazil. This, as a consequence, makes improvements in SOEs performance or prioritisation of which companies to privatise difficult. An ownership policy that includes the following would be helpful to close mentioned gaps:

- *Reduce the dispersion of decision-making power among many different ownership public entities*. This might be achieved in the short-term, for example, through (i) concentrating responsibilities allocated to different secretariats within the Ministry of the Economy into a specialised unit, and (ii) enlarging the number of ministers who sit in CGPAR to ensure a whole-of-government approach and increasing the committee`s power to set goals for SOEs and to nominate directors and members of fiscal councils.
- *Clarify the rationales that justify the ownership of SOEs*. While the Brazilian Constitution already provides principles for the State`s direct intervention in markets, those principles allow very different interpretations. Rationales that are more specific would be an important base for the Federal Government to define short and medium-term goals for the SOEs. Furthermore, privatisation should

always take as their starting point a well-defined set of rationales for the State`s ownership of enterprises.

- *Establish a mechanism for the Federal Government to set the financial and non-financial goals to SOEs it owns*. In the absence of a public mechanism for setting goals for SOEs, opportunities for political intervention in management through informal means are a persistent problem. Likewise, clear and transparent objectives increase the accountability of all parts involved, including SOEs` senior leadership. Specifically, such a mechanism would also be important in clarifying which public entity is responsible for setting financial performance goals for national SOEs, which is a central ownership attribution currently neglected in Brazil. Likewise, SOEs should not be allowed to pursue public policy objectives that are not clearly specified by the state.

Annual aggregate reporting. The quality of financial reporting has not recently been a problem for national SOEs, but an adequate understanding of financial statements is restricted to experts and can be extremely time-consuming. Reporting on costs and implementation of public policy objectives, while more common since the enactment of the SOE Statute, could be improved. Aggregate reporting on financial and non-financial results of national SOEs would have three major benefits: (i) it will allow the public to assess SOEs` performance, increasing the accountability of ownership entities and SOEs` senior leadership; (ii) it will provide the means for senior public officials and the political leadership of the country to identify which SOEs are performing poorly and take corrective measures; (iii) it will provide an opportunity to the public entity elaborating the aggregate reporting to monitor the quality of reporting by individual SOEs.

Strengthening boards of directors. While SOEs' boards have become, as a general rule, more independent from political interference due to the impediments established by the SOE Statute, the OECD recommends the following:

- *Extend the application of art. 17 of the SOE Statute to all committees to the board and to the fiscal council*. The prohibition to appoint politicians and other individuals in conflict of interests have proved to be successful in reducing some forms of political patronage using positions in boards of directors and senior executive roles. Since the impediments do not mean an increase in costs, there is no justification for the impediments not to be applicable to other corporate bodies.
- *Boards of directors should have the power to appoint and remove the CEO*. This would not only protect SOEs from being used for political patronage, but also enhance the board`s authority to supervise the performance of senior executives.
- *Improve the rules and procedures for nominating and appointing directors and senior executives*. The nomination process, although long and complex, continues to rely on the personal preferences of the Minister responsible for supervising the SOE. Notably, the eligibility committee required by the SOE Statute has proved ineffective in many cases. Likewise, while counting on private sector experience and diversity of educational backgrounds, SOEs` boards still lack gender balance, international experience and, in some cases, expertise in accounting and auditing issues. Among possibilities to improve the selection procedure would be the use of independent experts ("head hunters") or the creation of a pool of qualified candidates developed through an open and competitive process.

15.2. Medium-term recommendations

The 2016 SOE Statute provides an important element of the legal and regulatory environment for Brazilian SOEs, but it cannot stand alone. Additional changes will be needed, including with respect to:

Strengthening the state ownership function. While CGPAR and the Ministry of the Economy exercise some ownership rights over all national SOEs, Brazil`s dual ownership arrangement involves 12 ministries overseeing a portfolio of 46 directly owned SOEs. To further align Brazilian practices with the SOE Guidelines, Brazilian authorities should consider centralising the state ownership function under an ownership entity or other public body with ministerial status in the future, which would be granted direct ownership rights for all national SOEs. This should contribute towards exercising state ownership rights on a whole of government basis, as well as separating ownership and regulatory rights in a more consistent way.

Enhancing the professionalization and independence of corporate officers. Going forward after the implementation of the measures recommended under the near-term priorities section above, the OECD recommends the following:

- *Compensation of SOEs` senior leadership should be aligned with market practices*. Boards of directors should ensure the compensation packages for senior executives are competitive in order to attract talented professionals, but care should be taken not to incentivise management in a way inconsistent with the long-term interest of the corporation and its owners. The state as an owner should also increase the remuneration of board members, converging with market practices, to have access to a greater pool of qualified executives and retain successful directors who would otherwise move to privately owned corporations after a stint in SOEs to gain experience.
- *Require that a majority of audit committees` members should have adequate technical expertise in accounting and auditing issues*. Audit committees play a central role in advising the board on issues that are often complex and relevant for SOEs` businesses. It is therefore necessary that audit committees members have an adequate understanding of accounting and auditing issues.
- *Frequently evaluate whether board members have been devoting sufficient time and effort.* While the capacity and diversity of board members is central to the performance of an SOE, they will be successful only if they can devote enough time and effort to their duties as board members. For example, it might be a concern if a top-level public official or the partner of a private firm does not have enough time available to adequately prepare for SOEs` board meetings. Not only the state should evaluate the board`s work, but also the board should assess its performance and inform the ownership entity on findings that are relevant for the nomination process.

Streamline the corporate legislation applicable to all SOEs. The SOE Statute does not apply to companies that the Corporations Act would define as controlled by the State in cases it owns less than half of voting shares. While this situation is not currently common, a wave of privatisation might multiply the number of such cases (for example, plans for privatisation of Eletrobras are for a follow-on offer, which might leave the Federal Government in a position to control the company with a minority of voting shares). Likewise, some important provisions of the Corporation Act do not apply to Caixa Economica Federal (CEF), which is one of the three most relevant national financial-SOEs,

and its transformation into a joint stock company fully-compliant with the Corporations Act would therefore improve its corporate governance.

References

B3, Trading, http://www.b3.com.br/en_us/products-and-services/trading/interest-rates/di-training-program/01-brazilian-financial-market-structure.htm

Government of Brazil (2018), Brazil: fact sheet, accessed February 2020, http://www.brazil.gov.br/about-brazil/fact-sheet.

Government of Brazil (2019), Bulletin on Federal SOEs, Number 12, 3 Trimester 2019, http://www.economia.gov.br/central-de-conteudos/publicacoes/boletim-das-empresas-estatais-federais/arquivos/12a-edicao-boletim-das-empresas-estatais-federais.pdf

KPMG (2016), Corporate Governance and the Brazilian Capital Market, KPMG Audit Committee Institute, https://assets.kpmg/content/dam/kpmg/pdf/2016/05/br-corporate-governance-and-the-brazilian-capital-market-15-16-2.pdf).

FTSE, FTSE Equity Country Classification, September 2019, Annual Announcement, https://research.ftserussell.com/products/downloads/FTSE-Country-Classification-Update-2019.pdf.

Filho, Joaquim Rubens Fontes and Carlos Francisco Alves (2018), Control mechanisms in the corporate governance of state-owned enterprises: a comparison between Brazil and Portugal, 2018, http://ref.scielo.org/zrc36r).

Financial Times (FT) (2019), Brazil economy minister vows return of 'order' in sweeping reforms, accessed February 2020, https://www.ft.com/content/c8925b18-2b25-11e9-a5ab-ff8ef2b976c7

Inter-American Development Bank (IDB) (2016), Moreno, Enrique and Acevedo Sánchez, *State-Owned Enterprise Management: advantages of centralized models*, Inter-American Development Bank, https://publications.iadb.org/publications/english/document/State-owned-Enterprise-Management-Advantages-of-Centralized-Models.pdf.

IDB (2013), Governance, Performance, and the Best Reform Practices in State-Owned Enterprises in Latin America and the Caribbean and Korea, 2013, Inter-American Development Bank, https://publications.iadb.org/publications/english/document/Governance-Performance-and-the-Best-Reform-Practices-in-State-Owned-Enterprises-in-Latin-America-and-the-Caribbean-and-Korea-Forum-Report-and-Proceedings-from-the-International-Symposium-held-November-5-8-2013-in-Seoul-Korea.pdf.

International Labour Organisation (ILO), Statistics, accessed February 2020, https://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page33.jspx?locale=EN&MBI_ID=4&_afrLoop=3922898509664125&_afrWindowMode=0&_afrWindowId=_blank,#!%40%40%3F_afrWindowId%3D_blank%252C%26locale%3DEN%26_afrLoop%3D3922898509664125%26MBI_ID%3D4%26_afrWindowMode%3D0%26_adf.ctrl-state%3D7l35zfkr1_45

Lazzarini, Sergio G. and Aldo Musacchio (2018), State Ownership Reinvented? Explaining performance differences between State-Owned and Private Firms, Corporate Governance: an international review, 2018, https://doi.org/10.1111/corg.12239.

Musacchio, Aldo and Sergio G. Lazzarini (2014), State-Owned Enterprises in Brazil: History and Lessons, https://www.oecd.org/daf/ca/Workshop_SOEsDevelopmentProcess_Brazil.pdf.

Musacchio, Aldo; Pineda, Emilio; Huber, John; Jara, Mauricio; Kim, Hyungon; Ter-Minassian, Teresa;

Wagner, Rodrigo (2019), Fixing State-Owned Enterprises: New Policy Solutions to Old Problems, http://dx.doi.org/10.18235/0002012.

OECD (2020a), Brazil Data, https://data.oecd.org/brazil.htm#profile-government.

OECD (2020b), Economic Outlook, http://www.oecd.org/economic-outlook/.

OECD (2019a), "Brazil", in *OECD Economic Outlook, Volume 2019 Issue 1*, OECD Publishing, Paris, https://doi.org/10.1787/aa30aaa5-en.

OECD (2019b), "Brazil", in Economic Policy Reforms 2019: Going for Growth, OECD Publishing, Paris, https://doi.org/10.1787/d161f0de-en.

OECD (2019c), *Innovation Skills and Leadership in Brazil's Public Sector: Towards a Senior Civil Service System*, OECD Publishing, Paris, https://doi.org/10.1787/38b88777-en.

OECD (2019d), *Government at a Glance 2019*, OECD Publishing, Paris, https://doi.org/10.1787/8ccf5c38-en.

OECD (2019e), Owners of the World's Listed Companies, https://www.oecd.org/corporate/ca/Owners-of-the-Worlds-Listed-Companies.pdf).

OECD (2019f), *OECD Business and Finance Outlook 2019: Strengthening Trust in Business*, OECD Publishing, Paris, https://doi.org/10.1787/af784794-en.

OECD (2017), *Brazil's Federal Court of Accounts: Insight and Foresight for Better Governance*, OECD Public Governance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/9789264279247-en.

OECD (2016), Risk Management by State-Owned Enterprises and their Ownership, Corporate Governance, OECD Publishing, Paris, https://doi.org/10.1787/9789264262249-en.

OECD (2013), *Brazil's Supreme Audit Institution: The Audit of the Consolidated Year-end Government Report*, OECD Public Governance Reviews, OECD Publishing, Paris, https://doi.org/10.1787/9789264188112-en.

OECD (2007), Brazil: Phase 2. Report On The Application Of The Convention On Combating Bribery Of Foreign Public Officials In International Business Transactions And The 1997 Recommendation On Combating Bribery In International Business Transactions, https://www.oecd.org/brazil/39801089.pdf.

Sheng, Hsia Hua and José Marcos Carrera Junios (2018), State Ownership and Financial Performance of Brazilian Multinational Enterprises: An Analysis Before and After the Crisis, 2018, Conference on 'Emerging Multinationals: outward investment from emerging economies, Denmark, https://sf.cbs.dk/ofdi/content/download/339/2527/version/1/file/Hsia%20Hua%20Sheng.pdf.

Transparency International (TI) (2019), Global Corruption Barometer, https://www.transparency.org/research/gcb/global_corruption_barometer_2019.

World Bank (2020), Doing Business 2020, Economy Profile: Brazil, https://www.doingbusiness.org/content/dam/doingBusiness/country/b/brazil/BRA.pdf.

World Bank, 2020a, Worldwide Governance Indicators, https://databank.worldbank.org/source/worldwide-governance-indicators.

World Bank (2019), Doing Business Rankings, https://www.doingbusiness.org/en/rankings.

