Legal Issues on Corporate Governance of State-owned Enterprises in Ethiopia in Light of Global Good Practices

Alemayehu Yismaw Demamu ♣

Abstract

There are several state-owned enterprises in Ethiopia, and these enterprises have dominance in many strategic sectors. Although the state has enacted corporate governance laws, there are concerns that the laws are not comprehensive and strong enough, and need to draw lessons from comparative global good practices. This article analyses the Ethiopian laws and practices of corporate governance of state-owned enterprises in light of the OECD Guidelines on Corporate Governance of State-owned Enterprises, World Bank Toolkit, and comparative good practices. The analysis shows that the existing laws and practices of corporate governance of state-owned enterprises have gaps that have several implications on the corporate governance of state-owned enterprises. Thus, there is the need for reform or enactment of laws that incorporate good practices of corporate governance of state-owned enterprises.

Keywords:

Corporate governance, global practice, state-owned enterprises, public enterprises

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♣ Alemayehu Yismaw Demamu (PhD candidate, Zhejiang Gongshang University), Asst. Professor, School of Law, University of Gondar

Email: yismaw1980@gmail.com

ORCID: https://orcid.org/0000-0003-4001-0441

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1. Introduction

State-owned enterprises (SOEs) are crucial to the economies of both developed and developing countries, including Ethiopia. The state owns/controls around forty-four major SOEs in Ethiopia, including numerous other subsidiaries and sub-branches. These SOEs have monopoly or dominance in transportation, telecommunication, electric power and petroleum supply, financial services, shipping and logistics, and industrial parks.[1] They are also present in manufacturing, farming, hotel and tourism, distribution of basic commodities, and other trading activities. SOEs in Ethiopia play a significant role in creating employment opportunities and contributing to the national GDP (Gross Domestic Product). For example, in the fiscal year 2019/20, SOEs under the Public Enterprises Holding and Administration Agency (PEHAA) created about 164,000 job opportunities and contributed ten percent of the country's GDP.[2] SOEs supply public

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Frequently used acronyms:

IFRS	International Financial Reporting Standards
OECD	Organization of Economic Co-operation and Development
SOEs	State-owned enterprises

[1] Tewodros Meheret (2014). "The Concept and Characteristics of Public Enterprises in Ethiopia: An Overview," *Mizan Law Review*, Volume. 8, Issue 2, p. 333.

[2] Ashenafi Endale (2020). "There is Ample Room for Both the Public and Private Sectors," *Ethiopian Business Review*, 9th Year, No. 92. Available at

interest goods and services at a relatively lower cost. They undertake investments in less viable but socially important economic sectors.

To improve the performance of SOEs, the government has implemented various laws such as the Public Enterprises Proclamation No. 25/1992, the Commercial Code, and the Code of Corporate Governance for Public Enterprises No. 501/2020. Despite these efforts, however, most SOEs have recorded poor performance in terms of production and profitability. Many SOEs are facing financial difficulties, with about thirty-three percent of them experiencing loss (in 2019) and unable to cover their working capital.[3] In the 2019/20 fiscal year, the accumulated debt of twenty-one SOEs under the PEHAA was 846 billion birr, which accounts for more than half of the country's total national debt.[4] Several SOEs, including the Development Bank of Ethiopia, Sugar Corporation, Ethio Engineering Group, and some enterprises engaged in manufacturing and hotels are operating with financial loss.[5] Moreover, SOEs such as METEC (Metals and Engineering Coroporation) were found to be ridden with fraud and corruption. [6]

As a result, there are concerns about the comprehensiveness and effectiveness of the laws on corporate governance of SOEs. The laws and practices involve gaps and inconsistencies in the legal status of SOEs, including state-owned share companies.[7] They are susceptible to frequent excessive political interference in issues and decisions that should be taken by the board and management.[8] They include intricate rules in the board

< https://ethiopianbusinessreview.net/there-is-ample-room-for-both-the-public-and-private-sectors/ >. (Accessed on January 09, 2024).

[3] Abel Hailegiorgies (2019). "The Effect of Corporate Governance Practices on the Financial Performance of Public Enterprises in Ethiopia," MA Thesis, Addis Abeba University, Unpublished, p.19.

[4] Ashenafi Endale (2020). "Pushing or Pulling the Economy?," *Ethiopian Business Review*, 9th Year, No. 92. Available at < https://ethiopianbusinessreview.net/pushing-or-pulling-the-economy/ >. (Last seen on January 09, 2024).

[5] Ashenafi Endale, *supra note 2.*

[6] Bhupendra Kumar (2021). "Corporate Governance Practices & Failures in Ethiopia–A Case Study of METEC," in Ganesh Singh Rathore, and Harshit Dwivedi ed., *Impact of Covid-19 and World's Tourism Industry*, Chhattisgarh: Aditi Publication, p.15

[7] Endaweke Tsegaw (2016). "The Legal Status of State-Owned Share Companies in Ethiopia," *Beijing Law Review*, Volume 7, p.21.

[8] Eshete Taddesse (1995). "The State and Performance of Public Enterprises in Ethiopia," *Ethiopian Journal of Economics*, Volume 15, Issue 1, p. 27.

appointment and composition which have a fundamental impact on the corporate governance practice of SOEs.[9]

This article examines the legal framework of corporate governance of Ethiopian state-owned enterprises in light of global good practices. The article aims to identify the legal issues and examine best options for the corporate governance of Ethiopian SOEs. To this end, it employs a combination of comparative, doctrinal, and qualitative research methods. Qualitative analysis of scholarly works is undertaken to strengthen the legal interpretation and comparative work.

Due attention is given to the OECD Guidelines on Corporate Governance of State-owned Enterprises (the OECD Guidelines) and the World Bank Toolkit on Corporate Governance of State-owned Enterprises (the World Bank Toolkit), which are global non-binding instruments on this topic.

The laws of various countries are examined to (i) draw lessons from OECD countries that are relevant to the Ethiopian context, (ii) understand practices beyond the OECD in non-OECD countries, and (iii) to explore corporate governance practices in least-developed countries that are comparable to Ethiopia. The article also analyses the Ethiopian laws on corporate governance of SOEs and identifies the legal issues involved. Moreover, it compares the Ethiopian corporate governance laws and practices to global practices to identify areas that require further consideration and improvement.

The following section overviews the concept of corporate governance in SOEs. Section 3 examines the global practice of corporate governance of SOEs. It analyzes the OECD Guidelines, the World Bank Toolkit, and the experience of countries. Section 4 investigates the legal frameworks of corporate governance of SOEs in Ethiopia. Section 5 appraises the legal issues of corporate governance in Ethiopian SOEs. Section 6 analyzes Ethiopian SOEs' current corporate governance scheme in light of global practices. Section 7 deals with the implications of the current laws and practices of corporate governance of SOEs in Ethiopia. The final section highlights areas of future consideration in the corporate governance of SOEs.

[9] Henok Ashagrey & Jaap de Visser (2019). *The Regulation of Public Enterprises in Ethiopia: Lessons for South Africa*, University of the Western Cape, pp.14-28.

2. The Concept of Corporate Governance in State-owned Enterprises

Over the past decades, corporate governance has been adopted in SOEs as a viable alternative to the traditional leadership following several scandals and failures. It emerged in countries such as Germany, Australia, and Switzerland around 2000.[10] This practice is recognized and implemented in many regions, and has become increasingly significant and a fundamental element in the success of SOEs. [11]

Corporate governance (in SOEs) has been used interchangeably with different terms such as public governance, public corporate governance, public sector governance, and public service governance. Corporate governance applies to all legal forms of SOEs. The term 'corporate' refers to the governance concerns of all SOEs with independent economic management that will be determined based on whether the SOE has a separate annual financial statement or a separate appendix in the budget of the public authority.[12] It does not matter whether the respective SOEs are profitable or not, and whether they operate in competitive or non-competitive market environments.

Holmstrom and Kaplan argue that corporate governance is "the mechanism by which corporations and their managers are governed."[13] Wieland states that corporate governance is the "leadership, management, and control of a firm by formal and informal, public and private rules."[14] There are also scholars who consider corporate governance as the nexus of various participants in the SOEs. According to Monks and Minow, corporate governance is the relationship among various participants in determining the direction and

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[10] Ulf Papenfuß (2020), "Corporate Governance of State-Owned Enterprises: Conceptualization, Challenges and Perspectives for the Public Corporate Governance Field," in Luc Bernier, Massimo Florio, and Philippe Bance ed., *The Routledge Handbook of State-Owned Enterprises*, New York: Routledge, p. 434.

[11] Ron Hodges, Mike Wright, and Kevin Keasey(1996). "Corporate Governance in the Public Services : Concepts and Issues," *Public Money & Management*, Volume 16, p. 8.

[12] Papenfuß, *supra* note 10, p. 435.

[13] Bengt Holmstrom and Steven N Kaplan(2001). "Corporate Governance and Merger Activity in the United States : Making Sense of the 1980s and 1990s," *Journal of Economic Perspectives,* Volume 15, Issue 2, pp. 121-122.

