

APPOINTMENT OF BOARD OF DIRECTORS IN STATE OWNED ENTITIES

South Africa

1. In addition to the Companies Act of 2008, the enabling legislation governing an SOE may regulate the board profile and composition, while the PFMA merely establishes the function of the Accounting Authority (or CEO depending on the Schedule the entity falls under). The Companies Act goes further to prescribe qualifying criteria for board membership.
2. The 'Handbook for the appointment of persons to boards of state and state-controlled institutions' (approved by Cabinet on 17 September 2008), issued by the Department of Public Service and Administration determines that those responsible for conducting the appointment process must be familiar with the statutory requirements that govern appointments to boards. The handbook, however, represents a stand-alone practical document which is not in any way prescribed in terms of any formal framework, regulation or legislation and few SOEs are aware of its existence.

International Best Practice

3. Boards of directors of state-owned enterprises (SOEs) play a fundamental role in corporate stewardship and performance. Over the last decade, OECD (Organisation for Economic Co-operation and Development) governments have sought to professionalise SOE boards, ensure their independence and shield them from ad hoc political intervention.

4. This synopsis seeks to shed light on good practices drawing on national practices from over 30 economies who are member states of the OECD on the appointment of Boards of SOEs. The following are good practices adopted and implemented in the nomination and appointment processes of SOE boards:

4.1. Nomination framework and practices

- A robust nomination framework is one that clearly specifies the nominating power is transparent and is consistent in its application.
- Ministerial or executive powers normally have the ultimate responsibility for nominations. This brings legitimacy to the process, but it should not undermine the role of the ownership function.
- Where feasible, board appointments should be subject to co-ordination or consensus on a whole-of-government basis.
- Board appointments, even in wholly-owned SOEs, should be entrusted the annual general meeting of shareholders
- Establishing a transparent and consistent method to identify applicants from a wider pool of talent will improve board composition and bring uniformity in the assessment process.

- Specialised bodies in charge of advising or accrediting the nominations can bring further objectivity and transparency to the nomination process.
- The Board should be involved in the nomination process in an advisory capacity.
- Mechanisms should exist to facilitate non-government shareholders' participation in the board nomination process.

4.2. Board composition

- Persons directly linked with the executive powers should not sit on SOE boards. Other state representatives should be nominated based on qualifications, subject to specific vetting mechanisms.
- Independent directors should be independent from management, government and business relationships. Specific safeguards should be established to verify that nominees comply with requirements.
- Employee representatives can enrich board discussion; the appointment process should ensure that such persons are qualified, as well as representative of the SOE's staff.
- Certain eligibility requirements may be needed, but good practice increasingly relies on tailored approaches to identify the right mix between skills, experience and personal characteristics.

- For all other than direct ownership representatives, relevant commercial or financial expertise is viewed as essential qualifications.
- Reasonable limits on maximum number of board appointments are important to ensure that directors have sufficient time to carry out their duties.
- Diversity preferences may add value to boards, but should not rise to the level where the ability to attract candidates with the right skills and is imperilled.
- Restricting board membership to nationals should be limited to cases where there is a demonstrated need for such rules, considering that it can act as a barrier to attract the right talent

4.3. Examples of the appointment process in some member countries

- **New Zealand** operates a dual ownership model but with a centralised ownership support unit, the Crown Ownership Monitoring Unit (COMU). It has adopted a comprehensive approach to board appointments, from soliciting, vetting and recommending candidates through to conducting induction training after an appointment has been made.

COMU manages this process by advising the bodies responsible for appointment (i.e. the Minister after approval by a Cabinet Appointments and Honours Committee, and confirmation by Cabinet). It is responsible for developing a long and short list of candidates (with options) for

consideration by the minister; conducting due diligence on preferred candidates (including conflict of interest clearance, background checks); managing the cabinet approval process; and managing the formal appointment process.

- **Finland** apparently stands out in regards of modernising its selection procedures. The ownership agency outsources the development and maintenance of a database of pre-qualified candidates to a recruitment consulting firm. The outsourced contract is subject to competitive tender every four years.

This arrangement would appear to offer some advantages over maintaining an internal database: it provides access to the networks and resources of the recruiting firm, who have specialist skills in sourcing candidates for private sector boards, especially international candidates; it reduces the risk of political involvement in the selection process; and it provides for a cost-effective, transparent and consistent process for dealing with applications received from a wide variety of sources. A solidly structured process which is applied on a consistent basis has proved to be beneficial in avoiding a number of political sensitivities

Source: OECD (2013), *Boards of Directors of State-Owned Enterprises: An Overview of National Practices*, Corporate Governance, OECD Publishing, Paris, <https://doi.org/10.1787/9789264200425-en>