World Bank (2014), Corporate Governance of State-Owned Enterprise in Latin America: current trends and country cases, World Bank, http://documents.worldbank.org/curated/en/634451468088457556/pdf/894680WP00P1260orate0Governance0LAC.pdf

World Economic Forum (WEF) (2019), http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf

Annex A. Brazil's large SOEs by Ministry and form

Ministry(ies)	Listed company	Unlisted joint-stock company	T
Ministry of Economy	Banco da Amazonia (Financial) Banco do Brasil* (Financial) BNDES*** (Financial) BNB (Financial) CEF** (Financial)	ABGF (Insurance) ATIVOS S.A. (Financial) BB Consórcios (Financial) BB Corretora (Financial) BB DTVM (Financial) BB ELO Cartoes (Holding) BB Investimentos (Financial) BB Lam (Financial) BB Seguros (Insurance) BBTS (Trade and Services) BNDESPAR (Holding) Caixa Seguridade (Insurance) CAIXAPAR (Holding) CMB (Minting) DATAPREV (IT) EMGEA (Financial) FINAME (Financial) SERPRO (IT)	23
Ministry of Economy and Ministry of Mines and Energy	Eletrobras* (Energy) Petrobras* (Oil & Gas)	AmGT (Energy) Breitener (Energy) CGTEE (Energy) CHESF (Energy) CPRM (Reserach and Planning) e-PETRO (IT) ELETRONORTE (Energy) ELETRONUCLEAR (Energy) ELETROPAR (Energy) ELETROSUL (Energy) FURNAS (Energy) GASBRASILIANO (Oil & Gas) GASPETRO (Oil & Gas) INB (Transformation Industry) LIQUIGÁS (Oil & Gas) NUCLEP (Transformation Industry) PBIO (Oil & Gas) PB-LOG (Oil & Gas) PIB BV (Trade and Services) PNBV (Trade and Services) TBG (Oil & Gas) TERMOBAHIA (Energy) TRANSPETRO (Oil & Gas) TSBE (Energy) TSLE (Energy)	27

Ministry(ies)	Listed company	Unlisted joint-stock company	T
Ministry of Economy and Defence		AMAZUL (Research and Planning)	1
Ministry of Economy and Ministry of Regional Development		CBTU (Transportation) CODEVASF (Regional Development) TRENSURB (Transportation)	3
Ministry of Economy and Ministry of Infrastructure		CDRJ (Port) CODERN (Port) CODESA (Port) CODESP (Port) INFRAERO (Airport) VALEC (Railway)	6
Ministry of Economy and Ministry of Agriculture, Livestock and Supply		CEAGESP (Suply) CONAB (Suply) EMBRAPA (Research and Planning)	3
Ministry of Economy and Ministry of Health		CONCEIÇÃO (Hospital) HEMOBRÁS (Health)	2
Ministry of Economy and Chief of Staff of the Presidency (Casa Civil)		EBC (TV)	1
Ministry of Economy and Ministry of Education		EBSERH (Hospital) HCPA (Hospital)	2
Ministry of Economy and Ministry of Science, Technology, Innovations and Communications		ECT (Post) TELEBRAS (Telecom)	2
Ministry of Science, Technology, Innovations and Communications		FINEP (Financial)	1
Ministry of Economy and Ministry of Defence		EMGEPRON (Research and Planning) IMBEL (Transformation Industry)	2
TOTAL	6	66	73

Note: *denotes company groups. **CEF not counted in 'listed' total because it is a statutory corporation. The companies listed represent the country's 5 largest SOEs by value, as well as additional SOEs that fulfil one out of the following three criteria: (1) having a market capitalisation or estimated value of more than USD 100 million; (2) having annual revenues exceeding USD 100 million; (3) having more than 500 employees. In addition, it includes companies that do not fulfil at least one of the above criteria, but where public authorities nevertheless exert a considerable degree of influence.

Annex B. Rates of return on equity

	2015	2016	2017	2018
ABGF	-16%	3%	2%	0%
BANCO DA AMAZÔNIA	14%	7%	3%	6%
BNB	10%	24%	20%	18%
CDC	-7%	-7%	-5%	-5%
CDP	-6%	-3%	2%	-10%
CEAGESP	4%	-7%	-9%	-5%
CEASAMINAS	-1%	5%	6%	10%
CMB	16%	3%	-5%	-5%
CODEBA	5%	5%	0%	-3%
CODESA	3%	0%	-6%	-4%
CODESP	-6%	-1%	2%	-24%
DATAPREV	22%	18%	13%	13%
EMGEA	3%	2%	2%	4%
EMGEPRON	4%	1%	1%	3%
FINEP	17%	8%	-1%	9%
ELETROBRAS	-30%	8%	-4%	25%
PETROBRAS	-12%	-5%	0%	10%
BB	18%	10%	12%	13%
BNDES	13%	15%	10%	9%
CEF	11%	7%	19%	14%
HEMOBRÁS	-133%	31%	26%	-2%
SERPRO	-34%	-27%	24%	57%
TELEBRAS	-25%	-19%	-13%	-11%

Note: SOEs without audited financial reports and negative book equity were excluded from the table.
Source: SEST.

Annex C. Title I of Law no. 13 303 OF JUNE 30, 2016.

TITLE I

PROVISIONS APPLICABLE TO STATE-OWNED AND STATE-CONTROLLED ENTERPRISES

CHAPTER I

PRELIMINARY PROVISIONS

Art. 1 This Law provides for the legal status of state-owned and state-controlled enterprises and their subsidiaries, comprising any and all state-owned and state-controlled enterprises of the Union, the States, the Federal District and the Municipalities which exploit a business activity for the production or commercialization of goods or provision of services, even if the business activity is subject to the monopoly of the Union or is the provision of public services.

§ 1 Title I of this Law, except for the provisions of articles 2, 3, 4, 5, 6, 7, 8, 11, 12 and 27, shall not apply to state-owned or state-controlled enterprises which, jointly with their subsidiaries, have had in the previous fiscal year a gross operating revenue amounting to less than ninety million reais (BRL 90 000 000).

§ 2 The provision of Chapters I and II of Title II of this Law applies including to dependent state-owned companies, as defined under item III of art. 2 of Supplementary Law no. 101, of May 4, 2000, which exploits business activities, even if the business activity is subject to the monopoly regime of the Union is the provision of public services.

§ 3 The Executive Powers may issue acts that establish governance rules for their relevant state-owned and state-controlled enterprises that fit into the case of §, subject to the general provisions of this Law.

§ 4 The non issuance of the acts referred to in § 3 within one hundred eighty (180) days as from the publication of this Law must subject the relevant state-owned and state-controlled enterprises to the governance rules set forth in Title I of this Law.

§ 5 State-owned and state-controlled enterprises which participate in a consortium are subject to the regime established in this Law, pursuant to art. 279 of Law no. 6.404, of December 15, 1976, as operators.

§ 6 Companies, including specific purposes companies, which are controlled by a state-owned or a state-controlled enterprise referred to in the head hereof, are subject to the regime set forth in this Law.

§ 7 In having an interest in a company in which the state-owned and the state-controlled enterprises and their subsidiaries do not have a controlling interest, within their duty to conduct audits, they shall adopt governance and control practices in proportion to the importance, the materiality and the risks of the business in which they participate, considering, for this purpose:

I – strategic business documentation and information and other reports and information produced as a result of a shareholders' agreement and as determined by Law

which are considered to be essential to the defense of their interests in the company in which they invest;

II – a report on the implementation of the budget and the making of the investments projected by the company, including with regard to the alignment of estimated and actual costs with market costs;

III – a release on the compliance with the policy on transactions with related parties;

IV – analysis of the company's financial leverage conditions;

V – evaluation of financial inversions and relevant processes for the disposal of movable and immovable assets of the company;

VI – a report on the risks of hiring construction works, the supply of goods and the provision of services which are relevant to the investing company's interests;

VII – a release on the performance of projects that are relevant to the interests of the investing company;

VIII – a report on the compliance, withing the company's business, with the social and environmental conditions established by environmental bodies;

IX – evaluation of the needs for new investments in the company and possible risks in the reduction of the expected yield on the business;

X – any other report, document or information produced by the company invested in which is deemed to be important for the compliance with the provision prescribed in the head hereof.

Art. 2 Business activities of the State must be conducted by means of a state-owned or a state-controlled enterprise and its subsidiaries.

§ 1 The incorporation of a state-owned or a state-controlled enterprise shall depend upon prior legal authorization which clearly indicates a collective interest or an imperative national security interest, pursuant to the head of art. 173 of the Federal Constitution.

§ 2 The formation of a subsidiary of a state-owned or a state-controlled enterprise and the interest by any of them in a private company, whose purpose must be related with that of the investing company, must depend on a legislative authorization, pursuant to item XX of art. 37 of the Federal Constitution.

§ 3 The authorization to participate in a private company provided for in § 2 does not apply to treasury transactions, the transfer of qualification shares or interest authorized by the Board of Directors aligned with the business plan of the state-owned and state-controlled enterprise and their subsidiaries.

Art. 3 A state-owned enterprise is a private law legal entity the formation of which is authorized by law with its own wealth, the capital of which is wholly-owned by the Union, the States, the Federal District or the Municipalities.

Sole paragraph. Provided that the majority of the voting capital continues to be owned by the Union, the States, the Federal District and the Municipalities, other internal public law legal entities and indirect administration entities of the Union, the States, the Federal District and the Municipalities shall be permitted to have interest in the capital of the state-owned company.

Art. 4 A state-controlled enterprise is a private law legal entity the formation of which is authorized by law in the form of a corporation, the majority of the shares with voting rights of which are held by the Union, the States, the Federal District, the Municipalities or

the indirect administration entity.

§ 1 The legal entity which controls the state-controlled enterprise has the duties and responsibilities of the controlling shareholder, pursuant to Law no. 6.404, of December 15, 1976, and must exercise its power of control to the interest of the company, subject to the public interest which gave rise to its formation.

§ 2 Besides the rules provided for in this Law, state-controlled enterprises registered with the Brazilian Securities and Exchange Commission are subject to the provisions of Law no. 6.385, of December 7, 1976.

CHAPTER II

THE CORPORATE REGIME OF STATE-OWNED AND STATE-CONTROLLED ENTERPRISES

Section I

General Rules

Art. 5 A state-controlled enterprise shall be incorporated in the form of a corporation and, notwithstanding the provisions of this Law, must be subject to the regime established in Law no. 6.404, of December 15, 1976.

Art. 6 The bylaws of state-owned and state-controlled enterprises and their subsidiaries shall comply with corporate governance, transparency and structure rules, risk management and internal control practices, administration composition rules and, if there are shareholders, mechanisms for their protection, all contained in this Law.

Art. 7 All closely-held state-owned and state-controlled enterprises and their subsidiaries must comply with the provisions of Law no. 6.404, of December 15, 1976, and the Brazilian Securities and Exchange Commission rules on bookkeeping and financial statements, including the obligation of arranging for independent audits by an auditor registered with that body.

Art. 8 State-owned and state-controlled enterprises shall meet these minimum transparency requirements:

I – prepare an annual letter, undersigned by the directors and spelling out a commitment with fulfilling the objectives of public policies by state-owned and state-controlled enterprises and their subsidiaries, so as to meet the collecting interest or national security need which gave rise to the authorization of their creation, containing a clear definition of the resources to be applied for such a purpose, as well as the economic and financial impacts of meeting such objectives, which must be measurable by means of objective indicators;

II – have bylaws which are in accordance with the legislative authorization for its creation;

III – timely release updated information, particularly relative to activities developed, control structure, risk factors, economic and financial data, comments by managers on the performance, policies and practices related to corporate governance and a description of the composition and remuneration of management;

IV – prepare and release the information release policy in accordance with the law in force and best practices;

V – prepare a dividend distribution policy considering the public interest which gave rise to the creation of the state-owned or the state-controlled enterprise;

VI - release, in an explanatory note to their financial statements, the operating and financial information on the activities related to the fulfillment of the collective interest or national security purposes;

VII – prepare and release the policy of transactions with related parties, in accordance with competitiveness, compliance, transparency, equity and comutativeness requirements, which must be reviewed at least on an annual basis and approved by the Board of Directos;

VIII – broad release to the public in general of an annual corporate governance letter, which consolidates in a single document written in a clear and direct language the information referred to in item III;

IX – release an integrated or a sustainability report on an annual basis.

§ 1º The public interest of a state-owned or a state-controlled enterprise, subject to the reasons that gave rise to its legislative authorization, is expressed through the alignment between its objectives and the objectives of public policies, in the manner spelled out in the annual letter referred to in item I of the head hereof.

§ 2 Any obligations and responsibilities that the state-owned or the state-controlled enterprise with a business activity may have under conditions other than those of any other company in the private sector in which it operates shall:

I – be clearly defined by law or regulation, as well as stipulated in an agreement or arrangement entered into with the public entity competente to establish them, subject to the broad dissemination of such instruments;

II – have their expenses and revenues, including their accounting plan, itemized in a transparent way.

§ 3 Besides the obligations contained in this article, state-controlled enterprises registered with the Brazilian Securities and Exchange Commission are subject to the information regime established by that agency and must release such information set forth in this article as established in its rules.

§ 4 The documents resulting from compliance with the transparency requirements contained in items I to IX of the head must be publicly released on the internet on a permanent and cumulative basis.

Art. 9 State-owned and state-controlled enterprises will adopt structure rules and risk management and internal control practices comprising:

I – actions by managers and employees, by means of daily implementation of internal control practices;

II – the area responsible for verifying compliance with obligations and risk management;

III – an internal audit and a Statutory Audit Committee.

§ 1 A Code of Conduct and Compliance must be released, establishing the following:

I – the principles, values and mission of state-owned and state-controlled enterprises, as well as guidance on the conflict of interest prevention and prohibition of acts of corruption and fraud;

II – internal departments responsible for updating and applying the Code of Conduct and Compliance;

III – a hotline that enables the receipt of internal and external claims relative to the

violation of the Code of Code and Compliance and other internal rules of ethics and obligations;

IV – protection mechanisms to prevent any type of retaliation to people who use the hotline;

V – sanctions applicable in the case of violations of the Code of Conduct and Compliance rules;

VI – scheduled periodical training, at least annual, about the Code of Conduct and Compliance, to employees and managers, and about risk management, to managers.

§ 2 The area responsible for verifying compliance with the obligations and risk management must be linked with the CEO and headed by a statutory executive, and the bylaws must establish the duties of the area, as well as the mechanisms to guarantee independent participation.

§ 3 The internal audit must:

I – be linked with the Board of Directors, either directly or by means of a Statutory Audit Committee;

II – be responsible for evaluating internal control adequacy, the effectiveness of the management of risks and governance processes and the reliability of processes for the collection, measurement, classification, accumulation, recording and release of events and transactions, aiming at the preparation of financial statements.

§ 4 The bylaws must also provide for the possibility of the compliance department immediately reporting to the Board of Directors in situations where it is suspected that the CEO is involved in irregularities or where he or she fails to take the necessary measures in relation to the situation that has been reported to him or her.

Art. 10. State-owned or state-controlled enterprises shall create a statutory committee to verify the compliance of the process for the appointment and evaluation of members of the Board of Directors and the Fiscal Council, which will be competent to assist the controlling shareholder in appointing such members.

Sole paragraph. The minutes of the meetings of the said statutory committee which have been held must be released for verification of the compliance by the appointed members with the requirements set forth in the appointment policy, and any members' diverging opinions must be recorded.

Art. 11. A state-owned corporation shall not:

I - issue debentures or other share-convertible titles or securities;

II - issue partipation certificates.

Art. 12. State-owned and state-controlled enterprises shall:

I – release any and all type of management remuneration;

II – constantly adapt their practices to the Code of Conduct and Compliance and to other corporate governance good practices, in the form established in the of this Law.

Sole paragraph. A state-controlled corporation may resolve, through arbitration regulation, any disputes between shareholders and the company, or between controlling shareholders and minority shareholders, pursuant to its bylaws.