[14] Josef Wieland (2005). "Corporate Governance, Values Management, and Standards: A European Perspective," *Business and Society* , Volume 44, Issue 1, p. 76.

performance of corporations; and the shareholders, the management, and the board of directors are the primary participants.[15]

Ho notes that corporate governance refers to "the structure and processes among the board of directors, shareholders, top management and other stakeholders" and it "further involves the roles of the stewardship process and exercising strategic leadership, and the objectives of assuring accountability and improving performance."[16] According to Larcker, Richardson and Tuna corporate governance "is the set of mechanisms that influence the decisions made by managers when there is a separation of ownership and control; (some of these monitoring mechanisms are the boards of directors, institutional shareholders, and operation of the market for corporate control)."[17]

There are scholars who present corporate governance in terms of control over the interactions of different participants in SOEs. Fama and Jansen argue that corporate governance is the set of internal and external controls that reduce the conflict of interest between managers and shareholders.[18] Shleifer and Vishny also indicate that corporate governance "deals with the ways how suppliers of finance to corporations assure themselves of getting a return on their investment."[19]

Similarly, La Porta *et al* state that corporate governance is "a set of mechanisms through which outside investors protect themselves against expropriation by the insiders (i.e. both managers and controlling shareholders)."[20] Zingales argues that corporate governance "is the complex set of constraints that shape the ex-post bargaining over the quasi-rents generated by a firm."[21] Oman notes that corporate governance refers to "public and private institutions which include laws, regulations and business

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[15] Robert A. G. Monks and Nell Minow (2011). *Corporate Governance*, 5th ed., West Sussex: John Wiley & Sons, p. xviii.

[16] Chi-kun Ho (2005). "Corporate Governance and Corporate Competitiveness : An International Analysis," *Corporate Governance: An International Review,* Volume 13, Issue 2 , p. 212.

[17] David F Larcker, Scott A Richardson, and Irem Tuna (2007). "Corporate Governance, Accounting Outcomes, and Organizational Performance," *The Accounting Review,* Volume 82, Issue 4, p.9.

[18] Eugee F. Fama and Michael C Jensen (1983). "Separation of Ownership and Control," *Journal of Law & Economics,* Volume 26, Issue 2 , p. 302.

[19] Andrei Shleifer and Robert W Vishny (1997). "A Survey of Corporate Governance," *The Journal of Financ,*Volume 52, Issue 2, p. 737.

[20] Rafael La Porta et al.(2000). "Investor Protection and Corporate Governance," *Journal of Financial Economics*,Volume 58 , p.4.

[21] Luigi Zingales(1997), "Corporate Governance," *NBER Working Paper Serious*, p. 4.

practices governing the relationship between corporate managers and stakeholders."[22]

Countries adopt diverse working definitions for corporate governance. Some of these definitions are wide. For example, in the UK, the Cadbury Report defines corporate governance as "the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place"[23] Similarly, South Africa's King Code of Corporate Governance describes corporate governance as "the systems by which companies are directed and controlled."[24]

Some definitions are specific and narrow. According to the Gambian Code of Good Corporate Governance, corporate governance refers to "the structures and processes for the direction and control of companies. It specifies the distribution of rights and responsibilities among the company's stakeholders (including shareholders, directors, and managers) and articulates the rules and procedures for making decisions on corporate affairs." The (Securities and Exchange Board of India) SEBI Committee on Corporate Governance defines corporate governance as the "acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and their role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct, and about making a distinction between personal and corporate funds in the management of a company."[25]

In the context of banking and insurance in Ethiopia, the Bank Corporate Governance Directive No. SBB/71/2019 (1st Replacement) and the Insurance Corporate Governance Directive No. SIB/42/2015, for example, define corporate governance as "the process and the structure used to direct and manage the business and affairs of a bank or insurance towards enhancing business prosperity and corporate accountability with the ultimate objectives of realizing long-term shareholders' value as well as customers' and other stakeholders' interest".[26] This definition emphasizes corporate governance as

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[22] Charles P Oman (2001). "Corporate Governance and National Development," *Working Paper*, p.13.

[23] The Cadbury Report on Financial Aspects of Corporate Governance 1992, Sectionn 2.5.

[24] The King Report on Corporate Governanace 1994, p.1.

[25] The SEBI Committee Report of the SEBI Committee on Corporate Governance 2003, Preamble.

[26] Bank Corporate Governance Directives No. SBB/71/2019 (1st Replacement), Article 2.3; Insurance Corporate Governance Directives No. SIB/42/2015, Article 2.3.

the processes and structures employed to manage the affairs of SOEs to meet the needs of shareholders and stakeholders. However, corporate governance is also about the interactions of shareholders, the board, the management, and other stakeholders as well as the power and responsibilities shared among themselves. Thus, this definition lacks some of the core elements of corporate governance.

The Code of Corporate Governance for Public Enterprises No. 501/2020 provides that "[c]orporate governance is the framework of rules, structural relationships, systems, and processes within an enterprise by which powers and duties are exercised and controlled through building an environment of trust, transparency, and corporate accountability necessary to enhance business prosperity, foster long-term investment, financial stability, and business integrity".[27] Although this definition embodies most elements of corporate governance, it fails to cover the interactions of the board, managers, shareholders, employees, and other stakeholders in SOEs. It also does not include external control mechanisms which are equally important to limit agency problems, ensure sustainable growth, and bring long-term improvement in SOEs.[28]

Most scholars and laws of various countries refer to the OECD definition of corporate governance. The OECD Principles of Corporate Governance provide that:

> Corporate governance is a set of relationships between a company's management, board, shareholders, and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.[29]

Therefore, corporate governance is a set of relationships between a company's management, board, shareholders, and other stakeholders in SOEs. It sets the objectives of SOEs, and structures how they shall be implemented and monitored. It aligns the interests of all the participants and articulates how they shall behave. Any poor articulation or misalignment of the roles and interests of the participants can cause scandals in SOEs like what happened in SABC (South African Broadcasting Corporation) and Eskom in

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[27] Code of Corporate Governance for Public Enterprises Directive No.501/2020, Article 2(1).

[28] Joanne P Healy (1993). "The Effectiveness of Internal and External Mechanisms of Corporate Control," *International Business & Economic Research Journal,* Volume 1, No. 7, p.13.

[29] OECD Principles of Corporate Governance 2004, p. 11.

South Africa.[30] Moreover, corporate governance gives due regard to the rights and interests of stakeholders of SOEs.[31] Boards are SOE custodians and represent the interests of both shareholders and stakeholders. This article uses the OECD's definition of corporate governance.

3. Global Practices of Corporate Governance in State-owned Enterprises

3.1 OECD Guidelines and World Bank Toolkit

Over the past decades, efforts have been made globally to tackle the challenges of corporate governance of SOEs. However, a unified solution has not been agreed upon. Despite this, international institutions have developed guiding principles and toolkits on the corporate governance of SOEs. The OECD adopted the OECD Guidelines of Corporate Governance of State-owned Enterprises in 2005, and it was updated in 2015 as a benchmark for states to reform the corporate governance of SOEs. Moreover, the OECD has developed Guidelines on State-owned Enterprises Anti-Corruption and Integrity (ACI Guidelines) in 2019 and it, *inter alia,* states the pillars in the fight against corruption and in the pursuits of integrity in SOEs.

The World Bank has also developed a *Corporate Governance of State-owned Enterprises Toolkit* in 2014 and it recommends states to adopt an overarching corporate governance framework for SOEs, along with the tools and information for making practical improvements. The International Financial Reporting Standards (IFRS) provides a set of accounting and sustainability disclosure standards for SOEs to observe high standards of transparency and be subject to the same high-quality accounting, disclosure, compliance, and auditing of private enterprises.[32] The International Auditing and Assurance Standards Board (IAASB) has also developed a set of International Standards on Auditing (ISA) for auditors to conduct audits on financial statements of SOEs.[33]

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[30] Nimrod O. Mbele (2015). *Corporate Governance in State-Owned Enterprises,* University of the Witwaterserand, Johannesburg, p.20.

[31] L. S Murrin (2001), "Public Sector and Private Sector Governance: Vive La Difference," *IIR Corporate Governance Conference*, p. 3.

[32] See International Financial Reporting Standards (IFRS) Foundation (2024), *IFRS Accounting Standards*, London: IFRS Foundation.

[33] See International Auditing Assurance Standards Board (IAASB) (2020), *International Standards on Auditing*, New York: IFAC.

3.2 The legal framework in various countries

With regard to legislation in various countries, there are enactments to regulate the corporate governance of SOEs. These laws indicate the broad 'directions of the state' and the specific rules in SOEs. They communicate the key governance expectations in SOEs to shareholders, boards, management, and stakeholders. They set forth the relationships between the state as shareholder and boards and management. They legitimatize the state's ownership function and ensure the effective oversight and the implementation of objectives while cautiously restraining its participation in the day-to-day management of SOEs. Moreover, the laws articulate the roles of the board and management and ensure autonomous management in SOEs. They also guarantee equal treatment of shareholders, protection of minority shareholders and stakeholders, and ensure the disclosure of financial and non-financial performance of SOEs. They generally attempt to structure the corporate governance of SOEs on an equal footing with private enterprises.