//attached is the full report of the OECD

| | Appointment process | | Remuneration | | |
|-----------------------|--|---|--|---|--|
| | Structure of nomination process | Power of appointing CEOs | Who decides | Elements (fixed, performance related) | Level with respect to private sector |
| Austria | Notice of vacancy; one month to receive candidatures; evaluations even with consultants; after the choice publication. | Executives: Supervisory Board (joint stock companies); body representing the interests of the owners (Lim liab comp.). CEO: Government (in some cases consult with private shareholders); executives: Board on CEO's proposal. | Supervisory Board (joint stock companies). | | Contracts modelled on the standards of the respective sectors. |
| Belgium | | CEO: Government (in some cases consult with private shareholders); executives: Board on CEO's proposal. | Remuneration committee proposes to the board. | May be incentive elements in negotiation with the Minister. | |
| Czech Republic | | CEOs designed by shareholders after selection process organised by boards. | In accordance with Commercial Code, Labour Code and SOE's statutes, Board signs the managements agreement. | Basic + rewards + long term rewards; sometimes a special reward on fulfilment of selected criteria. | |
| Denmark | Determined by Board. | Board. | Board. | Mainly fixed but most receive performance related bonuses. | Generally low. |
| Finland | | Board of directors; State involved only as shareholder. | Board decides the bonuses schemes State as an owner takes step in the decision of incentive schemes. | Almost always performance related in some parts. | Should be competitive with but it is often slightly lower. |
| Germany | AGM | All the executives are elected by the supervisory board (except for smaller SOEs being limited liability companies). | Supervisory board (except for smaller SOEs being limited liability companies). | Fixed and performance-related elements. | Comparable to private sector except for (mostly smaller) companies in non competitive areas. |

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| Greece | Established in each SOE's Statute elaborated by the Board. | In cases of Public Companies joint ministerial decision; in cases of SA the AGM. | Established in the SOE Statute elaborated by the Board. | Extra compensation, according to law if over performing firm. |
| Hungary | Nomination according to ownership ratio, under company law. | GM | GM | Depending on the size of the company and performance related. |
| Italy | | State only as a shareholder. | Board upon proposal of the remuneration committee if any. | For nonlisted SOEs specific policies; almost always performance related. |
| Netherlands | | Supervisory board (selection and appointment). | Supervisory board with the approval of shareholders. | Comparable. |
| Poland | | Supervisory board | The supervisory board decides according to remuneration law. | |
| Slovak Republic | There are selection commissions elected by the founder except at least one member that is elected by the employees. | Founders | Founders | Fixed with an annual bonus from the share of profit for directors. |
| Spain | | Board under proposal of Direction Generale Patrimonio Estado and Minister of competence. | | Most part fixed, some adopted the performance related part. |
| Sweden | Ministry and chairman consult before appointments. | Board (one person representing the Ministry is there). | The board within specific public guidelines. | Salary, bonuses, sick insurance and pension schemes. |
| | | | | Guidelines state that remuneration should be competitive but not generally at a higher level than in corresponding private companies. |

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| United Kingdom | Open Competition, in accordance to the UK Government's "Code of practice for ministerial appointments to public bodies". Chair is on appointment panel. | Appointed by the shareholding minister after recommendation of appointment panel. | The shareholding Minister recommendation from remuneration committee. | Salary and performance related incentives. | Generally lower. |
| Norway | | CEO: Board of directors with help of consultancy firms; leading executives: by CEO. Board | Board but Ministry circular with elements and level of remuneration. | Comprehensive of pension rights. | Competitive but not leading. |
| Switzerland | Established in the SOEs' Statute elaborated by the Board. | Board | Board | Fixed and performance related. | Less than the private sector pay. |
| Turkey | | Appointed by the collective decision of the relevant minister, prime minister and president. | High Planning Council decides. | Fixed not performance related (salary + bonuses + pension + health insurance). | Less than the private sector pay level. |
| Australia | Established in the Entity Constitution or in the Legislation. | CEO: Board with review of Government. | CEO: Board in consultation with remuneration tribunal and shareholders ministers. | | |

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| Canada | Most appointed by the State on the recommendation of the Minister responsible for the corporation and after consultation with the board of directors; new appointment process announced in 2004, requires the corporation to initiate the appointment process by identifying suitable candidates and making recommendations to the state. | With rare exceptions, rests with the state but the new process started in 2004 requires the corporation to initiate the process and Parliament has a new role to review recommended candidate. | State sets remuneration ranges and maximum annual bonuses, usually after a review by an independent advisory committee; movement in the salary range and bonuses decided annually by the state on the recommendation of the board and minister responsible for the corporation. | Salary plus an annual bonus; non-remunerative benefits set by the board of directors, taking in consideration the norms of the public and private sectors, and must be communicated to the state. | Must take into consideration practices in both public and private sectors. |
| Japan | | Board, motion of selection approved by Finance or Public management Minister. | For JT the board within specific limits; for NTT the company itself. | Performance related is not common. | |
| New Zealand | | Board (government expectation on requisites). | Board (government expectations of up and down limits). | Performance related not uncommon. | Competitive but below private sector. |
| AGM: Annual General Meeting GM: General Meeting SA: Corporation (inc.) JT: Japan Tobacco Inc. NTT: Japanese Telecom Corporation. | | | | | |

Source: OECD, Corporate Governance of State-owned Enterprises, Paris 2005, pp. 175-178.