Art. 13. The law that authorizes the creation of the state-owned or the state-controlled enterprise shall provide for the guidance and restrictions to be considered in the

drafting of the company's bylaws, particularly about:

I – constitution and functioning of the Board of Directors, subject to a minimum number of seven (7) and a maximum number of eleven (11) members;

II – specific requirements for the position of officer, subject to the minimum number of three (3) officers;

III – assessment of individual and collective performance, of managers and members of committes, on an annual basis, subject to the following minimum requirements:

a) exposition of the acts performed by the management, with regard to lawfulness and effectiveness of administrative actions;

b) contribution to the result of the fiscal year;

c) fulfillment of the objectives established in the business plan and the long-term strategy;

IV – formation and functioning of a Fiscal Council, which will perform its duties on a permanent basis;

V – formation and functioning of the Statutory Audit Committee;

VI – a management termo of the Board of Directors and those appointed to the position of officer, which will be unified and not higher than two (2) years, at most three (3) consecutive reinstatements being permitted;

VII – (VETOED);

VIII – a management term of the Fiscal Council members not higher than two (2) years, two (2) consecutive reinstatements being permitted.

Section II

The Controlling Shareholder

Art. 14. The controlling shareholder of the state-owned and the state-controlled enterprise shall:

I – include in the Code of Conduct and Compliance, applicable to the senior management, the prohibition of release without permission by the appropriate body of the state-owned or the state-controlled enterprise information which may make an impact on the price of the securities of the state-owned or the state-controlled enterprise and its relations with the market or consumers and suppliers;

II – preserve the Independence of the Board of Directors in the performance of their duties;

III – abide by the policy for appointment of managers and members of the Fiscal Council.

Art. 15. The controlling shareholder of the state-owned and the state-controlled corporations shall be responsible for the acts performed with abuse of power, pursuant to Law no. 6.404, December 15,1976.

§ 1 The corporation may seek compensation, pursuant to art. 246 of Law no. 6.404, of December 15, 1976, by the injured third party or by other members, irrespective of an authorization by the general shareholders' meeting.

§ 2 The proceeding referred to in § 1 is barred by the statute of limitations in six (6) years, counted from the date the act of abuse was performed.

Section III

Managers

Art. 16. Without prejudice to the provisions of this Law, the manager of a state-owned or a state-controlled corporation is subject to the rules provided for in Law no. 6.404, of December 15, 1976.

Sole paragraph. The managers of a state-owned or a state-controlled corporation are deemed to be the members of the Board of Directors and the executive board.

Art. 17. The members of the Board of Directos and those appointed for office positions, including president, Director-General and CEO will be selected out of citizens with unsoiled reputation and reputable knowledge, and such requirements of subitems "a", "b" and "c" of item I shall be alternatively met, and the requirements of items II and III shall be cumulatively met:

I – have work experience of at least:

a) ten (10) years, in the public or private sector, in the area the state-owned or state-controlled enterprise operates or in an area in connection with that to which they have been appointed for a higher office position; or

b) four (4) years in at least one of the following positions:

1. higher management or a executive position in a large corporation or a corporation with a purpose that is similar to that of the state-owned or state-controlled enterprise , higher management position meaning that which is at the company's two (2) highest non statutory hiearchical levels;

2. a commissioned position or a function of trust equivalent to a DAS (High Head and Advisory Position, *Direção e Assessoramento Superior*)-4 or higher, in the public sector;

3. a position as a teacher or a researcher in areas that the state-owned or the state-controlled enterprise operates;

c) four (4) years experience as an independent professional with an activity that is directly or indirectly linked with the area in which the state-owned or state-controlled enterprise operates;

II – have academic qualifications that are compatible with the position for which he or she has been appointed; and

III – not to fall into the inegibility cases provided for in the subitem of of the head of art. 1 of Supplementary Law no. 64, of May 18, 1990, and alterations brought by Supplementary Law no. 135, of June 4, 2010.

§ 1 The bylaws of a state-owned or a state-controlled enterprise and its subsidiaries may provide for managers maintaining civil liability insurance.

§ 2 Appointment of the following persons to the Board of Directors or the Executive Board is prohibited:

I – a representative of a regulatory body to which the state-owned or the state-controlled enterprise is subject, Ministries of State, Secretaries of State, Municipal Secretary, holder of a position without a permanent relationship with civil service, of a special nature, executive or high advisory position in the government, statutory head of a political party and a person holding a term in the Legislative Power of any entity of the federation, even if on a leave from office;

II – a person who in the last thirty-six (36) months has participated in the decision structure of a political party or in any work linked with the organization, structuring or implementation of an electoral campaign;

III – a person with a position in a union;

IV – a person who has entered into an agreement or partnership as a supplier or buyer, purchaser or offeror, of goods or services of any nature, with a political-administrative person controlling the state-owned or state-controlled enterprise or with the business or corporation itself for a period lower than three (3) years before his or her appointment date;

V – a person who has or may have any type of conflict of interest with the political-administrative person controlling the state-owned or state-controlled enterprise or with the business or corporation itself.

§ 3 The prohibition provided for in item I of § 2 comprises the blood relatives or bylaws up to the third degree of the people mentioned therein.

§ 4 The managers elected shall participate, upon taking office and annually, in specific trainings on corporate and capital market legislation, release of information, internal control, code of conduct, Law no. 12.846, of August 1, 2013 (Anticorruption Law), and other matters related to the activities of the public or the state-controlled enterprise .

§ 5 The requirements provided for in item I of the head may be waived in the case of an appointment of an employee of the state-owned or the state-controlled enterprise for the position of manager or as a member of a committee, provided that the conditions are met:

I – the employee has joined the state-owned or the state-controlled enterprise by means of a public competitive examination or a competition of exams and titles;

II – the employee has been an in-house employee in the state-owned or state-controlled enterprise for over ten (10) years;

III – the employee has been in a senior management position in the state-owned or state-controlled enterprise , demonstrating its ability to take on responsibilities for the positions referred to in the head hereof.

Section IV

The Board of Directors

Art. 18. Without prejudice to the duties provided for in art. 142 of Law no. 6.404, of December 15, 1976, and other duties set forth in this Law, the Board of Directors is responsible for:

I - discussing, approving and monitoring decisions involving corporate governance practices, relationships with interested parties, person management policies and codes of conduct of the agents;

II – implementing and supervising the risk management and internal control systems established for the prevention and mitigation of the main risks to which the state-owned or state-controlled enterprise is exposed, including risks related to the integrity of accounting and financial information and those related to acts of corruption and fraud;

III – setting forth spokespersons policies to eliminate the risk of contradictory information from several areas and those provided by the officers of the state-owned or state-controlled enterprise ;

IV – evaluating the officers of the public or the state-controlled enterprise , pursuant to item III of art. 13, and they may rely on methodological and procedural support from the statutory committee referred to in art. 10.

Art. 19. The participation of a representative of the employees and of minority shareholders in the Board of Directors is guaranteed.

§ 1 The rules established in Law no. 12.353, of December 28, 2010 apply to the participation of employees in the Board of Directors of state-owned and state-controlled enterprises and their subsidiaries and controlled companies and other companies that the Union, whether directly or indirectly, holds the majority of the voting shares.

§ 2 The minority shareholders are afforded the right to elect one (1) member, if they are not entitled to a higher number through the multiple voting process provided for in Law no. 6.404, of December 15, 1976.

Art. 20. The members of the direct or indirect public administration are prohibited from participating in more than two (2) boards, a board of directors or a fiscal council, of a state-owned or a state-controlled enterprise or its subsidiaries.

Art. 21. (VETOED).

Sole paragraph. (VETOED).

Section V

The independent member of the Board of Directors

Art. 22. The Board of Directors must be made up of at least twenty-five percent (25%) of indepedent members or at least one (1), in the case of a decision for the exercise of multiple voting by minority shareholders, pursuant to art. 141 of Law no. 6.404, of December 15, 1976.

§ 1 An independent member of the Board of Directors is characterized by:

I – not having a connection with the public or the state-controlled enterprise , except for ownership interest;

II – not being a spouse or blood relative or by-law until the third degree or by adoption, of a chief of the Executive Power, a Ministry of State, a Secretary of State or Municipality or a manager of the public or the state-controlled enterprise;

III – not having had in the last three (3) years a connection of any nature with the state-owned or the state-controlled enterprise or its controlling shareholders which may compromise his or her independence;

IV – not being or not having been in the last three (3) years an employee or an officer at a state-owned or a state-controlled enterprise, an affiliate or a subsidiary or the public or the state-controlled enterprise , except if such a connection is or has been exclusively with public teaching or research institutions;

V – not being a direct or indirect provider or buyer of services or products of the public or the state-controlled enterprise, in a way that implies loss of independence;

VI – not being an eimployee or a manager of a company or entity that is offering or seeking services or products to the state-owned or the state-controlled enterprise in a way that it implies loss of independence;

VII – not receiving any other remuneration from the state-owned or state-controlled enterpise besides that which is relative to the position of diretor, with the exception of proceeds arising out of ownership interest.

§ 2 Where, as a result from observing the percentage mentioned in the head hereof a fractionated number of members is reached, the result will be rounded off to the whole number:

I – that is immediately higher, when the fraction is equal to or higher than half of one (0.5);

II – that is immediately lower, when the fraction is lower than half of one (0.5).

§ 3 In determining the places for independent members, those occupied by members elected by employees will not be considered, pursuant to §1 of art. 19.

§ 4 In determining the places for independent members, those occupied by members elected by minority shareholders will be considered, pursuant to § 2 of art. 19.

§ 5 (VETOED).

Section VI

The Executive Board

Art. 23. Vesting in an executive position at the state-owned and the state-controlled enterprise is conditional upon the undertaking of a commitment with specific targets and results to be reached, which shall be approved by the Board of Directors, who shall be responsible for supervising it.

§ 1 Without prejudice to the provision in the head of this article, the executive board shall reveal by the last ordinary meeting of the Board of Directors who shall be responsible for approving the following:

I – business plan for the following fiscal year;

II – updated long-term strategy containing a risk and opportunity analysis for at least the next five (5) years.

§ 2 The Board of Directors shall, on penalty of its members being liable for omission, conduct an annual analysis of the meeting of targets and results in the execution of the business plan and the long-term strategy, and shall publish its conclusions and demonstrate them to the National Congress, the Legislative Assemblies, the Legislative Chamber of the Federal District and the Municipal Chambers and their relevant courts of audits, if any.

§ 3 The obligation to publish referred to in § 2 shall not include any strategy-related information the release of which may undoubtedly jeopardize the interests of the public or the state-controlled enterprise .

Section VII

The Statutory Audit Committee

Art. 24. The state-owned and the state-controlled enterprise must have in its corporate structure an Statutory Audit Committe as an auxiliary body of the Board of Directors, to which they will directly report.

§ 1 Without prejudice to other duties set forth in the bylaws of the public or the state-controlled enterprise , the Statutory Audit Committee will be responsible for:

I – giving opinions on the hire or dismissal of an independent auditor;

II – supervising the activities of independente auditors, assessing their Independence, the quality of the services provided and th adequacy of such services to the needs of the public or the state-controlled enterprise;

III – supervising the activities developed in the internal control areas, internal audit and preparation of financial statements of the public or the state-controlled enterprise;

IV – monitoring the quality and integrity of internal control mechanisms, financial statements and the information and measurements released by the public or the state-controlled enterprise;

V – assessing and monitoring the risk exposure of the public or the state-controlled enterprise , and it may demand, among other, detailed information about policies and procedures, relative to:

a) managers' remuneration;

b) the use of the public or the state-controlled enterprise 's assets;

c) expenses incurred in the name of the public or the state-controlled enterprise;

VI – assessing and monitoring, jointly with the managers and the internal audit area, the adequacy of the transactions with related parties;

VII – preparing an annual report with information on the activities, results, conclusions and recommendations of the Estatutário Audit Committee, recording, any signficant divergencies, if any, between the management, the independent auditors and the Estatutário Audit Committee regarding the financial statements;

VIII – assessing the reasonableness of the parameters on which the actuarial calculations are based and the actuarial results of the benefit plans maintained by the pension fund, where the state-owned or the state-controlled enterprise is sponsored by a closed supplementary pension entity.

§ 2 The Statutory Audit Committee must have means to receive reports, including confidential, internal and external, against the state-owned or the state-controlled enterprise regarding the scope of its activities.

§ 3 The Estatutário Audit Committee must gather as necessary, at least on a bi-montly basis, so that the accounting information can be examined before being released.

§ 4 The state-owned or the state-controlled enterprise shall release the minutes of the meetings of the Statutory Audit Committee.

§ 5 If the Board of Directors believes that releasing the minutes may represent a risk to the to the legitimate interest of the state-owned or state-controlled enterprise , the state-owned or state-controlled enterprise will release only the summary of the minutes.

§ 6 The restriction provided for in § 5 will not apply to the control bodies, which will have complete and unlimited access to the content of the minutes of the Statutory Audit Committee, subject to the transfer of confidenciality.

§ 7 The Statutory Audit Committee shall have operational autonomy and budgetary appropriation on an annual or project basis within the limits approved by the Board of Directors to conduct or determine the conduct of consultations, evaluations and investigations within the scope of its activities, including with the hire and use of external independent experts.

Art. 25. The Statutory Audit Committee will be made up of at least three (3) and at most five (5) members, most of whom will be independent.

§ These are the minimum conditions to integrate the Statutory Audit Committee:

I – for the twelve (12) months before the appointment for the Committee, not to be or have been:

a) an officer, employee or member of the fiscal council of the state-owned or the state-controlled enterprise or its controlling, controlled, affiliated or common control company, whether direct or indirect;

b) a technical responsible person, officer, manager, supervisor or any other member in charge of managing the team involved in the auditing in the state-owned or state-controlled enterprise ;

II – not be a spouse or a blood relative or related up to the second degree or by adoption of the persons referred to in item I;

III – not receive any other type of remuneration from the state-owned or state-controlled enterprise , or its controlling, controlled, affiliated or common control company, whether direct or indirect, if it is not relative to the function of member of the Statutory Audit Committee;

IV – not have or have had a permanent public position, even if on a leave, or a commission position of a public law legal entity with controlling interest in the state-owned or the state-controlled enterprise for the last twelve (12) months before being appointed to the Statutory Audit Committee.