The legal framework and practice of corporate governance of SOEs are still growing and involve diverse experiences. Countries implement diverse laws to regulate the establishment and corporate governance of SOEs. Some countries apply a framework law (general law) to establish SOEs and other specific laws to control the corporate governance of SOEs. Brazil, for example, applies Decree Law 200 of 1967 to establish SOEs and other specific private laws to regulate the corporate governance of SOEs.[34] Similarly, Paraguay applies its constitution to create SOEs and frequently enforces other specific laws to structure the corporate governance of SOEs.[35] On the other hand, some countries enforce specific or sectoral commercial or enterprise laws to create SOEs as well as regulate the corporate governance of SOEs. In Chile, specific corporation laws regulate both the creation and corporate governance of SOEs.[36]

Similarly, countries apply different strands of laws to regulate the corporate governance of SOEs. Some countries apply private laws such as commercial law (company legislation) to govern the arrangements of the state ownership, power and responsibilities of the board, rights of shareholders, and disclosure of financial and non-financial information of SOEs. For example, in Serbia,

[34] The World Bank (2014). "Corporate Governance of State-Owned Enterprises in: Current Trends and Country Cases", Washgton D.C: The World Bank, p. 19.

[35] The National Council of SOEs Law 5058/2013. This law created the National Council of SOEs (Consejo Nacional de Empresas Públicas (CNEP)), an entity that centralized the supervision and control of SOEs.

[36] The World Bank, *supra* note 34, p.19.

South Africa, and Malaysia, company laws regulate the corporate governance of SOEs.[37] Likewise, in countries such as Bhutan, Niger, and Zambia, the company acts control the corporate governance of SOEs.[38] Some other countries apply public laws such as SOE laws to regulate the corporate governance of SOEs. In Korea, the Management of Public Institutions Act governs the corporate governance of all non-incorporated SOEs.[39] In Turkey, Decree Law No. 233/1984 governs the corporate governance of all corporatized and non-corporatized SOEs.[40]

There are countries that observe a mixed approach and implement both private and public laws to regulate the corporate governance of SOEs. Bulgaria, for example, adopts a mixed legal regime to regulate the corporate governance of SOEs. It applies the Companies Act 1991, and the Public Enterprise Act 2019 and its subsidiary legislation to the corporate governance of SOEs.[41] Likewise, in Peru, the SOE law mainly governs the corporate governance of SOEs, whereas the company law governs the rights of minority shareholders and issues of dividends in SOEs.[42] India mainly uses the company law to regulate the corporate governance of SOEs, but SOEs should also observe other public laws, codes, and guidelines.[43]

Some countries embody provisions in national constitutions and supranational laws that apply to the corporate governance of SOEs. For example, in Gambia, the 1997 Constitution incorporates provisions on the appointment of the board of directors, CEOs, and other staff as well as on the monitoring, oversight, and financial reporting of SOEs.[44] Similarly, in South Africa, the 1996 Constitution recognizes water rights,[45] and this, *inter alia*, requires the state through SOEs to meet this right. The Constitution of Uruguay incorporates the same right to water and sanitation.[46] Constitutions

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[37] The World Bank Corporate Governance of State-Owned Enterprises Toolkit 2014, p. 31.

[38] Ibid; *See* also Ordinance 86-00/ 1986, Title II Chapter 3 and Title III Chapter 1; Decree 121/1986 and Decree 86-122/PCMS/MTEP/SEM/ 1986.

[39] The Management of Public Institutions Act No. 8258/ 2007, Articles 2, 4-6.

[40] Decree Law 233/1984.

[41] The World Bank (2021). "Bulgaria Integrated State-Owned Enterprises Framework (ISOEF) Assessment, Washington D.C: The World Bank, p.37.

[42] Legislative Decree No. 1031/2008.

[43] The World Bank Corporate Governance of State-owned Enterprises Toolkit 2014, p. 31.

[44] The Constitution of the Republic of Gambia 1997, Article 175.

[45] The Constitution of Republic of South Africa 1996, Section 27.

[46] Political Constitution of the Oriental Republic of Uruguay 1966, Article 47.

of Uganda, and Zambia recognize water rights, and require SOEs to comply with these stipulations.[47]

Supranational laws such as the EU treaty provide that "member states shall adjust any state monopolies of a commercial character to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States."[48] Consequently, for example, most French SOEs are now regulated by the company law and not as individual public law entities.[49] Recently, countries have been moving towards developing and applying a unified legal framework of corporate governance that applies to the private sector and SOEs. For example, countries such as Australia, Belgium, Turkey, the UK, and France have begun applying company law to SOEs as private companies. [50]

3.3 Legal status of State-owned enterprises

Principle II(A) of the OECD Guidelines recommends states to simplify and streamline the legal status and operational practice of SOEs. It provides that SOEs may reflect specific, and sometimes, different legal statuses. But the legal status designed shall endow SOEs to meet their specific objectives, enhance transparency, facilitate oversight, and create a level playing field.[51] The World Bank Toolkit also recommends states to establish a simplified legal status that facilitates equal implementation of rules and regulations for all SOEs.[52]

Globally, several countries create SOEs with multiple legal statuses: in most cases, as joint stock companies, and in some cases, as statutory corporations and departmental undertakings. The Commerce Act of Bulgaria stipulates that SOEs shall be created as single-owner limited liability companies, single-shareholder joint-stock companies, or state enterprises (to be established via separate law).[53] In India, the Company Act of 1956 recognizes departmental undertakings, statutory corporations established by

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[47] The World Bank Corporate Governance of State-owned Enterprises Toolkit 2014, p. 29.

[48] European Union Treaty, Article 87; See also European Union Competition Law, Article 37(1).

[49] The World Bank Corporate Governance of State-owned Enterprises Toolkit 2014, p.2 9.

[50] Id., pp. 36-42.

[51] OECD (2021). "Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices," Paris: OECD Publsihing, p. 20.

[52] The World Bank Corporate Governance of State-owned Enterprises Toolkit 2014, pp.34-38.

[53] Commerce Act 1991, Article 62.

official acts, and governmental limited liability.[54] In Niger, several ordinances adopted in 1986 recognized four types of state-owned enterprises: industrial and commercial public entities, administrative public entities, state-owned companies, and partially state-owned companies.[55]

In some exceptional countries such as Kosovo and Singapore, SOEs assume a simplified legal status.[56] In Kosovo, Law No. 03/L-087 stipulates that every publicly owned enterprise shall be organized as a joint stock company.[57] Similarly, the Companies Act 1967 of Singapore' provides that all government-linked companies shall be limited liability companies.[58] Despite this blended legal status of SOEs, there is a trend towards corporatization of SOEs- the act of reorganizing or transforming SOEs into a separate legality although this may take different forms across and within jurisdictions. China, for example, corporatized its SOEs to establish a modern SOE system of corporate governance. [59]

3.4 Objectives, competitive neutrality, and income generation

According to the OECD Guidelines, the ultimate purpose of state ownership should be maximizing value for society. Principle III(C) of the Guidelines provides that SOEs may pursue both economic and public policy objectives. Principle I(D) recommends that SOEs' special responsibilities and obligations should be mandated and motivated by laws and regulations. They could also be incorporated into corporate bylaws. According to Principle III(D), "any cost related to the fulfillment of public policy objectives [should] be clearly identified, disclosed, and adequately compensated by the state". Similarly, the World Bank Toolkit provides that SOEs may carry out commercial and public service obligations, but stresses that these objectives should be balanced.[60]

The laws of most countries stipulate that SOEs shall generate the bulk of their revenues from selling goods and services on a commercial basis although they simultaneously pursue specific policy goals or public service objectives.

[54] Companies Act 1956, Section 617.

[55] The World Bank (2019). "Niger Integrated State-Owned Enterprise Framework (ISOEF)," Washington D.C: The World Bank, pp. 37-38.

[56] The World Bank (2020). "Corporate Governace of State-Owned Enterprises in Europe and Central Asia: A Survey," Washington D.C: The World Bank, p.17.

[57] Law No. 03/L-087 2008, Article 4.1; The World Bank, *Supra note 34*, p.16.

[58] Companies Act 1967, Article 17.

[59] Karen Jingrong *et al* (2020). "State-Owned Enterprises in China : A Review of 40 Years of Research and Practice," *China Journal of Accounting Research* , Volume 13, Isuue 1, p.38.

[60] The World Bank Corporate Governance of State-owned Enterprises Toolkit 2014, p.26.

In Niger, for example, Ordinance No. 1 of 1986 provides that SOEs shall carry out commercial and industrial activities as well as public service objectives.[61] The Company Law of the Netherlands states that SOEs shall carry out both commercial and non-commercial activities.[62] However, the laws of most countries mandate SOEs with more expansive public service obligations than commercial activities. This can constrain SOEs to compete with private enterprises, record good performance, and generate good financial rewards.

