Board Practices of State-Owned Enterprises

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OECD
BETTER POLICIES FOR BETTER LIVES

The OECD Guidelines on Corporate Governance of SOEs

- *An OECD legal instrument*
- *Non-binding*
- *Complementary to the OECD Principles of Corporate Governance*
- *An aspiration rather than a minimum standard*

Priorities in the OECD Guidelines

- *Ensure a level-playing field with the private sector*
- *Reinforce the ownership function within the state administration*
- *Provide equitable treatment of minority shareholders*
- *Improve transparency of SOEs' objectives and performance*
- *Improve stakeholder relationship*
- *Strengthen and empower SOE boards*

The “OECD model”: Separation of Roles

Government
- Sets ownership policy
- Coordinates at cabinet level

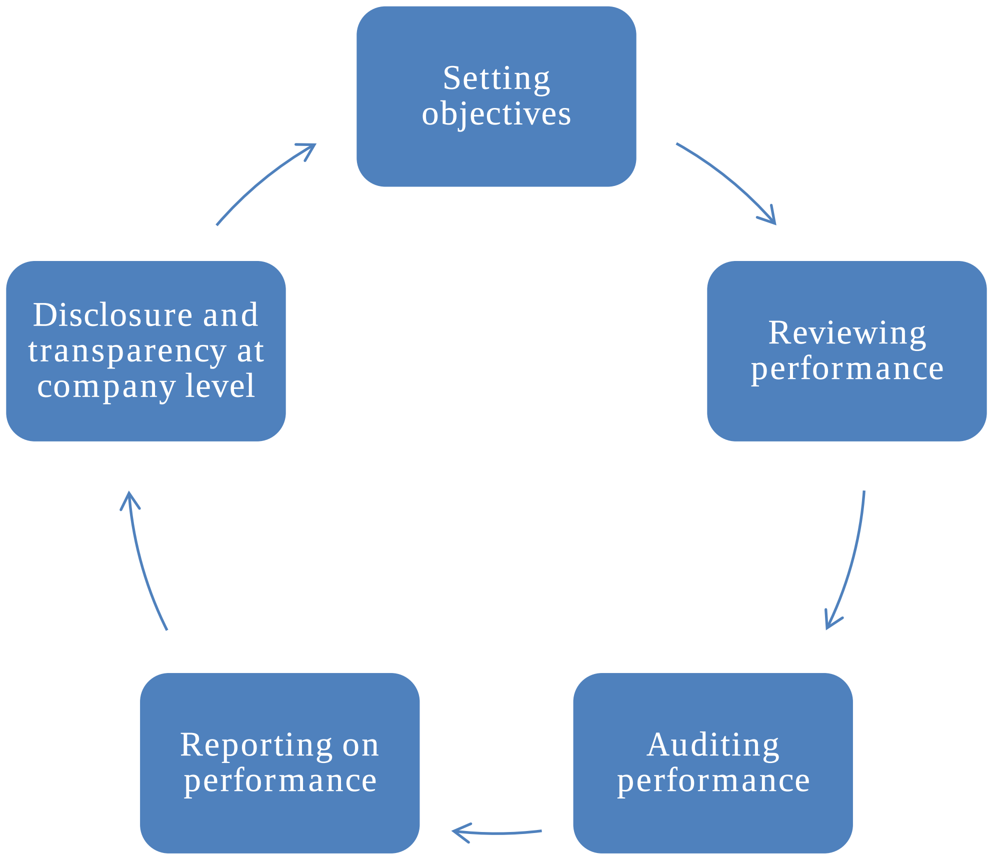
Ownership unit
- Defines objectives for individual SOEs
- Monitors performance

SOE board
- Approves strategy
- Monitors management

Management
- Runs the company

Independent regulation

The Accountability and Transparency Guide



Chapter 6: Responsibilities of the Board of Directors

- ***The board should have a clear mandate and ultimate responsibility for the company's performance***

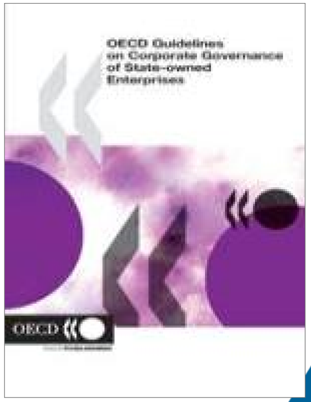
- ***The board acts according to objectives set by the ownership entity. It has the power to appoint and remove the CEO.***