§ 2 At least one (1) of the members of the Statutory Audit Committee shall have reputable experience with corporate accounting.

§ 3 Compliance with the provisions of this article shall be proven by means of documentation maintained in the headquarters of the state-owned or the state-controlled enterprise for at least five (5) years counted from the last day of the term of the member of the Statutory Audit Committee.

Section VIII

Fiscal Council

Art. 26. Besides the rules provided for in this Law, the provisions of Law no. 6.404, of December 15, 1976 apply to the members of the Fiscal Council of the state-owned and the state-controlled enterprise relative to their powers, duties and responsibilities, to requirements and prohibitions regarding their vesting and remuneration, besides other provisions contained in the said Law.

§ 1 Natural persons, resident in Brazil, with academic qualifications compatible with their position, who have had an executive or advisory position in the government or a position as fiscal councilor or administrator in a company for at least three (3) years can be members of the Fiscal Council.

§ 2 The Fiscal Council will have at least one (1) member appointed by the controlling entity, who shall be a civil servant with a permanent employment with the public administration.

CHAPTER III

THE SOCIAL FUNCTION OF THE STATE-OWNED AND THE STATE-CONTROLLED ENTERPRISE

Art. 27. The state-owned and the state-controlled enterprise will have the social function of realizing the collective interest or fulfilling the need for national security expressed in the instrument that legally authorized its creation.

§ 1 The realization of the collective interest referred to in this article must be geared toward reaching economic well-being and socially-efficient allocation of the resources generated by the state-owned or the state-controlled enterprise, as well as toward the

following:

I – economically sustained increase of acess by consumers to the products and services of the public and the state-controlled enterprise;

II – development or use of Brazilian technology for the production and offer of products and services of the state-owned or the state-controlled enterprise, always in a justified manner.

§ 2 Pursuant to the law, state-owned and the state-controlled enterprises shall adopt environmental sustainability and corporate social responsibility practices compatible with the markets in which they operate.

§ 3 The state-owned and the state-controlled enterprise may enter into a covenant or a sponsorship agreement with an individual or a corporation for the promotion of cultural, social, sports, educational and technological innovation activities provided that they are proven to be linked to the strengthening of its mark, and the bidding process and contract rules set forth this Law must be observed, where applicable.

Annex D. Information sent by line ministries on their activities related to SOEs they supervise[53]

1. Government Secretariat of the President Cabinet

The Special Secretariat for Social Communication – SECOM is the division of the Secretariat of Government of the Presidency of the Republic – SEGOV, as established in Decree no. 9.980/2019, whose primary function is to guarantee the uniformity of the communication for the Federal Executive Branch. In this regard, Decree no. 6.555/2008 establishes SECOM as the central body of the Government Communication System of the Federal Executive Branch – SICOM, which, in turn, is composed of the administrative units and entities of the Federal Executive Branch that are responsible for managing Communication.

The specificity and technical specialty of the required services and overseen contracts are a fundamental condition for achieving the objectives pursued by SECOM and to ensure for the requirement to inform the public about the Federal Executive Branch public policies, besides assuring their guidance in contributing to the democratization of information. Therefore, it is necessary to:

- Have audio-visual communication products and services that are references for the public to access information and news about the Federal Executive Branch;
- Make available TV, radio and Internet content to disseminate, inform and clarify the public about public policies, actions, acts, guidelines and other information of interest, adopted by the Federal Executive Branch, contributing to the democratization of information;
- Have TV, Radio and Internet products in accordance with editorial lines provided by SECOM; and
- Maintain dialogue media between the Federal Executive Branch and citizens through TV, Radio and Internet.

Regarding the legal competence of **Empresa Brasil de Comunicação (EBC)** to provide services related to broadcasting, communication and related services, including the transmission of Federal Government acts and matter, as established in article 8, items I and VI, and §2, of Law no. 11.652/2008, and because EBC is the operator of the TVNBR channel and radio stations from the Federal Government, the process ends up with EBC being hired with exemption from bidding, as provided for in article 24, item VIII, of Law no. 8.666/1993.

For the provision of Media Monitoring, TV and Video services, Radio and Audio, Internet, and other related services, EBC is competent for: VI – provide services in the areas of broadcasting, communication and related services, including the transmission of Federal Government acts and matters.

[53] The information was provided by line ministries and translated by SEST.

Regarding the contracting form, the Law authorizes the Administration to:

§ 2 The bidding for:

(...) II – the hiring of EBC by bodies or entities of the public administration, in ordert to perform activities related to its object, provided that the contracted price is compatible with the market.

In this manner, it has been demonstrated that the prices charged by EBC are compatible with market prices, and, therefore, it was advisable to hire the aforementioned public company, in order to meet all the mandatory requirements to meet SECOM demands. This compatibility was demonstrated through price research carried on with market suppliers that were included in the formal procedures.

Thus, the contract was established in April of 2019, with a total annual contract value estimated in BRL 35 000 000.05 (thirty five million and five cents) distributed as follows:

- BRL 32 390 173.57 (Thirty-two million, three hundred and ninety thousand, hundred and seventy-three reais and fifty-seven cents) for the provision of products and services; and
- BRL 2 609 826.48 (Two million, six and nine thousand, eight hundred and twenty and six reais and forty eight reais) for production travel expenses.

The contract period is December 30, 2019 to December 30, 2020, and may be extended for equal or successive periods up to a maximum limit of 60 months, using additive terms.

SECOM public servant team, which is directly related to EBC activities is composed of 06 (six) people:

- 01 (one) Press Service Department Director of the Press Secretariat, Special Secretariat of Social Communication of the Government Secretariat of the Presidency of the Republic – DAS 101.5
- 01 (one) Department of Analysis and Strategy Press Director of the Press Secretariat, Special Secretariat of Communication Secretariat of Government of the Presidency of the Republic – DAS 101.5;
- 01 (one) Project Manager of the General Interaction Coordination with the Press of the Press Secretariat, Special Secretariat of Social Communication of the Government Secretariat of the Presidency of the Republic – DAS 103.4;
- 01 (one) General Coordinator of Interaction with the Press of the Press Service Department of the Press Secretary, Special Secretariat for Social Communication of the Government Secretariat of Presidency of the Republic – DAS 101.4;
- 01 (one) General Content Coordinator of the Department of Content and Management of Digital Channels of the Press Secretary, Special Secretariat for Social Communication of the Government Secretariat of Presidency of the Republic – DAS 101.4;
- 01 (one) technical advisor to the General Coordination for Interaction with the Press of the Press Secretariat, Special Secretariat of Social Communication of the Government Secretariat of the Presidency of the Republic – DAS 102.3.

SEGOV represents the federal government in acts related to EBC, in which the government is the main shareholder, through its representatives on the Board of Directors Administration (CONSAD). In accordance with legislation provisions, the Board of Directors is formed by nine members, namely:

1. A member appointed by SEGOV (supervisory ministry), who will exercise the Board presidency;
2. Two independent members appointed by the supervising ministry, as established according to article 22 of Law no. 13.303, of June 30, 2016, and of art. 36 of Decree no. 8.945, of December 27, 2016;
3. The Chief Executive Officer;
4. A member appointed by the State Minister of Education;
5. A member appointed by the State Minister for Tourism;
6. A member appointed by the State Minister of the Economy;
7. A member appointed by the State Minister for Science, Technology, Innovations and Communications; and
8. A member representing EBC employees, chosen accordingly to Law no. 12.353, of December 28, 2010, and the provisions of EBC Bylaws.

2. Regional Development Ministry

General Information

There are 3 state-owned companies linked to the Ministry of Regional Development – MDR:

- Trensurb - Urban Trains Company of Porto Alegre S.A.
- CBTU - Brazilian Urban Trains Company
- Codevasf - Development Company of the São Francisco and São Paulo Valleys Parnaiba

They act autonomously, with their management and supervision responsibility of their internal organs, as described in its Statutes and Internal Regulations. All follow legal provisions established for SOEs, such as Law no. 13.303/2016 and no. 12,353/2010 and Decree no. 8.945/2016, which also put them under the scrutiny of the Comptroller General of the Union – CGU and the Securities and Exchange Commission – CVM.

They are also under a process of constant improvement of their Statutes and Regulations, best market practices, including the requirements of the Governance of the Secretariat for Coordination and Governance of State Companies – SEST (IG-SEST) index, in which CBTU is at level 2 and Codevasf and Trensurb are at level 1, with Trensurb being one of the 14 companies that scored maximum in 2019.

In the specific case of CBTU, there is a statutory provision for plans and programs approved by MDR, in accordance with the National Road Plan and in the section that concerns the PND, all processes that are not related to day-to-day operations are approved by the Ministry of Economy in accordance with Decree no. 10.006 of September 5, 2019.

The monitoring of SOEs related to MDR is done through the counsellors appointed by e Ministry to the SOEs´ Boards of Directors and Fiscal Councils, according to the provisions, processes and procedures provided for in the and Internal Regulations of each of the companies.

Since its inception in 2019, MDR has improved its relationship with its related companies and in February 2020, a Special Advisory for Councils and Integrity was established to

articulate the demands of related companies and MDR, to support the work of the Directors appointed by MDR, as well as to centralize information regarding the performance of companies related to the Ministry. This Special Advisory also coordinates, together with competent bodies in the Ministry, the implementation of the Integrity Program launched by CGU and under implementation in MDR since 2019.

Available Resources in 2020

Human Resources

MDR possess in its ministerial structure the support of 1 (one) Special Adviser for Councils and Integrity and its Ombudsman, Internal Affairs and Special Internal Control Advisory structure, encompassing 5 (five) professionals in total. In addition to these, MDR also provides 12 appointments to SOEs positions. The following are appointed in the companies:

- Trensurb – 2 (two) Tax Advisers;
- CBTU – 2 (two) Fiscal Counsellors;
- Codevasf – 1 (one) Board Members and 2 (two) Fiscal Council Members;
- MDR – 1 (one) Special Adviser for Councils and Integrity, 1 (one) Ombudsman, 1 (one) Investigator and 2 (two) auditors, through the Special Internal Control Advisory.

Available Financial Resources through the Federal Government General Budget

In order to have a better understanding of the financial resources available to SOEs functions within MDR, the Ministry presented values that refer to 2019 and 2018, as they represent financial values that were effectively related to SOES:

- Trensurb – BRL 395 536 237.42 (2019) and BRL 425 051 907.42 (2018)
- CBTU – BRL 1 297 085 084.95 (2019) and BRL 1 122 091 408.11 (2018
- Codevasf – BRL 1 207 746 400.25 (2019) and BRL 1 313 3684 617.60 (2018)

Ministry of Regional Development Performance

PND

Due to the inclusion of CBTU and Trensurb in the National Privatization Program – PND by Resolution no. 60, of May 8, 2019, of the Council of the Investment Partnership Program of the Presidency of the Republic, and by the first article of Decree no. 10.006 of September 5, 2019, the State Minister of the Economy appoints the federal government representatives of the Board of Directors members to be elected at the shareholders' meeting.

Thus, despite the nominations´ responsibility by the Ministry of Economy, MDR made suggestions for these positions through Official Letter no. 269/2020/SECEX(MDR) from the Executive Secretary of MDR, in order to bring companies aligned with MDER objectives, including the National Regional Development Plan and the Regional Development Plans. This was also the reason for the request made by Official Letter no. 401/2020/SECEX(MDR) to SEDDM/ME to create additional positions or to formalize MDR appointments to all Boards of Directors of companies related to MDR, so that the Boards of Directors Management of these related companies include the vision and planning of regional development in their strategic instances. Without this alignment, there is double overwork in ministerial accountability, and it is required for companies that

participate in the PND to also be overseen by both the MDR and the Ministry of the Economy, and also through the Board of Directors accountability.

Appointment Process

Regarding the appointments made by the Ministry of Regional Development, in the case of Codevasf Board of Directors and the Fiscal Councils of all related SOEs, the appointment process is preceded by the candidates´ qualification as required by Law no. 13.303/2016 and Decree no. 8.945/2016 that describe the required competences for the appointment to the referred positions.

In addition, all SOES related to the Ministry of Regional Development have Statutory Eligibility Committees that issue an opinion on the appointments in order to meet best market practices and suggestions from the federal government's control bodies.

Control

The control of the relates SOEs occurs through three mechanisms:

1. Active participation of the appointed Directors by the MDR, with support from the Special Advisory Councils/SECEX/MDR since February 2020.
2. Continuous dialogue, since February 2020, through budget preparation and execution between the financial budget department DIORF/MDR and the coordination, management or executive management of each SOE.
3. Constant improvement through appointed Directors by the MDR and interaction in the Audit Working Group – GTA between the Special Internal Control Advisory – AECI/MDR and the internal auditors of each company.

3. <u>Defense Ministry</u>

Four SOEs are related to the Ministry of Defense: (1) Empresa Gerencial de Projetos Navais– Emgepron; (2) Amazônia Azul Tecnologia de Defesa S.A. – Amazul; (3) Indústria de Material Bélico do Brasil – Imbel; e (4) NAV Brasil Serviços de Navegação Aérea S.A. – NAV Brasil. However, it is necessary to clarify that the relationship is maintained through the Armed Forces Command and its institutions that participate more directly in the companies´ governance.

With this in mind and the required time for the Ministry of Defense response, the answers to SEST´s consultation was sent by the Supervisory Ministry, the Defesne Ministry, which sent relevant information obtained from the contact made with internal agents. If more information is necessary, it requires consultation to the Command.

Once this central point has been elucidated, information on the items is as follows:

Financial and human resources employed in the functioning of the departments of the Supervisory Ministry for the policy and ownership of the linked state companies.

Financial resources

Budget and Institutional Organization Secretariat – SEORI

Department of Planning, Budget and Finance – DEORF

The Defense Ministry does not have a specific sector to follow/monitor SOEs and the performance is verified in accordance with the subject demands. Thus, there is no way to appoint the amount of resources, in the organizational structure of the central administration directed to the activity.

Human Resources

Budget and Institutional Organization Secretariat – SEORI

Department of Organization and Legislation – DEORG

Three DEORG/SEORI public servant are part of the team responsible for the appointment analysis for administrators and Fiscal Council members of the companies, and verify the fulfilment of requirements and absence of restrictions for the respective functions and examine conformity of the evaluation process of administrators and Fiscal Council members.