A significant number of countries are now adopting laws that force the state to reimburse costs associated with non-commercial objectives. For example, the Gambian Public Enterprise Act provides that costs associated with non-commercial activities are subject to reimbursement by the State.[63] In New Zealand, the State-Owned Enterprises Act 1986 provides that SOEs may pursue noncommercial objectives but "requires Ministers to agree with the [SOE] to pay for any goods or services that they wish [an SOE] to provide to any person.[64]

Principle III(E) of the OECD Guidelines provides that "SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes and regulations. Laws and regulations should not unduly discriminate between SOEs and their market competitors. SOEs' legal form should allow creditors to press their claims and to initiate insolvency procedures." The World Bank Toolkit similarly recommends equal application of laws and regulations to SOEs and private enterprises, and this includes the procurement law, competition law, insolvency law, tax law, and labor law. [65]

In this regard, the laws of most countries ensure an equal playing field for SOEs and private companies. These laws do not guarantee competitive advantages for SOEs over private enterprises nor establish exceptions to the application of laws. In Brazil, the Federal Public Administration Act subjects SOEs to the same market conditions as private enterprises.[66] In the United Kingdom, *Principles of Competitive Neutrality in the Procurement Process*

[61] Ordinance No. 1 of 1986, Articles 3 and 21.

[62] Robert C. G. Haffner and Koen G. Berden (1998). "Reforming Public Enterprises-Case Studies: The Netherlands," Paris:OECD Publshing, p.7.

[63] Public Enterprises Act 1/1990, Part II, Section 6.

[64] State-Owned Enterprises Act 1986, Section 7.

[65] The World Bank Corporate Governance of State-owned Enterprises Toolkit 2014, p.36.

[66] Decree No. 200/ 1967, Article 178.

for Custodial Service specifically addresses the competitive neutrality of SOEs in procurement contracts.[67]

However, some national laws extend exemptions and provide subsidies and other preferential treatment for SOEs.[68] For example, in Gambia, the Public Finance Act stipulates that the state may lend funds to SOEs or regulate borrowing by SOEs.[69] It also entrusts the Ministry of Finance and Economic Affairs with the authority to lend state funds and issue state guarantees, including loan guarantees for SOEs.[70] The Procurement Law of Turkey exempts SOEs from the application of the law on purchases below a certain threshold although such thresholds cover only a fraction of total SOE procurement.[71]

3.5 Models of state control and autonomy for professionalism and effectiveness

State ownership function and arrangement are also fundamental in the corporate governance of SOEs. Accordingly, the OECD Guidelines provide that the state should act as an informed and active owner, ensuring transparent and accountable governance of SOEs with professionalism and effectiveness. To that effect, Principle II(D) of the OECD Guidelines recommends that the exercise of state ownership rights in SOEs shall be (i) clearly identified within the state administration; and (ii) centralized in a single ownership entity or, if this is not possible, carried out by a coordinating body. The World Bank Toolkit also provides that the centralized ownership model ensures a more professional state owner, maintains an arm's length state control, and narrows the temptation to intervene in the day-to-day affairs of SOEs.[72] The Toolkit also suggests that an advisory or coordinating body is an option to improve the state's ownership function. [73]

Countries also adopt laws that enable the state to be active and an informed owner. These laws provide the modalities of exercising the state's ownership that fall broadly into five arrangements. In one of the models, the laws recognize a *centralized model*, i.e. a single ownership institution or public

[67] The World Bank Corporate Governance of State-owned Enterprises Toolkit 2014, p. 42.
[68] The World Bank, *supra* note 34, p.20.
[69] Public Finance Act 1/ 1990, Part VI, Section 36 (1) (c) and Section 53.
[70] Public Finance Act, Part VI, Sections 46 and 47.
[71] The World Bank Corporate Governance of State-owned Enterprises Toolkit 2014, p. 41.
[72] Id., p.93.
[73] Ibid.

entity, which may be independent or part of the government, exercises state ownership rights over the SOEs. For example, in Finland, the State Shareholdings and Ownership Steering Act 1368/2007 and the Act Amending the State Shareholdings and Ownership Steering Act enjoin the Ownership Steering Department in the Prime Minister's Office to own and exercise ownership rights in SOEs.[74] Similarly, in China, the Implementing Regulations of May 13, 2003, empowers the State-Owned Assets Supervision and Administration Commission (SASAC) to exercise ownership and management of large centrally-owned state enterprises.[75]

In the second model, the laws adopt a *dual model*, i.e. a ministry and agency or group of entities exercise ownership rights in SOEs. In most countries, the Ministry of Finance is the legal owner of the shares in SOEs, but the Ministry of Finance often delegates the ownership function to line ministries or agencies. For example, in Niger, Ordinance 86-002 provides that sectoral ministries exercise technical oversight over SOEs that operate under their respective jurisdictions and the Ministry of Finance exercises financial oversight.[76]

In the third model, the laws adopt an *advisory model* whereby ownership remains dispersed, but an advisory or coordinating body provides high-level input into SOE governance and ownership matters. For example, the Public Enterprise Act 2019 of Bulgaria adopts an advisory model with Public Enterprises and Control Agency (PECA) performing centralized oversight and coordination of SOE reporting, while the main policy functions and decision-making remain with line ministries.[77] Similarly, the United Kingdom adopts the advisory body model where the shareholder executive organ has a classic advisory function and other governance agencies exercise the governance function.[78]

Some countries employ the fourth model, i.e. a *decentralized model* where ownership responsibilities are dispersed among different line ministries. In Croatia, the Act on Internal Organization and Scope of State Administration Bodies enacted in 2020 (Official Gazette 85/20) provides that the state ownership function of SOEs remain among different institutions, with an

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[74] State Shareholdings and Ownership Steering Act 1368/2007, Section 5.
[75] Decree of the State Council of the People's Republic of China No. 378/ 2003, Art. 1.
[76] Ordinance 86-002 /1986, Articles 4–6.
[77] Public Enterprise Act No. 100/20.12.2019, Articles 11 and 12.
[78] OECD, *supra note 51*, p.15.

active role of line ministries.[79] The fifth model relates to the laws of countries that recognize the *twin track model* where two independent government institutions exercise ownership function on SOEs under their portfolio.[80] In Turkey, Decree Law No. 233 (DL.233) and Law No. 4046 entrust the Ministry of Treasury and Finance (MoTF) and Privatization Agency (PA) to exercise state ownership rights over SOEs in their portfolio.[81]

In a nutshell, even though there is no ideal model for exercising state ownership in SOEs, more countries are reforming their laws towards the *centralized* or *advisory body* model to bring quality and professionalism to the state's ownership role. Principle II(F) of the OECD Guidelines recommends that the state as an active owner exercise its ownership rights.[82] This shall at least include the rights to participate and vote in shareholder meetings; obtain relevant and sufficient information on a timely and regular basis; elect and remove members of the board; and approve extraordinary transactions. The laws of many countries also recognize the rights of the states as shareholders in SOEs. In Chile, for example, the Enterprises System Code provides that state ownership entities, *inter alia*, shall participate in the shareholders' meeting.[83]

3.6 Board and management autonomy

The OECD Guidelines, World Bank Toolkit, and the laws of countries further underscore the significance of the board and management in the corporate governance of SOEs. The OECD Guidelines provides that the board should be assigned with a clear mandate and ultimate responsibility to ensure the performance of SOEs. The guideline under Principle VIII(C) recommends that the boards be composed of members of various backgrounds so that they have competency and objectivity to provide strategic guidance and monitor the management of SOEs. It recommends that the boards shall have the necessary authority to effectively carry out their functions, including the power to appoint and remove CEOs.

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[79] *Act on the Organization and Scope of State Administration Bodies* Official Gazette 85/2020. *See* also OECD(2021), "OECD Review of the Corporate Governance of State-Owned Enterprises: Croatia," Paris: OECD Publsihing, p.42.

[80] Acevedo Sánchez (2016). "State-Owned Enterprise Management: Advantages of Centralized Models, p. 20.

[81] Ministry of Treasury and Finance (2019). "Annual Ownership Report for State Owned Enterprises," p.5.

[82] OECD Guidelines on Corporate Governance of State-Owned Enterprises 2015, Principle II(F).

[83] Enterprise System (Sistema de Empresas SEP) Code 1997, Section I, 3b.

The World Bank Toolkit provides that the board bears the ultimate responsibility for the stewardship and performance of SOEs. It shall be professionalized and include highly qualified and competent directors who can exercise objective and independent judgment.[84] The Toolkit also requires the board, subject to clear terms, to appoint and remove the CEOs to reduce the scope of government interference in operational decision-making. [85]

Moreover, countries have enacted laws that define the powers and responsibilities of the board in SOEs. In Mexico, the Law of Parastatal Entities lists down the power of the board in SOEs. In Gambia, the Board Charter stipulates in detail the important duties and responsibilities of board members.[86] Similarly, in Bulgaria, the Commerce Act, Company rules and regulations, and management contracts set forth the responsibilities of board members.[87] Yet, countries take different positions, particularly regarding the power of the board to appoint and remove CEOs.

The South Africa King Report III, for example, recognizes that the board shall appoint the CEO, subject to final approval by, or in consultation with the ownership entity and other shareholders.[88] Similarly, in Norway, the Government Ownership Policy (2008) stipulates that the board is responsible for appointing and, if necessary, firing the CEO.[89] In Slovenia, the Companies Act 65/09 states that the supervisory board should appoint the CEO.[90] At present, the laws of most countries empower boards to appoint and remove CEOs.