- ***The board is composed so that it can exercise objective, independent judgement.***

- ***Employee representation.***

- ***Specialised board committees should be considered.***

- ***Annual board evaluation.***



The OECD Principles provide additional guidance. The board should…

- ***Review and guide corporate strategy;***

- ***Monitor the effectiveness of the company's governance***

- ***Select, monitor and, if necessary, replace executives***

- ***Align remuneration with the longer term interest of the company***

- ***Ensure formal and transparent board nomination practice***

- ***Monitor potential conflicts of interest***

However, theory and practice may sometimes differ

- *OECD undertook a stocktaking of all SOE related practices in 2005. It was updated in 2011.*

- *An recent study by the Working Party documenting SOE Board practices.*

- *A few stylized facts. SOE Boards are becoming:*
  - *Smaller…*
  - *…more “independent”*
  - *…more like private sector (listed) enterprises*
  - *…and more “diverse”.*

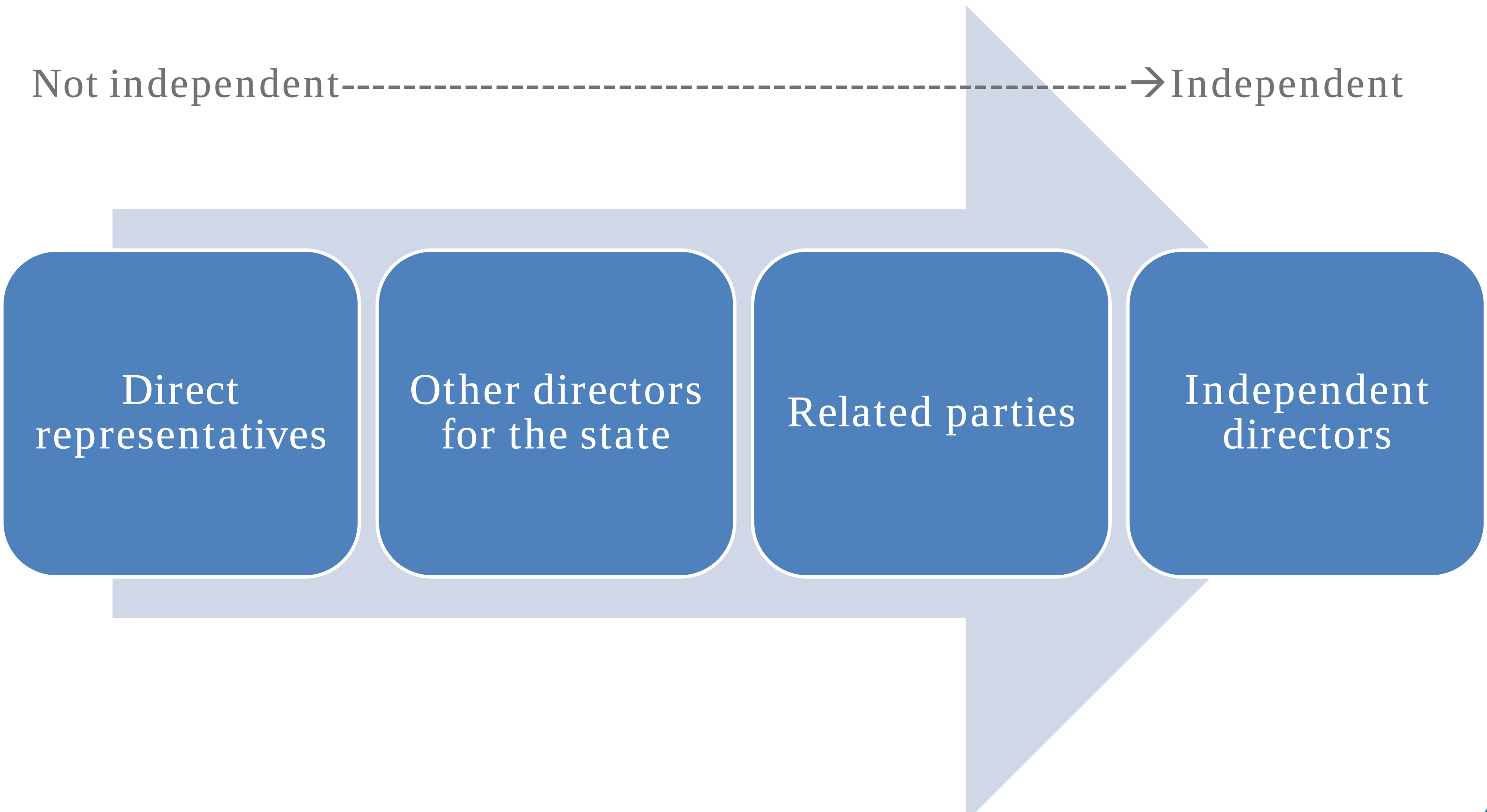
Responsibilities of the Boards

- ***Monitoring management and providing strategic guidance.*** Seven countries have implemented guidelines on remuneration and/or qualification and employment terms for boards and management.
- ***Exercising objective and independent judgment.*** Six countries have established rules for qualifications and integrity. (Further to this.)
- ***SOE board committees.*** Three countries have mandated, or encouraged, the establishment of board committees in SOEs. (audit, remuneration, strategy).

Who has the powers of nomination?

- *Ownership structure is a decisive factor (central/dual/dispersed)*
- *Different types of board members: civil servants, business people, employee representatives*
- *Very different national rules on independent directors – and it is far from clear what constitutes "independence"*
- *The ultimate power usually lies with ownership ministers, subject to cabinet approval. But there are exceptions:*
  - *Direct or "ex-officio" nomination*
  - *Devolvement to ownership unit*

Board composition and the role of state officials



According to what criteria are directors selected?

- ***Most countries have rules to limit the politicisation of SOE boards.***

- ***Rules bearing on depolitisation and qualifications vary. Some examples are:***
  - ***Pre-declaration of formal qualification requirements***
  - ***Informal processes to vet or advise on ministerial appointees***
  - ***Formal or informal nomination committees***

- ***General difference: are board selection guided by best-practice public sector or private enterprise practices?***

What procedures are applied?

- ***The role of the ownership function:***
  - ***Maintaining registers of qualified board members (e.g. directors pools)***
  - ***Advisory and screening of ministerial appointees***

- ***The role of the board itself:***