Personnel, Education, Health and Sports Secretariat – SEDESP

Personnel Department – DEPES

DEPES/SEDESP is the interlocutor of the Ministry of Defense for the purpose of personnel policy (public admission exams, competences, legislation, remuneration issues, etc.) of SOEs. Public servants from this department work together with SOEs representatives to carry out necessary coordination on these topics. The Civil Personnel Sector Division (DIPEC) of DEPES, has 08 (eight) civil public servants, who perform their activities in accordance with the provisions of the Internal Regulations of MD - Normative Ordinance MD no. 12/2019 (art. 11, IV).

Art. 11. The Civil Personnel Sector Division, within the scope of the Ministry of Defense, is responsible for: IV – coordinate and monitor actions related to the remuneration policy for civilian personnel of public companies linked to the Ministry of Defense.

Thus, DEPES works in processes aimed to review a collective bargaining agreements or convention and to revise job and remuneration plans, which must be sent by the Supervisory Ministry for analysis to the Ministry of Economy (ME), pursuant to the provisions in article 1 of Decree no. 3.735/2001. As a result, Ordinance DEST/MP no. 27/2012, details which documents must be sent for analysis by the Ministry of the Economy. The verification of these documents is carried out within the scope of DIPEC/DEPES, without analysing the merits of the demand, as it usually comes with a statement from the company's Fiscal or Administrative Council, as well as from the corresponding Command Office.

DIPEC/DEPES employees participate in strategic alignment meetings, coordinated by SEST/ME, related to collective labour agreements negotiated within the scope of each SOE. These meetings are held close to the base date of each SOE review or in the case of exceptional needs. The results of these meetings are shared with the Command to which the SOE is related with the company's management.

Details on the functioning of the relationship, such as provisions set out in Decree, formal procedures and description of the bodies involved.

Budget and Institutional Organization Secretariat – SEORI

Department of Organization and Legislation – DEORG

According to item VI of article of the Annex to Decree no. 9.659, of January 1, 2019, the following state-owned companies are related to the Ministry of Defense: a Empresa Gerencial de Projetos Navais - Emgepron; a Amazônia Azul Tecnologias de Defesa S. A. - Amazul; a Indústria de Material Bélico do Brasil - Imbel; e a NAV Brasil Serviços de Navegação Aérea S.A. - NAV Brasil.

However, it is important to note that these entities are related to the Ministry of Defense through the Armed Forces Command: the Navy Command, in the cases of Emgepron and

Amazul; Army Command, in the case of Imbel; and the Air Force Command, in the case of NAV Brasil. These companies are also part of the Regimental Structures of the Forces and not that of the Ministry of Defense.

This characteristic, together with the provision established in Article 4 of Complementary Law no. 97, of June 9, 1999, which assigns the Commanders of the Navy, Army and Air Force the direction and management of the respective Force, implies that supervision of state companies related to the Ministry of Defense is performed by each of the Commands.

Regarding the requirements verification for the appointment of administrators and members of the Fiscal Council under the responsibility of DEORG, the procedures are determined by Law no. 13.303, of June 30, 2016, which provides for the legal status of the public company, the mixed economy and its subsidiaries, within the scope of the Union, the States, the Federal District and the Municipalities, and by Decree no. 8.945 of December 27, 2016, which regulates it.

How the Supervisory Ministry acts to represent the Union in acts related to state-owned companies in which the State has an equity interest.

Budget and Institutional Organization Secretariat – SEORI

Department of Organization and Legislation – DEORG

The singularity of the organizational format of the Ministry of Defense, integrated by the Commands of the Navy, the Army and the Air Force, which are subordinate to the Minister of State for Defense but which, however, have their own structures, as provided for in art. 3 of Complementary Law no. 97, of 1999, makes representation in acts related to state companies that are relate to the Ministry of Defense to be done by the Navy, Army and Air Force Commands, according to the public company that is part of each regulatory structure.

4. **Ministry of Science, Technology, Innovations and Communications**

Financial and human resources employed in the functioning of the departments of the Supervisory Ministry for the policy and ownership of the linked state companies.

At MCTIC there are final secretariats responsible for public policies and there is a subsecretary that, among its attributions, is responsible for the governance of state-owned companies.

In this subsecretary, regarding human resources provided for SOE governance, there is a general coordinator, a coordinator and three analysts, in addition to the undersecretary. It is necessary to consult other secretariats of this Ministry to find out the resources linked to public policies.

With regard to financial resources, in this Subsecretariat, there are three functions: FCPE 101.4, FCPE 101.3 and DAS 102.1.

Details on how the relationship works, such as provisions specified in Decree, formal procedures and description of the bodies involved.

In addition to the internal regulations of this Ministry, provided for in Decree no. 9.677, of 01.02.2019, the following norms are used:

- Law no. 13.303, of June 30, 2016;
- Decree no. 8.945, of December 27, 2016;
- DEST Ordinance no. 27, of December 12, 2012;
- Law no. 6.404, of December 15, 1976;

- Decree-Law no. 200, of February 25, 1967;
- CGPAR resolutions; and
- Decree no. 9.794, of May 14, 2019.

How does the Supervisory Ministry act to represent the federal government in acts related to state-owned companies in which the State has an interest.

In state-owned companies, the role of the Supervisory Ministry is in the appointment of Board Members, Directors and Fiscal Council members. This Supervisory Ministry also manifests opinions regarding SOEs matters on contracting long-term credit operations; sponsorship of benefit plans, management of closed supplementary pension entities; and personnel policy, wages, benefits and advantages.

5. Ministry of Agricultue, Livestock and Food Supply

The state-owned companies related to MAPA, as stated in Decree no. 10.253, of February 20, 2020, are (i) public companies: Companhia Nacional de Abastecimento – Conab and Empresa Brasileira de Pesquisa Agropecuária – Embrapa; and (ii) mixed capital companies: Centrais de Abastecimento de Minas Gerais S.A. – Ceasa/MG and Companhia de Armazéns e Silos do Estado de Minas Gerais S.A. – CASEMG, in liquidation.

The Ministry of Agriculture, Livestock and Food Supply exercises ministerial oversight, primarily in accordance with the terms of Decree-Law no. 200, of February 25, 1967, Law no. 13.303, of June 30, 2016, and Decree no. 8.945, of 27 of December 2016, which regulates Law no. 13.303/2016. That is through the guidance, coordination and control of the activities of state companies, aiming to ensure the achievement of the objectives set out in the constitutive acts, in harmony with the government's policy and programming, administrative efficiency, without any interference in the administration and operation of the state company, preserving its autonomy.

MAPA makes appointments to the executive boards, including presidents, as well as representatives of the Board of Directors and Fiscal Council, taking into account the legal requirements for these appointments, as well as receiving systematic information and reports that allow the monitoring of all the entity activities, approves accounts, reports and balance sheets, directly or through the ministerial representatives in the Assemblies and management or control bodies; fixes personnel and administration expenses; sets criteria for advertising, dissemination and public relations expenses; etc

As for the exercise of ministerial oversight, which is an inherent activity, there is no direct expenditure by this Ministry on the supervision itself, but Decree no. 10.253/2020 provides that the Executive Secretariat is responsible for assisting the Minister of State in defining guidelines, in the supervision and coordination of the activities of the related entities, as well as supervising, within the scope of the Ministry, the activities related to them and promoting and articulating the interaction of the centrTal administration of the Ministry with state-owned companies and their related entities for the improvement of governance and management.

In addition, there is in its structure the General Coordination of Related Entities and Collegiate Bodies, a unit directly related to the Executive Secretariat, with 7 (seven) public servant and 1 (one) outsourced, as described below:

- 1 (one) General Coordinator - DAS 101.4;
- 2 (two) Coordinators - DAS 101.3;

- 4 (four) Assistants - DAS 102.2;
- 1 (one) outsourced secretariat technician.

The General Coordination of Related Entities and Collegiate Bodies is responsible, basically for (Note: the Internal Regulation is under review and pending approval):

- assist the Executive Secretary in supporting ministerial oversight with respect to Entities relates to the Ministry;
- guide and conduct the activities related to the appointments of the Ministry's representations in the Councils of the state-owned companies;
- manage and inform the Collegiate Body Management System, including executive boards and councils of state-owned companies;
- guide related entities regarding the guidelines and standards issued by the central bodies;
- monitor the activities of the executive boards and councils in which MAPA has representatives;
- performance of the duties of the members - members and alternates, monitoring and consolidating the evaluations received;
- register and monitor the documents of legal basis that make the appointments for members or substitutions of members, members and alternates;
- keep the registration information of full and alternate members of the Collegiate Bodies of companies linked to MAPA up to date;
- analyse the minutes of the linked Companies' Councils and make specific follow-up records.

In addition, there are several other MAPA bodies or units that work on the issue, especially:

- Special Advisory on Government and Institutional Relations: coordinates and guides the work of the Ministry and its entities linked to the National Congress and political parties;
- Special Internal Control Advisory: supports the ministerial supervision of related entities, in conjunction with the respective internal audit units, including regarding the planning and results of the work;
- Department of Governance and Management: interacts with the central organ of the federal systems – planning and federal budget system; federal financial administration system (regarding financial programming activities), organization and institutional innovation system; civil personnel system of the federal administration, regarding training activities; and the Brazilian intelligence system and guides the related to entities regarding compliance with the established rules;
- Legal Consultancy, sectoral body of the Federal Attorney General: assists the Minister of State in the internal control of the administrative legality of the acts of his related entities;
- Secretariat of Innovation, Rural Development and Irrigation: plans, promotes, guides, coordinates, supervises and evaluates, within the bound entities, activities related to a) processes to support innovation, including the development and adoption of cutting-edge technologies and new inputs; b) innovations that add value to agricultural, livestock, fisheries, aquaculture and extractivist products and

processes; c) conservation, protection and management of genetic resources of interest to agriculture, livestock, aquaculture, fishing and food; d) bioeconomics of species of agricultural interest; e) good agricultural practices; f) unconventional, integrated and sustainable production; g) geographical indication, designation of origin, collective marks and certification of agricultural products; h) promotion of the agricultural sector with an emphasis on innovation, rural development, the development of production chains and irrigation; i) infrastructure for rural areas within the scope of regional development projects; j) soil and water management and conservation; k) recovery of degraded areas and forest restoration; l) adaptation to the impacts caused by climate change; and m) development of cocoa farming and associated agroforestry systems;

- Department of Support to Innovation for Agriculture: proposes and implements plans, programs, projects, actions and activities aimed at the implementation of a governance and management model for the linked entities' germplasm banks, including genetic resources,

6. Ministry of Infrastructure

(I) Department of Infrastructure Development and Development

Initially, it is necessary to make some comments on the structure of Infrastrucute Ministry – MINFRA and on the competences of the bodies and entities that comprise it. According to Decree no. 9.676, of 2019, eleven companies are part of the the Ministry of Infrastructure.

Of these eleven companies, eight qualify as "mixed capital companies". They are (i) Companhia Docas do Ceará – CDC, (ii) Companhia das Docas do Bahia – CODEBA, (iii) Companhia Docas do Espíritos Santo – CODESA, (iv) Companhia Docas do Estado de São Paulo – CODESP, (v) Companhia Docas do Pará – CDP, (vi) Companhia Docas do Rio Grande do Norte – CODERN, (vii) Companhia Docas do Rio de Janeiro – CDRJ and (viii) Companhia Docas do Maranhão – CODOMAR, in liquidation process. The other three companies qualify as "public companies". They are (i) Engenharia, Construções e Ferrovias S.A. – VALEC; (ii) the Brazilian Airport Infrastructure Company – Infraero and (iii) Planning and Logistics Company – EPL.

As informed by SEST/ME, the OECD Guidelines on Corporate Governance for State Controlled Companies are applicable to companies that are under the control of the State, and that the State is the owner and final beneficiary of the majority of the voting shares or the State to exercise an equivalent degree of control.

The eleven state-owned companies related to the Ministry of Infrastructure operate in different sectors and branches of infrastructure and their actions belong, if not entirely, mostly to the Union.

Regarding companies that operate in the civil and airport aviation sector, art. 15 of Decree no. 9.676, of 2019 establishes the National Civil Aviation Secretariat – SAC competence for advising the Minister of State and the Executive Secretary in the coordination and supervision of the bodies and entities of the civil aviation system. Therefore, SAC is the technical unit responsible for assisting the Ministry in the coordination and supervision of Infraero, given the company's object relative to the airport infrastructure.

Regard companies that operate in the waterway and port transport sector, art. 20 of Decree no. 9.676, of 2019, establishes the National Secretariat of Ports and Waterways Transport – SNPTA competence for advising the Minister of State and the Executive Secretary in the

coordination and supervision of the bodies and entities related to the waterway and port transportation sectors. Thus, it is up to SNPTA to assist the Ministry in the coordination and supervision of the eight Dock Companies mentioned above.

Regarding companies that operate in the land transport sector, article 25 of Decree no. 9.676, of 2019 establishes the National Secretariat of Land Transportation – SNTT the competence for advising the Minister of State and the Executive Secretary in the coordination and supervision of the organs and related entities of the traffic and transportation sectors, road, rail, cargo and passenger services and special projects. In this manner, it is the responsibility of SNTT to assist the Ministry in the coordination and supervision of VALEC.

Finally, in relation to EPL, it should be noted that this company aims to provide services in the area of projects, studies and research aimed at subsidizing the planning of infrastructure, logistics and transport in Brazil.

In this regard, although Decree no. 9.676, of 2019, does not expressly attribute the Secretariat for Promotion, Planning and Partnerships – SFPP competence for advising in the coordination or in the supervision of indirect administration entities, it is SFPP that gives guidance to entities related to the Ministry for the fulfilment of the guidelines of the national transport policy referred to in item I of the aforementioned Decree, that is, of formulating and evaluating the national transport policy and proposing guidelines for governmental actions, in articulation with the secretariats of the Ministry.

Among the specific units of SFPP, the Department of Infrastructure Development and Development – DEFOM has the competence, using subsidies from the General Coordination of Restructuring, Privatization and Institutional Reorganization – CGRI, to evaluate and propose mechanisms for restructuring, privatization and institutional reorganization of bodies and entities linked to the Ministry.