There is a variety of experience on the composition and independence of the board of SOEs. In Norway, the Government Ownership Policy (2008) specifies that the state shall ensure the boards represent diversified members who have the competency and capacity to perform their office duties.[91] The policy stresses that the board shall be independent and balance gender distributions. It further provides that active politicians, including members of government ministers and state secretaries, as well as civil servants whose area of responsibility includes regulatory or supervisory powers in SOEs, or

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[84] The World Bank Corporate Governance of State-owned Enterprises Toolkit 2014, p. 159.

[85] Id., p. 187.

[86] The World Bank (2021). "The Gambia: Integrated State-Owned Enterprises Framework (ISOEF) Assessment" Washington D.C: The World Bank, p. 60.

[87] The World Bank, *supra note 41*, p.31.

[88] King Report on Corporate Governance 2009 , Principle 1.6.

[89] The Government's Ownership Policy 2008, p.72.

[90] Companies Act 65/2009, Art 268; The World Bank, *Supra note 56*, p. 88.

[91] The Government's Ownership Policy 2008, 73.

who have matters under consideration of material importance to SOEs, shall not be members of the board.[92]

On the other hand, in Finland, the Government Resolution on State Ownership Policy (2011) provides that the boards shall have experts independent of SOEs.[93] It further states that the board may appoint directors from among state officials at the various ministries.[94] At present, however, the laws of most countries require that boards should be comprised of non-political officeholders and government officials.[95]

Likewise, there have been differences on employees' representation on boards of SOEs. The majority of states do not acknowledge employees to have a representative on SOE boards. In some countries, legally or traditionally, states include representatives of employees on SOE boards. In Finland, the state traditionally brings in representatives of employees on SOE boards.[96] In Sweden, the law requires employee representation on SOE boards.[97] In Chile, under Law No. 20.392/2009, the state enables employees to participate in the board of directors subject to the condition that employee representatives shall have no voting rights in matters that involve potential conflicts of interest, such as labor issues.[98]

3.7 Transparency and disclosure

Principle VI of the OECD Guidelines provides that SOEs should observe high standards of transparency and be subject to the same high-quality accounting, and auditing standards as listed companies. SOEs shall disclose material financial and non-financial information complying with international disclosure standards. SOEs shall subject their financial statements to an independent external audit of high-quality standards. The state ownership entity shall also publish an annual aggregate report on the performance of SOEs.

Moreover, OECD's Anti-Corruption and Integrity (ACI) guideline embodies recommendations on how to fight corruption and promote integrity in SOEs.[99] The World Bank Toolkit recommends SOEs to abide by the same

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[92] Ibid.
[93] Government Resolution on State Ownership Policy 2011, p. 6.
[94] Ibid.
[95] Simon C. Y. Wong(2018), "The State of Governance at State-Owned Enterprises," *Private Sector Opinion*, Issue 40, p.15.
[96] Government Resolution on State Ownership Policy of 2011, 8.
[97] State Ownership Policy of 2020, 104.
[98] Law No. 20.392/2009, Article 8(b).
[99] OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises 2019.

reporting, control, and audit frameworks as other significant corporate or public interest entities. It requires SOEs to publish financial statements according to high-quality accounting and auditing standards and publicly disclose financial and non-financial information.[100]

Countries also adopt laws on transparency and disclosure practices of their SOEs; however, they set forth different transparency and disclosure levels. The laws of some countries require SOEs to observe national transparency and disclosure standards. In Brazil, the Law on Limited Liability Corporations, and Law 11638 of 2007 provide that SOEs shall comply with national accounting and audit standards.[101]

On the contrary, the laws of most countries require SOEs to observe very strong transparency and disclosure standards that align with international accounting and auditing standards applicable to private enterprises. For example, the Accountancy Act 2015 of Bulgaria requires SOEs to observe the IFRS and comply with standardized contents of financial statements and management reports.[102] The United Kingdom Government's Financial Reporting Mechanisms require SOEs to publish sustainability reports beyond disclosing financial and non-financial information.[103] The Sweden Guidelines for External Reporting has also incorporated strong disclosure requirements for SOEs.[104]

Countries pursue different controlling mechanisms of transparency and disclosure, particularly in employing internal and independent external auditors. The law of Chile requires SOEs to apply internal audit systems including risk management.[105] The law of Peru stipulates that SOEs shall employ independent external auditors who will be selected through public tender.[106] Similarly, the 1977 Gambia Constitution requires the National

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[100] The World Bank Group (2014). *Corporate Governance of State-owned Enterprises: A Toolkit*, p. 215.

[101] Law No. 11,638/2007; *see* also Marcos Valadão & Nara Galeb Porto (2008), "Brazilian Update: New Accounting Standards, Reinsurance Law, Business Environment Improvement and More," Law and Business Review of the Americas, Vol. 14, Issue 3, p.643.

[102] Accountancy Act 2015, Article 34; The World Bank, *supra note 41,* p.26.

[103] The Government Financial Reporting Manual 2022, p.34.

[104] OECD(2020). "Transparency and Disclosure Practices of State-Owned Enterprises and Their Owners:Implementing the OECD Guidelines on Corporate Governance of State-Owned Enterprises," Paris: OECD Publishinng, p.12.

[105] The World Bank, *supra* note 34, p.26

[106] Ibid.

Audit Office to audit the accounts and financial information of SOEs.[107] The Public Enterprises Act of Bulgaria also enjoins independent registered auditors to audit the performance of SOEs.[108] Nowadays, the requirement for independent external auditors has become virtually pervasive. Most countries are reforming their laws to employ independent external auditors to inspect the financial and non-financial statements of SOEs. [109]

Different measures are taken against non-compliance with transparency and disclosure requirements. In Korea, the Management of Public Institutions Act enjoins the Ministry of Economy and Finance to take measures if SOEs negligently or imprecisely disclose information.[110] The Netherlands recognizes SOEs that comply with the requirements and it imposes fine against non-compliance.[111] Lithuania does not impose punishment against non-disclosure by SOEs.[112] However, it is not uncommon to see that most jurisdictions recognize measures against non-compliance of disclosure requirements.[113] The measures often rest on the governing bodies of SOEs, and may include dismissal, and in some cases, criminal offense charges.

3.8 Relations with minority shareholders and stakeholders

The relations of SOEs with minority shareholders and stakeholders deserve due attention in the corporate governance of SOEs. Principle IV of the OECD Guidelines states that the state and SOEs should protect minority shareholders from abusive action, by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress. Principle V further recommends that SOEs should recognize and respect the legal and contractual rights of stakeholders. The World Bank Toolkit provides that SOE policies and laws shall recognize the basic rights and endorse the participation of minority shareholders in SOEs.[114] The Toolkit also provides that SOEs shall establish effective relationships with stakeholders.[115]

In a similar vein, countries have enacted laws that regulate relations of SOEs with minority shareholders. In Peru, Decree No. 1031/2008 requests

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[107] The Constitution of Republic of Gambia 1997, Section 160.
[108] The Public Enterprises Act of 2021, Art 26.
[109] The World Bank, *supra* note 34, pp.19-20.
[110] Management of Public Institutions Act No. 8258/2007, Article 56.
[111] The World Bank, *supra* note 34, p.14.
[112] Ibid.
[113] Ibid.
[114] The World Bank Corporate Governance of State-owned Enterprises Toolkit 2014, pp. 248-250.
[115] Id, p.16.

SOEs to develop internal rules that ensure fair treatment of minority shareholders and guarantee, *inter alia,* voting rights and access to material information.[116] In some countries, SOEs recognize rights for minority shareholders beyond the minimum legal requirements. In Colombia, ECOPETROL guarantees minority shareholders to participate and vote in the shareholders' general meeting, receive dividends, access public information, request calls for extraordinary meetings, ask for specialized audits, and prepare proposals on good corporate governance of SOEs.[117] Likewise, countries develop laws that maintain good relations between SOEs and stakeholders.

4. The Legal Framework for Corporate Governance in State-owned Enterprises in Ethiopia

Ethiopian laws relevant to SOEs include the 1995 FDRE Constitution, Public Enterprises Proclamation No. 25/199, the Commercial Code, Code of Corporate Governance for Public Enterprises No. 501/2020, and other subsidiary legislations which embody provisions that regulate the corporate governance of SOEs. Ethiopia mainly applies the Public Enterprise Proclamation No. 25/1992 to establish and regulate the corporate governance of SOEs. Moreover, it applies specific enabling laws. Ethiopia also employs the Commercial Code and the Civil Code to fill gaps in the corporate governance of SOEs.[118] In the realm of constitutional law, Article 90 of the 1995 FDRE Constitution has implications for the corporate governance of SOEs because it guarantees all Ethiopians to have access to public health and education, clean water, housing, food, and social security.

4.1 Legal status, objectives, and competitive neutrality

A close examination of the aforementioned laws reveals that SOEs reflect multiple legal statuses, namely the legal status of the departmental undertaking, statutory corporation, and share company. For example, Proclamation No. 535/2007 establishes the National Lottery Administration (NLA). The NLA, according to the Proclamation, operates under the authority of a state organ and lacks both operational and financial independence. It functions as a departmental undertaking. Regulation No. 197/2010 establishes Ethiopian Telecommunication (Ethio Telecom). According to the regulation, Ethio Telecom has a legal personality separate from the state and enjoys

[116] Decree No. 1031/2008, Article 3.
[117] The World Bank, *supra* note 34, p. 25.
[118] Public Enterprises Proclamation No. 25/1992, Article 4.

operational and financial independence. These attributes resemble the legal status of a statutory corporation.