  - ***Board assessment of skills requirements***
  - ***Internal nomination committees***
  - ***Dialogue between Chair and ownership function***

- ***The role of third parties:***
  - ***External nomination committees (AGM)***
  - ***Headhunting for directors with well-defined skills sets***

Board evaluation procedures

- ***Evaluations by the ownership function***
  - ***Hinges on ownership policy and company-specific objectives***
- ***Self-reviews by the board of directors***
  - ***Can be whole-of-board or include individual performance. (May imply a strong involvement of the Chair).***
- ***The role of external evaluators***
- ***Feedback loop into the nomination process***

Example 1: Israeli requirements

Israel has some of the strictest qualification requirements in the OECD area.

- ***Educational attainment:***
  - ***An academic degree in an area relevant to the SOEs main line of business; or***
  - ***A PhD degree in any area.***
- ***At least 5 years experiences in one of the following:***
  - ***Senior business administration;***
  - ***Senior civil service position in a relevant area;***
  - ***Senior position in the SOEs principal area of business activity***

- ***The qualifications are overseen by an Appointments Examination Committee***
- ***If a candidate is found to have links to senior politicians then the requirements are raised.***

Example 2: Denmark's nomination process

1. *Discussions between the Ministry and the Chair about the board's needs.*

2. *Formulation of a profile for the necessary board member(s). An absolute requirement is business sector experience.*

3. *A shortlist is formulated in a process involving the Chair, the ministry and recruitment agencies*

4. *The Minister presents the shortlist to the Government's Appointment and Organisation Committee .*

5. *The Committee decides, based on the Minister's recommendations*

Example 3: New Zealand's nomination process

1. *Prior to expiry of board mandate, a new profile is formulated (Minister & COMU)*

2. *Vacancy notice posted online*

3. *Long and short list to Minister. Ministry decides whom to interview (and performs due diligence).*

4. *Ministerial appointment is decided.*

5. *Cabinet approval through Committee.*

Key lessons from recent OECD experience

1. ***A board shall add value to the company. It is there to offer to strategic guidance based on the business and other relevant experience of its members. It is not there merely to check compliance.***

2. ***The board is a collegial entity, jointly making decisions in the interest of the company and its shareholders. Directors should not perceive themselves as representatives of individual constituencies.***

3. ***The board shall deliver on the priorities of the State, but it must be given sufficient autonomy to do so without ad-hoc interventions.***

www.oecd.org/daf/corporateaffairs/soe/guidelines

(Available in a number of different languages.)