In this sense, despite the fact that it is not DEFOM´s responsibility to supervise the policy or ownership of state-owned companies related to MINFRA, it is worth noting that CGRI currently has 1 (one) public servant in its organizational structure for general coordination of the unit. In addition to the Director of DEFOM, the Department of Infrastructure Development and Development currently has 2 (two) public civil servants that carry out, among others, activities related to the processes of restructuring, privatization and institutional reorganization of bodies and entities linked to the Ministry.

Notwithstanding SFPP being a transversal technical unit, that is not associated to a specific transport infrastructure sector, and for which the competence is not attributed for assisting in the coordination or in the supervision of the entities linked to the Ministry of Infrastructure, there is no prejudice, for the purpose of clarification to SEST/ ME and the OECD, in presenting information related to projects of restructuring, privatization or institutional reorganization involving state-owned companies related to MINFRA, monitored by this Department.

There are five projects for restructuring, privatization or institutional reorganization involving state-owned companies that are currently monitored by the Department. Below is information about each project.

a) CODOMAR: This involves the company's liquidation project, under the terms of Decree no. 9.265, of 2018, which included it CODOMAR in the National Privatization Program – PND. The company´s dissolution is based on the absence of operational activities. Port assets previously under the scope of CODOMAR - Porto de Manaus and Porto de Itaqui - were transferred to other federal entities, which is why their maintenance is not justified.

As an example, the estimated value of the expenditures associated with CODOMAR´s liquidation process, although not managed by SFPP, but by the Executive Secretariat of MINFRA, in 2020, amounts to the amount of BRL 4.5 million.

July 13, 2020 is estimated date to finish the company's liquidation, after which, the documents are registered and filed, and the company is extinguished.

b) CODESA: This is a privatization project, based on the terms of Decree no. 9.852, of 2019, according to which the Docas do Espírito Santo Company – Codesa was qualified in the Investment Partnership Program – PPI of the Ministry of Economy and the public port services currently provided by the Ports of Vitória and Barra do Riacho, in the State of Espírito Santo.

   Subsequently, on August 15, 2019, the Ministry of Infrastructure, through SFPP, signed a contract with the National Bank for Economic and Social Development – BNDES to contract technical support services for the structuring and implementation of the privatization of Companhia Docas do Estado do Espírito Santo – Codesa and/or the granting of a joint administration concession, separately or in blocks of the organized ports of Vitória, Vila Velha and Barra do Riacho, as well as of the port facilities of Praia Mole, in Espírito Santo Santo, within the scope of the Investment Partnership Program – PPI of the Presidency of the Republic.

   The budgetary allocation for this project comprises the amount of BRL 5 million, which was allocated in the budgetary action 20UC – Studies, Projects and Transport Infrastructure Planning, in order to provide resources for reimbursement of expenses with studies and remuneration contractor, in the case, BNDES, in the event of failure of the auction. In case of success in the auction, the contractor's expenses (reimbursement and remuneration) will be borne by the winning bidder.

   The estimated closing date for the project, that is, the auction date that will formalize the transfer of assets to the private sector, is November 12, 2021.

c) CODESP: This is a privatization project, based on Decree no. 10.138, of 2019, which qualified the Organized Port of Santos, located in the State of São Paulo, under the Investment Partnership Program of the Presidency of the Republic – PPI, and its related public port services, for the purposes of privatization studies. Subsequently, after the privatization of CODESP and the Organized Port of São Sebastião (CDSS) was defined, on May 4, 2020, the contract was signed by the Ministry, through SNPTA, and BNDES for the provision of technical services. of support, evaluation, structuring and implementation of a project for the participation of the private sector in the provision, management and operation of the Ports of Santos and São Sebastião and related services, considering in its scope the possibilities of both divestment and privatization of the port authority and its variations, within the scope of the Investment Partnerships Program – PPI.

   In the case of CODESP and CDSS, although the contract was signed by SNPTA, it is worth noting that the contract amounts to BRL 23 896 527.60, according to Contract Statement 1/2020, published in the Federal Official Gazette of May 4, 2020.

   The estimated end date for the project, that is, the auction date for the transfer of assets to the private sector, is May 11, 2022.

d) (d) INFRAERO: This is a project for the sale of Infraero's shareholdings in the concessionaires of the international airports of Guarulhos/SP, Brasília/DF, Galeão/RJ and Confins/MG, whose operation was transferred to the private sector. The project, qualified under the PPI by Decree no. 9.972, of 2019, is coordinated by Infraero, with monitoring by SAC and this SFPP.

For information purposes, despite the fact that the contract is not managed by SFPP, it should be noted that the value of contract No. 0472-ST/2019/0001, signed by INFRAERO, is BRL 4 365 000.00. It is estimated that the end date for the project is the date of execution of the sale of the shares, March 18, 2021.

e) VALEC and EPL: This is an institutional reorganization project for Empresa de Planejamento e Logística S.A. – EPL and Engenharia, Construções e Ferrovias S.A. – VALEC, related to the Ministry of Infrastructure – Minfra, which aims to to rationalize the provision of public services assigned in the infrastructure and transport logistics sectors.

Through Ordinance no. 35, 2020, a Working Group was created, involving SFPP, the Executive Secretariat of MINFRA, SNTT, VALEC and EPL, for the coordination and execution of governance and project monitoring actions to subsidize the institutional reorganization of EPL and VALEC.

(II) National Secretariat for Land Transport

D. Responses referred to VALEC Engenharia, Construções e Ferrovias S.A. and EPL - Empresa de Planejamento e Logística S.A.

(i) Financial and human resources employed in the functioning of the departments of the Supervisory Ministry for the policy and ownership of the linked state companies.

Decree no. 9.676, of January 2, 2019, which approves the regulatory structure and positions of the Ministry of Infrastructure – Minfra, in its Annex I, Chapter II, presents VALEC Engenharia, Construções e Ferrovias S.A. and EPL – Empresa de Planejamento e Logística S.A. as related companies. In this same legal provision there is the Department of Rail Transport – DTFER, part of the National Secretariat of Land Transport, which has constant interaction with these companies.

DTFER has in its organizational structure 17 (seventeen) public servants, from the career of Infrastructure Analyst – AIE in office, 01 (one) high level technical assistant and 03 (three) secretaries for administrative support, who help the Coordinations of General Railway Management, of Railway Grants and of Railway Projects (CGGF, CGOFER and CGPF, respectively).

Therefore, the financial and human resources comprise the staff of DTFER, their respective salaries and, eventually, financial resources for daily expenses and travel tickets for technical trips. It should also be noted that the Department does not have a budget for direct execution with the companies.

(ii) Details on the functioning of the relationship, such as provisions stipulated in Decree, formal procedures and description of bodies involved.

The relationship with the aforementioned companies takes place within the scope of Decree no. 9.676, of January 2, 2019, especially with regard to article 25 and article 30, which present the competences of the National Secretariat for Land Transport-SNTT and the Secretariat for Promotion, Planning and Partnerships-SFPP, respectively. Furthermore, the disciplining of Minfra's relationship with its affiliates is stipulated in the companies' Bylaws and Internal Regulations.

As for the relationship between this Ministry and Valec, it is worth mentioning the nature and denomination of the company contained in its Internal Regulations, available at https://www.valec.gov.br/documentos/RegimentoInternoVALEC.pdf

Art. 2 Valec - Engenharia, Construções e Ferrovias S.A. is a public company, organized as a private limited company, controlled by the Union and linked to the Ministry of Infrastructure.

Similarly, EPL states in its Bylaws its institutional link and alignment with Minfra's guidelines, available at https://www.epl.gov.br/estatutosocial

Art 1 §1 The EPL is related to the Ministry of Infrastructure, with legal personality under private law, its own assets, administrative and financial autonomy.

(...)

Art 5 For the fulfilment of its purpose, the following guidelines will be observed by EPL:

I - adaptation, through its work programs, projects and activities, to the priorities and guidelines established by the Ministry of Infrastructure.

(iii) How the Supervisory Ministry acts to represent the Union in acts related to state-owned companies in which the State has an equity interest.

Minfra, as the Supervisory Ministry, represents the Union in acts related to Valec through the performance of those nominated to the Board of Directors and Fiscal Council, in accordance with art. 42 and Art 61 of Valec's Bylaws (mentioned below), respectively, available at https://www.valec.gov.br/documentos/Estatuto%20Social%20da%20Valec%20(67%C2%AA%20AGE%20de%2006.12.2017).pdf

Art. 42. The Board of Directors will consist of 6 (six) members, elected by the General Meeting and removed by it at any time, being:

I – 03 (three) representatives appointed by the Minister of Transport, Ports and Civil Aviation, one being the Director - President of Valec;

II – a representative appointed by the Minister of State for Planning, Development and Management;

III – a representative of Valec employees, pursuant to Law no. 12.353, of December 28, 2010, and its regulations;

(...) Art. 61. The Fiscal Council will be composed of three effective members and alternate respective, being:

I – 01 (one) appointed by the Ministry of Economy, as representative of the National Treasury, who must be a public servant with a permanent employment relation with the Public Administration; and

II – 02 (two) members appointed by the Ministry of Transport, Ports and Civil Aviation.

Similarly, the representation of the Union in the EPL is done through Minfra's performance on the Board of Directors and the Fiscal Council, with this Ministry having fixed seats in the respective instances, according to art 44 and art 63 of the EPL Bylaws (mentioned below), available at https://www.epl.gov.br/estatuto-social

Art. 44. The Board of Directors is composed of 05 (five) members, namely:

I – 03 (three) representatives appointed by the Ministry of Infrastructure;

(...)

Art. 63. The Fiscal Council will be composed of 3 (three) effective members and alternate members, being:

I – 02 (two) members appointed by the Ministry of Infrastructure.

(III) National Secretariat for Ports and Water Transport – SNPTA – General Coordination of Port Management - CGGP

(i) financial and human resources employed in the functioning of the departments of the Supervisory Ministry for the policy and ownership of the linked state companies.

Currently, the General Coordination has 4 (four) public servants and 11 collaborators for technical follow-up on the proposals of personnel and salary policies of the companies supervised by this National Secretariat of Ports and Waterway Transport –SNPTA. Regarding resources, it is worth informing that the General Coordination of Port Management does not have its own budget for direct execution with the companies, however it is possible to provide such resources when appropriate when hiring technical and specialized consultancies, or specific actions.

(ii) Details on the functioning of the relationship, such as provisions stipulated in Decree, formal procedures and description of the bodies involved

According to Decree no. 9.676, of January 2, 2019, art. 2, item III, the Department of Port Management and Modernization has the incumbency for expressing technical opinions on the proposals of personnel and salary policies of the companies supervised by the National Secretariat of Ports and Water Transport.

Considering its attributions, the General Coordination highlights some aspects in the relationship, such as the Program named Monthly Variable Honorary – HVM, composed of Management Goals, an instrument that aims to operationalize the policies and strategic guidelines of this Supervisory Ministry (SNPTA-MINFRA) with companies state-owned companies, Dock Companies, Federal State Companies of the Port Sector, and consist of operational tactical actions, which derive from the Annual Variable Remuneration program – RVA and impact the payment of the Variable Fees of the Executive Directors of these Companies, proportionally to the level of achievement of the agreed management goals.

Among other actions, the management goals contribute to the compliance of the provisions of Article 64 of Law no. 12.815, of June 5, 2013.

Article 64. The Dock Companies will enter into commitments with the Presidency of the Republic's Ports for commitments and targets for business performance, which will establish, under the terms of the regulation:

I – objectives, goals and results to be achieved, and deadlines for their achievement;

II – performance evaluation indicators and criteria;

III – additional remuneration due to its compliance; and

IV – criteria for professionalizing the management of Docks.

Law no. 13.303/2016 establishes that the investiture in positions of directors in Public Companies and Mixed Economy Companies, the commitment to goals and results, among other requirements and specific goals to be achieved. Decree no. 8.945, which regulates, Law no. 13.303/16, specifies in its article 37, that Federal State Companies must assume the commitment to goals and results. It should also be noted that SNPTA is preparing an Ordinance to regulate the mechanism for defining and monitoring the Management Goals between the National Secretariat for Ports and Water Transport - SNPTA/MINFRA and the Dock Companies.

Also within the scope of the General Coordination, there has been the implementation of the Port Management and Modernization Program – PMGP, which aims to promote the improvement of the management of dock companies related to the Ministry of Infrastructure, seeking to increase efficiency through the review and restructuring of processes, improvement of systems guidelines, governance rules and personnel policies.

It is also worth mentioning that, in order to achieve a management model capable of making ports increasingly profitable, competitive, self-sustainable and autonomous, the Federal Government has been continuously improving the planning of the national port sector.

An example of this initiative is the establishment of instruments that have come to form the planning for the national port sector, namely: the National Port Logistics Plan (PNLP), the Master Plan, the Development and Zoning Plan (PDZ) and the Plano Of Grants (PGO). Through these instruments, the Ministry of Infrastructure promotes the integration of sectorial planning, which guarantees the efficient allocation of resources from the prioritization of investments, avoiding overlapping efforts; direct actions, improvements and short, medium and long-term investments in ports and their accesses; and the establishment of actions and goals for rational expansion and optimization of the use of port areas and facilities.

Another highlighted mechanism is Ordinance no. 545, of September 4, 2019, which defines the procedures related to the indication, selection, appointment and designation of occupants of commissioned positions and commissioned functions within the scope of the Ministry of Infrastructure positions, which establishes a general governance rule for public companies and mixed economy companies related to the Ministry of Infrastructure. The legal provision creates the obligation of companies and mixed-economy companies related to Minfra regarding the application of Decree no. 9.727, of March 15, 2019, creating criteria for the indication and appointment of positions and functions of its staff, in addition to promoting the equivalence to the structure of positions of the DAS-Group of the Executive Power, from the position of Special Nature - NES, pursuant to §3 of art. 2 and Annex VI, of Ordinance no. 121, of March 27, 2019, of the Ministry of Economy. This measure reinforces the governance rules established in Law no. 13.303/2016, increasing the technical qualification of professionals in the staff of federal dock companies.

Ordinance no. 574, of December 26, 2018, was also highlighted, which regulates the decentralization of competences related to the indirect exploitation of port facilities in ports organized by the respective port authorities. In short, it establishes the possibility of delegating certain powers, related to the operation of port facilities, to the respective port administrations, whether delegated or not.