Regulation No. 202/1994 establishes the Development Bank of Ethiopia (DBE). According to the country's financial and monetary laws, financial institutions must be established as share companies. Thus, the DBE is established as a share company, although it is owned by the state. Upon registration in the commercial register, share companies acquire a separate legal personality and enjoy significant operational and financial independence, and this applies to DBE.

The laws allow SOEs to pursue various commercial and non-commercial objectives in their operations. Especially, the enabling laws set forth the objectives to be pursued by individual SOEs. For example, Article 6 of the Ethiopian Airlines Group Establishment Council of Ministers Regulation No. 406/2017 specifies eleven objectives of the Group that include providing domestic and international air transport and general aviation services; manufacturing and repairing aircraft and aircraft parts; providing hotel, recreational, and other tourism services; selling and pledging bonds; and the power to negotiate and sign loan agreements with local and international financing sources.

Article 6 of The Development Bank of Ethiopia Re-establishment Council of Ministers Regulations 83/2003 also assigns the bank to exercise about thirteen objectives not limited to providing investment credits; participating in equity investment; and guaranteeing loans and other financial obligations.[119] These laws mandate SOEs to jointly operate commercial and non-commercial objectives. They also enable SOEs to deploy their resources and commercial gains to cover the costs of non-commercial objectives.

Although these laws attempt to ensure competitive neutrality between SOEs and private enterprises in the market, there are some laws that grant SOEs exemption and preferential treatments. For example, Article 30(2) of Proclamation No 25/1992 states that “nothing in this Proclamation shall affect the right of an enterprise to be exempted from taxes and duties and any other right under any other law.” In line with this, Article 3 of the VAT Directive No. 27/2002 EC allows SOEs to withhold VAT payments, unlike the private sector. The Federal Government Procurement and Property Administration Proclamation No. 649/2009 extends different treatment for SOEs. The Trade Competition and Consumers Protection Proclamation No. 813/2013 opens door for the state to provide subsidies and other assistance for SOEs.

[119] Development Bank of Ethiopia Re-establishment Regulation No. 83/2003, Article 6.

4.2 Ownership and management

Ethiopia does not have a formal state ownership policy with regard to SOEs. Nevertheless, various sectoral policies and enabling laws indicate the rationale of state ownership in SOEs. The Prosperity Party Political Program and the Homegrown Economic Reform Agenda indicate that the state participates in strategic economic sectors to create wealth in a stable manner and raise government revenue.[120] The enabling laws of individual SOEs imply that providing public goods and services and implementing public policy goals are some of the rationales for state ownership.

The laws also determine the supervising authorities responsible to exercise state ownership rights. The Public Enterprises Proclamation No. 25/1992 stipulates that supervising authorities designated by the Council of Ministers shall exercise the state ownership rights.[121] Accordingly, the Council of Ministers has empowered the Public Enterprises Holding and Administration Agency, the Ethiopian Investment Holdings, and Sectoral Ministries to exercise ownership rights on SOEs established as per Proclamation No. 25/1992.

Proclamation No 1206/2020, Regulation No. 445/ 2019 and Regulation No. 487/2022 also incorporate provisions that endorse similar state ownership function arrangements. Article 11 of the Public Enterprises Proclamation No.25/1992 provides that these supervising state organs shall appoint and remove members and chairperson of the board; fix the allowances of board members; appoint external auditors; decide capital and dividends; approve investment plans; propose dissolution, division, or divestitures; and approve the targets of SOEs.

The laws regulate the board and the management of SOEs. They provide that the supervising authority and employees shall appoint board members of SOEs. Article 12(2) of the Public Enterprises Proclamation No 25/1992 stipulates that the general assembly of workers shall elect up to one-third (1/3rd) of the board members and the supervising authority shall appoint the rest board members. This provision thus gives due attention to the interests of the employees. The Proclamation also stipulates that board members shall be selected and appointed based on their profession, experience, and competence.[122]

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[120] Prosperity Party Political Program 2022, p. 21; A Homegrown Economic Reform Agenda of 2020, p.16.

[121] Public Enterprises Proclamation No.25/1992, Articles 2(2), 10, and 11.

[122] Id., Article 12(4).

Article 6(2) of the Corporate Governance Code stipulates that the board shall maintain a variety of views, experience, and intangible qualities such as interpersonal skills, communication skills, diplomacy, leadership, commitment, and ethical integrity. According to this provision, the board shall be comprised of independent directors from the public and private sectors to bring more professionalism and fresh perspectives to the board.[123] Thus, the board shall be comprised of members with different backgrounds, professions, and skills. The Code mandates supervising authorities to establish a well-structured and transparent board nomination and assignment guideline to ensure the placement of competent leaders and professionals in the board.

The Public Enterprises Proclamation No. 25/1992 and other laws further define the power and responsibilities of the board in SOEs. Accordingly, the Board appoints and dismisses the general manager; approves the employment, assignment, and dismissal of officers, including their salaries and allowances; approves internal regulations, work program, and budget; approves long-term loans and credits of the enterprise; approves the sale of fixed assets; and ensures proper books of account.

4.3 Transparency and disclosure

Article 28(3) of Public Enterprises Proclamation No. 25/1992 requires SOEs to prepare reports on the state of their activities and affairs, including statements of achievements and major plans and programs to be implemented. SOEs shall keep books of account following generally accepted accounting principles.[124] They shall close their accounts at least once a year and failure to do so entails accountability.[125] Similarly, Article 21 of the Code of Corporate Governance states that SOEs shall timely and accurately disclose material financial and non-financial information in line with international standards. The supervising authorities shall annually publish an aggregate report on the overall performance of individual SOEs.[126]

The Public Enterprise Board Administrative Directive No. 8/2009 incorporates similar disclosure requirements.[127] The Financial Reporting Proclamation No. 847/2014 also requires SOEs to observe international financial reporting standards.[128] Besides, Article 32(1) of the Public

[123] Code of Corporate Governance Code for Public Enterprises No. 501/2020, Article 6(3), (hereinafter Corporate Governance Code)
[124] Public Enterprises Proclamation No.25/1992, Article 27.
[125] Id., Article 28(2) & (4).
[126] Corporate Governance Code, Article 21.
[127] The Public Enterprise Board Administrative Directive No.8/2009, Article.10/15.
[128] Financial Reporting Proclamation No.847/2014, Articles 5 (1) and (2).

Enterprises Proclamation No. 25/1992 stipulates that SOEs shall be audited by independent external auditors. The Code of Corporate Governance and the Commercial Code also require the financial reports of SOEs to pass through external auditing practices.[129] Financial Reporting Proclamation No. 847/2014 enjoins auditors to adhere to international auditing standards issued by the International Federation of Accountants.[130] The Proclamation states that failure to comply with these reporting and auditing requirements entails liability including criminal punishment.[131]

4.4 Relationships of SOEs with minority shareholders and stakeholders

The Commercial Code entitles minority shareholders to have the right to participate in annual general meetings, cast votes, challenge decisions, receive dividends, and take shares upon the winding-up of SOEs.[132] The Code also provides that the general meeting may not pass a resolution that gives undue benefit controlling shareholders.[133] Likewise, the rights of stakeholders are recognized. Article 20 of the Corporate Governance Code states that the rights of creditors shall be protected in the acquisition, merger and division of SOEs.

Article 36(1) of the Public Enterprises Proclamation No. 25/1992 states that the consent of creditors shall be secured before SOEs are amalgamated or divided.[134] If the amalgamation or division does not meet the obligations towards the creditors, the SOEs may not be amalgamated or divided.[135] SOEs that undergo dissolution shall inform creditors to bring their claims or deposit the amounts due to them.[136]

As indicated above under Section 4.2, the Public Enterprise Proclamation No. 25/1992 guarantees employees to participate on the board of SOEs.[137] The Corporate Governance Code provides that the board and management may determine other forms and levels of employee participation in the affairs of SOEs.[138] The Code demands the board and management maintain good labor,

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[129] Corporate Governance Code, Articles 18 &19; See also Commercial Code of Ethiopia Proclamation No. 1243/2021, Article 343.
[130] Financial Reporting Proclamation No.847/2014, Articles 12.
[131] Id., Articles 37, 44.
[132] Commercial Code of Ethiopia Proclamation No. 1243/2021, Articles 362 & 363.
[133] Id., Article 364.
[134] Public Enterprises Proclamation No. 25/1992, Article 36(1).
[135] Id., Article 36(2).
[136] Id., Article 42 & 43.
[137] Id., Article 12(2).
[138] Corporate Governance Code, Article 20(9).

health, and safety conditions.[139] It encourages SOEs to assist persons with disabilities, women, minorities, and youth and children as well as engage in social responsibility activities such as consumer protection, environmental protection, and community development within their means and resources.[140]

5. An Appraisal of Legal Issues of Corporate Governance of State-owned Enterprises in Ethiopia

The discussion in Section 4 shows that Ethiopia has put in place several laws to regulate the corporate governance of SOEs. These laws establish the rules and they state expectations that are applicable to all stakeholders involved in SOEs. They separate the state's ownership function from its policy-making and regulatory functions and define the board's role. Moreover, the laws establish the legal status of SOEs, regulate their objectives, control the board and management, govern minority shareholders and stakeholders, and manage transparency and disclosure practices. However, the corporate governance of SOEs still faces various legal and practical challenges that need to be addressed.