The main objectives of Ordinance no. 574, edited precisely to regulate how this decentralization process will take place, are to improve the efficiency and speed of the decentralization of activities related to the exploration of organized ports to the respective port administrations; and the implementation of management, monitoring and inspection tools by the authorities.

Still on these provisions, it is worth mentioning that the Undersecretary for Governance and Integrity – SGI, together with the General Coordination of Port Management, makes visits to the Dock Companies, called "Ministerial Supervision", of the Radar Anticorruption program, launched by the Ministry of Infrastructure as an agency supervisor, in May 2019, with the objective of verifying the results of the entities, assessing the efficiency of management and seeking to improve governance.

Such visits are carried out by representatives of the Executive Secretariat, the Undersecretary for Governance and Integrity, the Undersecretary for Planning, Budget and Administration, Special Advisory on Internal Control, Ombudsman and Internal Affairs.

(iii) How the Supervisory Ministry acts to represent the Union in acts related to state-owned companies in which the State has an equity interest.

Regarding role of the Supervisory Ministry to represent the Federal Government in acts related to state-owned companies, the participation through a representative of the Minsitry on the Board of Directors in the Compania Docas is noteworthy. The strategic decision-making body was established in the form of art. 138, and following of Law no. 6.404/1976, Art 16 and Law no. 13.303/2016, in addition to their respective Bylaws. Its powers, established by Law no. 13.303/2016 and Decree no. 8.945/2016, are of strategic guidance for elective and supervisory powers, not covering operational or executive positions, aiming to carry out the following guidelines: I – promote and observe the corporate purpose of the Company; II – oversee of the interests of the shareholders, without losing the overview of other interested parties; III – to ensure the continuity of the Company, within a long-term and sustainability perspective, which incorporates economic, social, environmental and good corporate governance considerations in the definition of business and operations; IV – formulate guidelines for the Company's management, which will be reflected in the annual budget; V – incorporate strategies and guidelines that are effectively implemented by the board, without, however, interfering in operational matters; and VI – prevent and manage situations of conflict of interest or divergence of opinions, so that the interest of the Company always prevails.

Among the tools used, the so-called ministerial supervision, there is also the Fiscal Council, which is a collegiate body that is not part of the company's management, which, through its supervisory function, is responsible for representing the shareholders, following the action of administrators. Its general objective is to verify compliance with legal and statutory duties and protect the interests of the company and shareholders in general. The State-Owned Companies Law, previously mentioned, made the Fiscal Council a mandatory and permanent body in all Federal State-owned companies.

Another means of the so-called ministerial supervision, is the performance of the Port Authority Council (CAP), where each port authority council must be constituted by 4 representatives of the Federal Government, with at least one member of the National Secretariat of Ports and Water Transport and that presides the Council. The others selected, upon prior consultation, are the federal agencies intervening in the organized ports, according to item a, Item I, article 3 of Ordinance no. 244 of 26 November 2013. The CAP also has the participation of representatives indicated by the Maritime Authority, Port Administration, State Government, Municipality where the port is located, Business Class and Class of Port Workers.

According to Decree no. 8.033/13, the Port Authority Council is responsible for approving its internal regulations, as well as suggesting: I – amendments to the port operating regulation; I – changes in the port's development and zoning plan; III – actions to promote the rationalization and optimization of the use of port facilities; IV – measures to promote industrial and commercial action in the port; V – actions to develop mechanisms to attract cargo; VI – measures aimed at stimulating competitiveness; and a VII – other measures and actions of interest to Porto.

(IV) National Civil Aviation Secretariat - Investment Department

Information provided in this Informative Note is limited to the programs in execution within the scope of this Investment Department and, in accordance with the powers provided for in art. 16 of annex I of Decree no. 9.676/2019:

Art.16. The Investment Department is responsible for:

- Assist the National Civil Aviation Secretary in matters related to investments in airport and civil aeronautical infrastructure;
- Propose and execute actions, plans and investment programs in airport and civil aeronautics infrastructures, by means of contracts, agreements and similar instruments;
- Monitor and monitor the application of FN AC resources for investments in airport and civil aeronautical infrastructure; and
- Support federative entities in the implementation of airport and civil aeronautical infrastructure projects

(i) Financial and human resources employed in the functioning of the departments of the Supervisory Ministry for the policy and ownership of the linked state companies.

Within the Investment Department, with regard to the human resources used to monitor the investment actions of the Brazilian Airport Infrastructure Company - Infraero, this is carried out by 17 (seventeen) public servants, among them the Director and employees of the General Coordination of Investment and Management of Processes and Contracts.

Infraero is responsible for preparing, executing and managing its Investment Plan, which is periodically monitored as to its physical and financial execution by the Investment Department. The referred plan is presented to the Department at a technical meeting, with the possibility of suggesting adjustments, which is subsequently evaluated by Infraero's technical area and consequently validated by the Board, including changes in investments, which are foreseen and accepted by SAC.

In order to monitor the physical and financial execution of the investments made by Infraero with funds from the National Civil Aviation Fund – FNAC, there is no expenditure of specific financial resources, only expenses with travel tickets and daily expenses for technical visits.

(ii) Details on the functioning of the relationship, such as provisions stipulated in Decree, formal procedures and description of the bodies involved.

On this topic, monthly monitoring meetings are held between the parties. More detailed negotiations are also carried out when the Annual Budget Law is drafted and for possible adjustments regarding investment changes or inclusions. There are formal procedures defined for acceptance of the Investment Plan for works and equipment executed with resources from the National Civil Aviation Fund – FNAC.

(iii) how the Supervisory Ministry acts to represent the Union in acts related to state-owned companies in which the State has an equity interest.

This action is not included as one of those exercised by the Investment Department, provided for in art. 16 of annex I of Decree no. 9.676/2019. It is understood that this performance action occurs through the Legal Consultancy of this Ministry, which should be consulted on the subject.

7. CAS

The General Coordination of Corporate Affairs of the PGFN does not have its own budget, as it is a unit of the PGFN, and, therefore, there was no information on financial resources. The only information requested and that was provided was in relation to human resources: CAS uses the workforce of 11 public attorneys from the Ministry of the Economy to represent the Union in corporate acts of companies in which the National Treasury holds

shareholdings, in addition to providing consultancy, in corporate matters, to the various bodies of the Ministry of Economy.

PGFN's performance in corporate matters is provided for in the following legislation: (i) Decree-Law 147, of February 3, 1967 (art. 1, V, c / c art. 10, V, "a", " b "," c "and" d "); (ii) Decree no. 89.309, of January 18, 1984; (iii) Ordinance MF 36, of January 24, 2014, which approves the Internal Regulations of the PGFN (art. 10), and this ordinance describes how the PGFN acts in representing the Union in corporate acts and consultancy on corporate matters.

Annex E. Summary of CGU audits on national SOEs` procurement internal rules

The assessment of adherence of SOEs to Title II of the SOE Statute has been periodically carried out through CGU audits, since the standard was fully in force, on June 30, 2018, according to the links provided below. Compliance assessments are carried out through the assessment of the internal regulations for bids and contracts based on Law no. 13.303/16, the assessment of compliance with the prohibitions of article 38 of Law no. 13.303/2016, the assessments carried out within the scope of the annual audits of accounts, the inclusion of the topic of hiring in the CGU Tactical Plan in 2020/21 and the survey of public governance and management by TCU.

Evaluation of procurements and contracting regulations based on Law no. 13.303/16

As explained below, CGU carried out an audit to verify the compliance with the regulations of Caixa and Companhia Docas do Ceará. In addition, a survey was carried out to verify the existence of internal regulations for bids and contracts.

CAIXA

Report link: https://auditoria.cgu.gov.br/download/12215.pdf

Although CAIXA's new bidding and contracting regulations were examined, according to the guidelines of the Law, the analysis on this item was only able to verify possible more relevant discrepancies in relation to the legal text, without, however, tests having been carried out. Audit on concrete bidding processes and contracts. However, no such discrepancies were found.

Companhia Docas do Ceará - CDC

Report link: report pending publication

The work carried out showed that the CDC changed the Internal Regulation for Bids and Contracts, in line with the provisions contained in Title II, Chapter I - Bids, of Law no. 13.303/2016. Emphasizing that said regulation is published on the Company's website.

As the new Internal Regulation for Bids and Contracts, which is in line with the precepts of the aforementioned regulations, was only approved on August 31, 2018, the sample for analysis was based on the assumption of bids that took place from that date, and thus, by the bidding records and contracts contained in the CDC website, only the analysis of processes related to bidding waivers was viable.

It should be noted that from the analysis of the bidding waiver processes, compliance with legal requirements was verified, although disobedience to provisions of the CDC's Bylaws was found.

Assessment of compliance with the prohibitions provided for in Article 38 of Law no. 13.303/2016

Bank of Brazil

Report link: https://auditoria.cgu.gov.br/download/13778.pdf

In 2019, an audit was carried out at Banco do Brasil to verify compliance with the application of Article 38 of Law no. 13.303/2016. Tests were carried out in order to verify the adherence of the contracts made by Banco do Brasil in 2018 to the article cited. From the performance of these tests, there were some flaws in the hiring process related to item II, art. 38, but which have already been corrected by the company. The hiring process is well structured in the company and, in some of the identified flaws, the problems stem from the lack of access to databases that are only available to CGU. As the process is structured, CGU despite emphasizes the need to complete the following actions to improve the process:

- assessment of the convenience and opportunity to include supplier risk among the Bank's relevant risks;
- mapping, assessment and treatment of integrity risks in the hiring process;
- mapping, assessing and treating the risk of supplier dependency;
- implementation of the supplier due diligence process ;
- prospection of technological tools capable of allowing the Bank to know its suppliers more deeply, in addition to complying with legal provisions;
- implementation of the functionalities still under development of the Digital Supply Platform;
- implementation of the newly developed hiring process monitoring indicators ;
- implementation of improvements in the monitoring of maintenance service contracts and engineering works within the Bank's premises;
- concentration of responsibility as the sole manager of the contracting process, reinforcing the necessary segregation of function between demand and supply; and
- implementation of measures to improve the low performance of the indicator "Planning Contracting Demands".

Annual Audits of Accounts

There are also assessments of the compliance of contractions in SOEs that are annually evaluated in the Annual Audits of Accounts. The Annual Audit of Accounts aims to promote good public governance, increase transparency, improve the accountability of federal agencies and entities, induce public management to achieve results and provide an opinion on how the accounts should be judged by the Court of Auditors of the Union. In 2019, CGU assessed the compliance of contracts in 7 SOEs.

Dataprev

Access link: https://auditoria.cgu.gov.br/download/12050.pdf

This audit seeks to analyze the risks in forming a partnership between Dataprev and the private entity PIQL Brasil Preservação Digital to explore long-term digital storage services. Among the risks listed in this audit, the legal risk of non-compliance with article 13,303 / 2016 stands out. It was observed that the company applied item II, of § 3, of art. 28, of Law no. 13.303/2016 without the proper formalization of an internal regulation for bidding and contracts, as required by art. 40 of the same law. In this risk, the command brought by art. 40 of the aforementioned Law, which, in its item IV, warns that public companies must publish and keep updated internal regulation of bids and contracts, compatible with the provisions of this Law, especially with regard to bidding and direct contracting procedures.

In the other companies, the audits consist of analyzing, by means of a sample, the contracting carried out in the year related to the rendering of accounts to verify compliance with the provisions of Law no. 13.303/16.

- Telebras - https://auditoria.cgu.gov.br/download/13546.pdf
- Valec - https://auditoria.cgu.gov.br/download/13618.pdf
- Trensurb - https://auditoria.cgu.gov.br/download/13498.pdf
- Codesp - https://auditoria.cgu.gov.br/download/13777.pdf
- Ceitec - https://auditoria.cgu.gov.br/download/13449.pdf
- Serpro - https://auditoria.cgu.gov.br/download/13557.pdf

Tactical Plan Proposal 2020/21

For the year 2020, one of the themes of the proposal for the Tactical Plan of the State Audit Directorate (planning of priority issues for audit in a biannual horizon) is the compliance and efficiency of the hiring processes in SOEs. To comply with this guideline, the following audits are planned in 2020:

- Petrobras: Process for contracting FPSOs
- Petrobras: Outsourcing contracts for legal matters
- Performance of the Legal Departments of Federal Public Banks
- Furnas: Evaluation of labor outsourcing contracts
- NUCLEP: Evaluation of the Spending Quality and the allocation of the manufacturing costs of the productive activity
- Assessment of CAIXA's Vice Presidency of Technology in relation to suppliers and outsourced contracts
- Assessment of Caixa's Logistics Vice-Presidency in relation to suppliers and outsourced contracts
- Adequacy of Petrobras' contracts to the provisions of Law no. 13.303/2016
- DOCAS system contracts
- Adequacy of Eletrobras' hiring to the provisions of Law no. 13.303/2016

Survey of Public Governance and Management - TCU result

Access link: https://portal.tcu.gov.br/governanca/governanca-no-tcu/levantamento-de-governanca-resultados-do-tcu/

The Federal Court of Accounts carries out surveys to better understand the governance situation in the public sector and to encourage public organizations to adopt good governance practices. In this survey, the Court uses indexes to measure governance in public administration. In the Governance and Management of Contracts Index (IGovContrat), the existence of coordinated activities to implement governance guidelines in this area is evaluated, in order to direct the hiring macro process in order to achieve the organizational objectives. The IGovContrat is generated by combining the results obtained in " Contract Governance " (GovContrat) with the "Contract Management Index" (IGestContrat).

In the last assessment in 2018, the report presented by TCU pointed out that the level of capacity of the responding organizations is still incipient in managing their acquisitions and contracts, but this capacity has been evolving. From 2017 to 2018 there was a 13% reduction in the initial stages of IGovContrat , GovContrat by 8% and IGestContrat by 15%.

Annex F. Summary of CGU audits on whistleblowing systems[54]

Petrobras

Report access link: https://auditoria.cgu.gov.br/download/12694.pdf

The initial context for the reformulation of the channels resulted from the effects of Operation Car Wash on Petrobras' activities and the weaknesses detected by the Internal Audit in work carried out in 2014 on that process.