5.1 The need for harmonized or unified law

There is lack of a harmonized or unified law to regulate the corporate governance of SOEs. Ethiopia has a mix of several strands of laws, i.e., the Public Enterprise Proclamation No. 25/1992 and laws such as the Commercial Code, the Commercial Code, and the Code of Corporate Governance for Public Enterprise No. 501/2020. There are also specific regulations like the Council of Ministers Establishment Regulations of individual SOEs. These laws involve gaps, ambiguities, and sometimes overlap and contradict each other thereby causing inconsistent and conflicting corporate governance practices in SOEs.

These problems dilute the accountability of the state, boards of directors, management, and respective government agencies. They establish different treatments among SOEs, and between SOEs and the private sector. Some of the laws are outdated in terms of their relevance in the corporate governance of SOEs. For example, the Public Enterprise Proclamation No. 25/92, which is the main law of SOEs, was enacted in 1992, and it is inadequate to handle contemporary corporate governance issues in SOEs.

The laws establish manifold legal status for SOEs. Each SOE is subject to different laws; bears divergent rights, privileges, and responsibilities; and

[139] Id., Article 20(7).
[140] Id., Article 20(7) & (8).

possesses a distinct governance structure.[141] Besides, there is lack of public policy or general law that explicitly defines the objectives of SOEs. In effect, the objectives are inferred from the founding laws of individual SOEs which enable SOEs to pursue multiple and competing commercial and non-commercial objectives. These laws do not balance the commercial and non-commercial activities with due attention to strengthening the commercial orientation of SOEs. They do not also recognize a clear and transparent compensation system for non-commercial activities.[142] The laws provide exemptions and preferential treatments for SOEs. This adversely affects the commitment and efforts of SOEs to become competitive in the market; and their continued operation is largely contingent upon preferential treatment rather than institutional viability.

5.2 Policy gaps in state ownership and management

The state has not prepared a state ownership policy. The rationales for state ownership of SOEs are extrapolated from different sectoral policies and founding laws of individual SOEs. This constrains SOEs from observing coherent guidance and consistent practices. Moreover, the laws recognize de-centralized ownership arrangements. The laws enjoin sectoral ministries and different agencies to exercise state ownership function over SOEs. This state ownership arrangement widens the discretion for state political interference; blurs the state's ownership, policy, and regulatory functions; diffuses accountability; affects the state's ownership and oversight capacity; and dilutes the existing expertise levels. Similarly, the arrangement establishes little or no coordination room among the agencies and line ministries exercising state ownership functions.

Legislation that clearly and coherently regulates the selection and appointment of board members has not yet been enacted. There are gaps relating to clear and transparent processes in nominating, selecting, and appointing board members. As a result, the board members are usually senior government officials and politically affiliated individuals.[143] These board members may not usually have the necessary industry knowledge and experience to provide strategic guidance in SOEs. They also compromise the board's objectivity and independence. The laws do not ensure that the board

[141] Alemayehu Yismaw (2024). "Legal Status and Objectives of State-Owned Enterprises in Ethiopia : A Global Perspective," *CIFILE Journal of International Law* (CJIL) 5, Volume.5, Issue. 9: 66–85, p. 80.

[142] Id., p. 81.

[143] Firew Bekele Woldeyes (2021). "Debt Sustainability and Management in Ethiopia Lessons from China," *United Nations Conference on Trade and Development*, p. 11.

shall have the required authority to strategically guide and assume ultimate responsibility for gaps in an SOE's performance. The state still controls crucial powers such as electing the chairperson of the board, and approving the strategic objective, budget, etc of the SOEs. These factors create wide room for political interference in the board and SOEs.

5.3 Transparency and disclosure practices and the rights of minority shareholders

Even though the laws require SOEs to publish financial statements, this happens only rarely. Few SOEs publish financial statements; but provide very limited statements that do not meet international standards.[144] SOEs hardly publish an accurate picture of their strategy, operation, and financial condition, including their revenue stream, structure of expenditure, financing, and debts. Admittedly, the laws stipulate that non-compliance entails measures. But, the laws do not limit the timeframe for the publication of financial statements, and this induces publication of outdated information that impedes the enforcement of the rule.

Likewise, the laws require SOEs to report to multiple ownership and regulatory authorities. They establish weak internal audit and external audit systems. They create a room for CEOs to control internal auditors, and such gaps also enable the board to control independent external auditors, thereby concealing independent information. SOEs also have no law on risk management systems.

5.4 Rights of minority shareholders and stakeholders

The laws are inadequate to protect the rights of minority shareholders. The state ownership entities may abuse or ignore the rights minority shareholders to participate in the appointment of board members; in the approval of extraordinary transactions such as change of capital and control of SOEs (sale of a major stake); and imposition of special levies or contributions to the budget on SOEs. The laws enable ownership entities to hold a 'golden share' which gives special rights that unduly restrict the rights of minority shareholders. The laws do not effectively enforce the provision of accurate and timely information, including the number of shares of all classes held by the state and other major shareholders.

They are also inadequate to protect the rights of stakeholders. The legal regime, for example, inconsistently applies public and private laws to the

[144] The US State Department investment climate statement (2022), available at < https://www.state.gov/reports/2022-investment-climate-statements/ >. (Last visited on July 26, 2023)

employees of SOEs. These laws do not provide employees equal protection of salary, job, training, and exposure to development programs. The laws also may not adequately protect the rights of creditors. For example, they do not guarantee creditors collateral rights as well as accurate and timely information about the financial status of SOEs. Most SOEs do not participate in philanthropic and socially responsible activities.

6. Ethiopian Practices of SOE Governance in light of OECD Guidelines, World Bank Toolkit, and Global Good Practices

The OECD Guidelines and the World Bank Toolkit recommend states to apply unified or harmonized laws to the corporate governance of SOEs. Many countries are also implementing unified laws for all forms of SOEs as well as for SOEs and private enterprises alike. Various countries are increasingly moving in this direction. As highlighted in Section 5.1, the Ethiopian legal regime applies multiple strands of laws to the corporate governance of SOEs. Moreover, there is no initiative to develop or apply a unified or harmonized law to the corporate governance of SOEs. For example, there are no signs of initiatives to amend the main SOE law, i.e., the Public Enterprises Proclamation No. 25/1992 which involves many gaps and that has been in operation for about 33 years.

The OECD Guidelines and the World Bank Toolkit recommend that countries streamline and simplify the legal statuses of SOEs that ensure effective performance. Globally, some countries adopt a single legal status (legal form) for SOEs while many others follow multiple legal statuses (manifold legal forms) for SOEs. Ethiopia recognizes multiple legal statuses for SOEs which is against the recommendations of the OECD Guidelines and the World Bank Toolkit. The fact that many countries have multiple legal statutes does not justify pursuance of this course because there can be other variables such as harmony in policy (despite multiple laws). In the Ethiopian context, in addition to the multiplicity of the laws relevant to corporate governance of SOEs, there is no SOE Corporate Governance Policy that gives direction for laws with regard to the core elements of corporate governance applicable of SOEs.

The OECD Guidelines, World Bank Toolkit, and good practices of countries show that SOEs may inherently exercise activities aiming at profit, and simultaneously pursue multiple public policy objectives. The lessons that can be drawn from comparative good practices reveal that the state should separate commercial and non-commercial objectives; establish funding mechanisms for costs of non-commercial objectives; and ensure its implementation transparently. However, Ethiopia has not yet developed a

state ownership policy on the objectives of SOEs. The objectives of SOEs are scattered and impliedly inferred from the enabling laws of individual SOEs. The laws do not separate commercial and non-commercial objectives and do not establish funding mechanisms for the costs of non-commercial activities. Certainly, the state extends subsidies and other financial assistance to SOEs; but the process is not fairly transparent.

Based on the OECD Guidelines and the World Bank Toolkit, most countries maintain the competitive neutrality of SOEs. The legal regime in Ethiopia deviates from this common standard and applies laws that exempt or provide preferential treatment for SOEs. This distorts the level playing field in the market and adversely affects the competitiveness of SOEs in the long run.

The OECD Guidelines and the World Bank Toolkit recommend the adoption of a clear and consistent state ownership policy. They further commend the structure of the state ownership function through a centralized, or if not possible, advisory council model. Although the name varies, many countries have state ownership policies. Several countries that follow the minimal approach to state interference adopt a centralized or advisory council ownership arrangement model. However, in Ethiopia, the situation is different. The state has not developed a state ownership policy yet. The rationales for state ownership of SOEs are discerned from other sectoral policies and enabling laws of individual SOEs. The state still exercises its ownership rights through the traditional decentralized model. The laws entrust multiple agencies and sectoral ministries to exercise the state ownership function.