Petrobras has clear rules and procedures on how to handle the complaints received. Although the processing of complaints related to ethical violations was already provided for in the Petrobras Code of Ethics, it was only in 2012, with the issuance of the Petrobras System Ombudsman Function Policy and Guidelines and subsequent updates, that Petrobras assumed the strategic objective of commitment to address this type of demand. This policy was followed by the Petrobras Guide to Conduct, created in 2014, the Petrobras Corporate Compliance Policy approved in 2016, and a list of specific procedures for the management and execution of the complaints investigation process, constituting all of this. in the normative framework on the topic. The steps for receiving and handling complaints are operated by two different Organizational Units, but which interact frequently: Petrobras' Ombudsman-General and the Governance and Compliance Department (DGC). Within the scope of this Executive Board, the investigation of complaints was initially carried out by the Compliance Executive Management (CONF), and in October 2017 a specific management for the function was created, called the General Management of the Complaint Assessment.

The complaint handling process begins after it has been formulated by the plaintiff. After receiving the report and opening the protocol, the complaints are classified into four groups, according to the themes: Fraud and Corruption; Violence at Work; SMS and Property and Off-Property Damage. The next step is to distribute the demands to an area, still within the Ombudsman's Office, so that a team can validate the classification and verify the fulfillment of the minimum materiality and authorship requirements necessary for forwarding to the area that will respond to the request of the plaintiff. When classified under the theme of fraud and corruption, the following actions are conducted by the Ombudsman, in summary:

A. The Ombudsman General's risk matrix is applied to the reporting of fraud and corruption. According to Petrobras, this initiative has been adopted since February 2016, and aims to identify complaints with greater potential for risks to the company's strategies.

B. If the absence of essential information is verified, preventing the treatment and investigation of the complaint, the Ombudsman must give an opinion on its filing, sending a communication to Compliance, so that this, in turn, ratifies the understanding within 20 days.

[54] This summary was provided by CGU.

C. Only for cases of fraud and corruption, the Ombudsman's Office will process a complaint containing issues that are under consideration or that have already been decided by the Judiciary.

D. The cases of impediment and / or suspicion of the investigating area imply the forwarding of the demand to other areas of the Company's integrity.

E. Complaints related to Petrobras System companies with their own Ombudsman should be sent to these areas for treatment, remaining monitored by Petrobras' Ombudsman-General. The CONF must be copied in this consignment and the Ombudsman of the business company must inform Petrobras of the estimated period for verification and result of the complaint.

F. For complaints involving senior management, the Compliance must be copied in the forwarding made to the Petrobras Ethics Committee.

G. In the case of receiving this type of complaint through a channel other than the Reporting Channel, the Ombudsman's Office is responsible for inserting it into the single channel.

H. When forwarding the complaints to the CONF, a period of 50 days must be set for the area to respond. The Ombudsman, in specific cases, or in other matters, may extend or reduce the estimated period for the investigation.

I. The Ombudsman must monitor the implementation of corrective actions for confirmed or partially confirmed complaints with the investigating area.

J. In order to allow the Ombudsman to monitor the complaints of fraud and corruption, the Compliance must indicate in the computerized system of the process the stage of the investigation of the complaint, the phases and the estimated deadline for conclusion. Complaints classified as being “very high risk” and “high risk” must be monitored by the Ombudsman in a specific way.

Currently, the Whistleblowing Channel is hosted outside Petrobras and is operated by a company hired for this purpose, "Contato Seguro". The whistleblower has direct and independent access to the channel through the Petrobras Portal on the internet. Guidelines for the public, as well as forms for making complaints, can be accessed in Portuguese, Spanish and English. The status of the generated protocols is monitored in that same environment. Complaints can also be made by telephone, free of charge. The channel operates 24 hours a day, seven days a week. Anonymity is ensured in all cases, with no possibility of tracing by the system, which does not mean that the complaint does not require minimum data (such as, for example, names of people related to the problem) to support the investigation. In any case, the Ombudsman's rule is not to reveal the identity of the whistleblower, even if he declares it.

Eletrobras

Link to access the report: https://auditoria.cgu.gov.br/download/10551.pdf

In 2016, CGU evaluated, in an audit work, the set of internal measures related to the provision of communication channels with employees in order to receive complaints, clarify doubts or provide information on matters of integrity. It was observed that the reporting channel, at the time, had deficiencies and it was recommended:

- Improve the structure of the whistleblowing channel, in order to provide free access by telephone and provide the formulation of whistleblowers in other languages (English and Spanish).

- Improve the mechanisms for handling complaints, in order to guarantee the protection of whistleblowers, the reporting of complaints to all members of senior management, the treatment of suspected irregularities arising from sources other than the reporting channels, and database integrity.
- Include in the company's social communication policy a plan of measures to encourage the reporting of acts of fraud, corruption and deviations, highlighting that the company does not retaliate against the whistleblower in good faith, regardless of the authority involved, as well as that the complaints are effectively investigated, presenting concrete results of the integrity system functioning (investigations carried out, punishments applied, improvements, etc.).
- Improve the investigative process, so that the investigations are substantiated and objective and that both the investigated and the complainant have, with transparency, the appropriate treatment.

In a new audit carried out in 2018, it was found that Eletrobras had remedied the deficiencies pointed out. In 2019, within the scope of the evaluations carried out by CGU, it was observed that the company evolved in the standardization of the Ombudsman's activities, in particular, by adopting a standard for different treatment for complaints or detected violations involving members of the senior management and complaints about infractions, ethics, integrity and the legislation or regulations of the company. In October 2018, the company joined the Integrated Ombudsman and Access to Information Platform (Fala.BR), which is an integrated channel for forwarding manifestations (access to information, complaints, complaints, requests, suggestions, compliments and simplify) to government agencies and entities. CGU is responsible for the management and maintenance of the system.

In the period between 2016 and 2019, it was noted that the company acted to reformulate the reporting channels and, as mentioned previously, there were advances. However, there are still important flaws that need to be addressed by the company. These flaws were detected in the assessment carried out by CGU in 2019, which will be disclosed when the report is published.

Infraero

Link to access the report: https://auditoria.cgu.gov.br/download/13032.pdf

Infraero's Ombudsman is directly linked to the company's Board of Directors and aims to receive any reports and complaints, in an anonymous or identified manner, serving the entire society. The procedures related to its performance were regulated by internal standard NI 27.01 / A, in October 2014. The Ombudsman receives and examines suggestions and complaints, internal and external complaints, including confidential ones, related to the company's activities and other related activities defined by the Board of Directors. According to information provided by the company, between January 2017 and June 2018, 10,330 service reports were recorded, of which about 70% were answered on time. It was also informed that the access channels to the Ombudsman are: call center; printed form, available in the suggestion boxes, in the Ombudsman totems and in the information counters of the premises; fax; mailbox; electronic form available on Infraero's home page ; electronic form available on the Intranet (for internal users); Ombudsman manager or responsible for Ombudsman activities on the premises.

Regarding the rules on the processing of complaints, Infraero informed that the handling of the Service Report (AR) must obey a flowchart of the macro process of service, which

contains guidance on the treatments related to classification, competence, referrals, generation of documents and responses. The reports that are received by the Ombudsman must contain minimum elements of authorship and materiality and be sent to the following areas: i) to the Internal Affairs Department (DSCR), in the case of demands involving disciplinary aspects covered by Infraero's Disciplinary Control Regulation; ii) Governance, Risk and Compliance Superintendence (PRRC), in situations that characterize acts harmful to Infraero; iii) Infraero's Ethics Committee, in the cases that may constitute indications of the infraction of the Infraero Code of Business Ethics.

Reports of denunciation received by other Infraero channels and areas must be immediately forwarded to the Ombudsman area, for the purpose of registering with PROUVI and forwarding to the competent area. Infraero informed that it encourages the internal and external public to report irregularities through informational pieces on social networks, Infraero's Internet portal, desktop background of the company's computers, posters, stickers installed in the network's airports in locations circulation and quick access links on the intranet. However, there was no clear demonstration of incentive to denounce, only the disclosure of the ombudsman channel.

It should be noted that the internal Ombudsman rule (NI 27/01 / A) was in the process of being modified at the time of the audit and, until the date of preparation of the CGU report, was under analysis by the company's legal body. The version analyzed by the CGU audit team did not include the definition of specific measures to prevent retaliation against whistleblowers.

The Infraero Code of Conduct and Integrity regulates the possibility of including anonymous complaints or omitting registration information, as well as informing that the whistleblower can identify himself and request the confidentiality reservation, and the Ombudsman system (PROUVI) has resource to hide this information for the areas demanded.

Based on this performance, CGU recommended that Infraero adopt the following measures:

- Present evidence that Infraero promotes communications that clearly encourage the making of complaints, if employees are aware of any situation contrary to ethics and institutional integrity.
- Define and regulate mechanisms that guarantee the protection of good faith whistleblowers against possible retaliation as a result of making complaints, mainly by those who occupy superior hierarchical positions.

Correios

Link to access the report: https://auditoria.cgu.gov.br/download/7638.pdf

The assessment of the Correios' complaint channels took place in 2015, having been one of the firsts carried out by CGU on the subject. Over the past 5 years, the company has taken several steps to implement an integrity program. Thus, when exposing in this document the conclusions of this 2015 report, there is a risk of passing on outdated information.

Serpro

Link to access the report: https://auditoria.cgu.gov.br/download/9345.pdf

The evaluation report on the degree of maturity of Serpro's integrity program, published on 04/06/2017, points out that the topic of integrity started to be treated by the company, as an institutional program only in June 2016, so that the program integrity of the company was at an early stage of implementation. The company had some integrity measures (Code of Ethics, Ombudsman, Ethics Committee, etc.), but these were dispersed and not integrated within the scope of a formally established program. Thus, when exposing in this document the conclusions of this 2017 report, there is a risk of passing on outdated information about the company.

Banco do Brasil

(Report not yet published)

In 2019, Banco do Brasil signed up to be evaluated in the "Pró-Ética" program. As previously stated, "Pró-Ética" was reformulated in 2017 so that SOEs could be evaluated according to the criteria of article 42 of Decree no. 8.420/2015 and Law no. 13.303/2016. The Bank was approved in this edition and will have the report of its assessment published shortly.

Caixa

Link to access the report: https://auditoria.cgu.gov.br/download/13887.pdf

The audit was carried out in 2018 in order to verify how the receipt and handling of complaints worked before the implementation of the new reporting channel to understand the reasons for the lack of control and monitoring pointed out by the Internal Audit in 2018. It is important to contextualize that the audit coincided with a moment of great change in the process of receiving and investigating complaints at CAIXA, as a result of the implementation of measures to improve and strengthen its Corporate Governance, especially the hiring of a company to provide services for receiving, analyzing and classifying complaints from internal and external audiences of CAIXA, through an external channel made available via computerized system. The immediate consequence of this contract was the disabling , in order to register the events classified as a complaint, in the "Atender.CAIXA" system, in April 2019.

The previous system, Atender.CAIXA, had a series of limitations that could impact, even, the credibility of handling complaints, since it allowed automatic sending, until May 2018, of complaints to management units for purposes of verification, without However, there should be checks regarding their independence and the protection of the whistleblower. In addition, the analysis of data extracted from its database indicated precarious control as to the traceability of information on dates and those responsible for handling complaints, the monitoring of filings, the urgency and relevance of reported facts, and the monitoring of the efficiency and effectiveness of channels and the investigation of complaints. Based on its data, it was not possible to assess the performance of processing and investigating complaints at CAIXA.

As an aggravating factor, a multiplicity of norms were detected on the same process that did not present a flow of the entire processing of complaints, in order to contemplate all the areas involved, and did not reflect the way the processing was carried out, which made it difficult understanding of the process as a whole and the responsibilities of each area by users.

Still, there were regulatory gaps regarding procedures for standardization and consolidation of information, performance indicators covering all stages, objective criteria for the filing of complaints without investigation, procedures for the impartiality of the investigation, prioritization criteria, specific procedures to safeguard the whistleblower's identity, treatment of complaints involving managers and the application of sanctions for managers without employment relationship with CAIXA. As a consequence, there were inconclusive reports on the effectiveness and efficiency of handling complaints of irregular facts with possible employee involvement and diverging from the database that substantiated the figures released.

With the new reporting channel, it will be possible to prioritize complaints and monitor, based on system reports, the effectiveness of the investigation and the efficiency for each stage of CAIXA's complaint processing belt, which will allow to know the bottlenecks of the process and, further, the improvement of reporting on the handling of complaints at CAIXA. It is also expected to improve the quality of the content of the complaints and the response given to the complainant, since it will be the result of the investigation.

The disclosure made by CAIXA about its implementation addressed the main aspects for the effective functioning of whistleblowing channels: protection for whistleblowers and impartial and independent treatment, and presented clarifications on who can make whistleblowing, expected cases of whistleblowing, types of channels, availability of the channel, the types of complaints, the guarantee of anonymity, the minimum desirable information, the monitoring by the whistleblower, with emphasis on the fact that the investigation will take place in confidence.

Notwithstanding the controls coming from the new channel, the normative update that contemplates the new flow, all areas involved and their responsibilities, the handling of complaints involving managers, the application of sanctions for officers without employment with CAIXA, centralized monitoring procedures and control procedures, including those specific to safeguard the whistleblower's identity, to ensure impartiality in the investigation, in addition to indicators of effectiveness and efficiency and adequate criteria for filing complaints without investigation and prioritizing complaints.

Regarding the performance of the investigation of complaints in the scope of Internal Affairs, whose control occurs through the Control System of Accountability, even after the implementation of the new channel, it was found that the processing conveyor has failed to meet the deadlines standardized, being that: significant number of events (99%) presented an average time for the conclusion of the screening, carried out internally by the Internal Affairs, exceeding the standardized maximum of 30 days to start investigating irregular facts; and a significant amount of Preliminary Analysis not canceled (98%) showed an average time greater than the standardized maximum of 40 days for completion, with the rest being at the threshold of the maximum expected period.

OECD REVIEW OF THE CORPORATE GOVERNANCE OF STATE-OWNED ENTERPRISES

BRAZIL

This report evaluates the corporate governance framework for the Brazilian state-owned enterprise sector relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises. The report was prepared at the request of Brazil. It is based on discussions involving all OECD countries.

OECD

GREAT for PARTNERSHIP
BRITAIN & NORTHERN IRELAND