The OECD Guidelines proposes that the board should assume the necessary authority, competency, and objectivity. The World Bank Toolkit also calls for depoliticized and professionalized boards in SOEs. Consistent with this, many countries have robust laws on the selection, appointment, and composition of the board. These laws limit the participation of ministers, state secretaries, or other direct representatives of the executive power on SOE boards; urge independent directors to form the majority of SOE boards; and enable the board to transcend beyond the traditional role of oversight towards guiding the corporate strategy and performance of SOEs.

In Ethiopia, however, the laws still enjoin the board to exercise the traditional role of oversight. They restrain the board's relevant authorities, including appointing the chairman of the board. There is lack of law on the nomination, selection, and appointment processes of board members. As a result, the boards of SOEs (as indicated earlier) often comprise ministers and politically affiliated individuals who might have limited (or no) competence

on commercial undertakings or issues related to finance. Such boards often lack adequate number of independent directors.

Globally, there have been efforts to ensure a high level of transparency and disclosure in SOEs. The OECD Guidelines and the World Bank Toolkit recommend SOEs to observe international accounting and auditing standards as listed companies. Similarly, many countries are increasingly observing high-quality international transparency and disclosure standards. Interestingly, some countries have started a centralized information system for SOEs. Although Ethiopian laws require SOEs to observe international accounting and financial standards, there is the need for the preparation of instruction/ manual on the detailed application of these high-quality standards. Most SOEs do not publish material (financial and non-financial) information. Although a few SOEs publish this information, there are concerns about the quality, accuracy, and time of disclosure. Supervising authorities do not also publish an aggregate report on the performance of SOEs. This can be mainly attributed to the lack of a centralized reporting system because SOEs report to multiple ministries, agencies, and other regulators.

The OECD Guidelines and World Bank Toolkit recommend that SOEs should ensure good relations with minority shareholders. Many countries also attempt to ensure equitable treatment, equal participation, and access to information for minority shareholders. However, Ethiopia's laws need to address the gaps in the adequate protection of minority shareholders because they recognize a 'golden share' that gives the state a special right or veto power over minority shareholders.[145] This gap necessitates an active policy of timely and systematic communication and consultation that keeps minority shareholders informed.

Both OECD Guidelines and World Bank Toolkit recommend SOEs to give due regard to the legal and contractual rights of stakeholders. And as discussed earlier, many countries recognize the roles of stakeholders in SOEs. Although Ethiopia's laws recognize stakeholders, there are gaps in political commitment to enforce these laws. A comprehensive state ownership policy that involves stakeholders has not yet been formulated. As highlighted earlier, different public and private laws are, for example, applicable to employees in SOEs, thereby, creating confusion on their status.

Moreover, the laws show gaps in providing adequate guarantee and protection to creditors. It is also to be noted that the laws allow SOEs to receive finance from the government and continue operating despite failure in

[145] Public Private Partnership Proclamation No. 1076/2018, Article 44 (4).

operations and competitiveness, subject to the possibility that certain spheres can be clearly accorded subsidies (and pre-determined grants) with due transparency and expected performance standards so that the level of their efficiency and performance can be clearly monitored and evaluated.

7. Implications of Gaps in Corporate Governance in Ethiopian State-owned Enterprises

Ethiopia has enacted laws that are meant to regulate corporate governance practices in SOEs. However, there are several gaps and practical problems in light of modern principles and recommendations proposed under international guidelines and toolkits. Moreover, the laws need to draw comparative good practices from the laws of various jurisdictions. This has multiple implications on the corporate governance of SOEs.

The first implication relates to the possibility that the state may use SOEs for political gains. The state recognizes multiple legal statuses for SOEs. It entrusts them with multiple and potentially competing objectives without clear order of priority. It assumes crucial authority in SOEs, including appointing and removing board members and their chairperson. It establishes a low level of transparency and disclosure. This may allow the state to interfere, capture SOEs, and misuse their resources.

The other implication is that the SOEs may underperform. SOEs are operating under multiple supervising ministries and agencies. These state organs have different, and sometimes, conflicting interests and goals. They may deploy the resources of SOEs to serve the goals of their offices. The officials may even utilize the resources of SOEs to achieve their interests. Besides, the supervising authorities may be busy with other administrative activities and may not rigorously supervise the operation of SOEs. They may put the SOEs' decisions under long bureaucratic procedures. This may stifle the day-to-day operation and competitiveness of the SOEs. It may also lead to the depletion of resources and the expansion of fraud and corruption in SOEs. It may cause a high accumulation of debt in SOEs. This can ultimately affect the lives of millions of individuals and disturb the macro and microeconomic balance of the country

The board may be fully comprised of ministers, government officials, and politically affiliated individuals who do not have knowledge and experience in the industry. This may lead to a loss of monitoring activities of SOEs. Board members may also easily form patronage and engage in self-dealing activities. Moreover, the managers may serve political goals, instead of the interest of SOEs. They may participate in self-dealing activities and related party

transactions and thereby misappropriate the resources of SOEs. Such settings are susceptible to active participation in fraud and corruption activities.

The relationship of SOEs with the general public and other stakeholders may also be affected. SOEs may lose the trust and confidence of the public and other stakeholders. Potential investors may lose confidence in buying equity shares in SOEs. Suppliers, customers, and other stakeholders may be reluctant to work with SOEs. It may also discourage the SOE board and management from developing effective strategic plans and being vibrant to achieve the objectives of SOEs. In effect, senior, professional, and skilled board members, managers, and employees may not be willing to work in such SOEs.

8. Areas for Future Consideration in Corporate Governance of Ethiopian State-owned Enterprises

In light of the discussion in the preceding sections, there are legal issues that need critical reform and require effective enforcement to improve the performance of SOEs and enhance their contribution to the country's economy. The government is also expected to adopt a policy framework for SOEs that clearly states the rationales, expectations, and priorities in SOEs.

The policy should address the crucial components of corporate governance SOEs. This would help to establish a clear direction in the oversight of SOEs, including the appointment of board members, reporting lines, and financial and non-financial obligations. It also creates a coherent path to monitor SOEs, improve their accountability, and streamline oversight and decision-making. The laws that regulate the corporate governance of SOEs need to be consolidated under a unified legislation or be harmonized which builds on international experience. Relevant laws need to be approved and enacted on several important aspects to pave a clear path towards efficient and effective corporate governance of SOEs.

SOEs should be made more commercial-oriented and should be governed by the same laws and rules as private companies. To this end, they can be corporatized or incorporated under the private Commercial Code. This might take time, but the government should progressively move towards this model. In the meantime, however, the government should make SOEs pursue balanced commercial and public policy objectives. This would strengthen the competitive capacity of SOEs in the market and ensure their sustainability.

The state ownership arrangement is expected to move towards a more *centralized model,* in which the state ownership of SOEs will be exercised under a single Ministry or Agency. If this is not possible, the state ownership should move to a *coordinating/advisory model* with the Public Enterprises

Holding and Administration Agency (PEHAA) performing centralized oversight and coordination of SOEs, while the main policy and decision-making functions remain with line ministries. This would help to professionalize the SOE ownership functions. It would also facilitate the pursuits of SOEs to become more effective, efficient, and independent.

Indeed, this would be a gradual process and the government will choose the appropriate model evaluating risks and benefits and gaining experience with ownership reforms. The state's role as owner, policy maker, and regulator should be explicitly established, separated, and formalized. This would make the state act as an engaged and professional owner of its assets in SOEs. It would also insulate SOEs from political and other inappropriate interference of the state and guarantee their operational independence thereby enabling them to focus on achieving their objectives.

The board of a state-owned enterprise should be empowered with more authority and decision-making powers to provide strategic guidance and play an active role in efficient and effective performance. Currently, sectoral ministries and agencies exercise the most strategic and operational decision-making in SOEs. As opposed to this paradigm, the board should have autonomy to pass objective and independent decisions and monitor SOE performance. Towards this end, boards of SOEs should be professionalized and strengthened with independent board members, and the government should gradually reduce the presence of government officials and introduce more industry experts and independent board members to SOE boards. Other crucial tasks include training, peer exchanges, and learning opportunities to build the capacity and skills of board members.

The board should establish specialized board committees such as audit, remuneration, and risk management committees to audit the process and communicate with the external auditors, set and implement proper remuneration policies, and manage risks at SOEs. Modern corporate governance of SOEs requires the board chairman to organize the work of the board, provide clear leadership, and introduce specialized board committees to delegate and oversee specific issues.

There should be a remuneration policy that appropriately incentivizes board members and that are competitive with the private sector. The level of remuneration and incentives for board members should be transparent and fully disclosed in annual reports. An effective system of performance monitoring system such as a contractual agreement with board members should be introduced. This should include a clear definition and enforcement of rewards and consequences for SOE managers, boards, and sectoral

ministries. All SOEs regardless of their legal status should be evaluated on a uniform basis. This would help to stimulate the performance of SOEs.

There should be an improved enforcement of reporting and auditing of financial and non-financial information. The existing laws require SOEs to prepare annual reports and disclose financial information based on IFRS (International Financial Reporting Standards). In practice, however, only a few SOEs comply with this requirement. Strengthening the reporting and auditing enforcement would enable the government, potential investors, and other stakeholders to analyze and evaluate SOEs' performance on a timely basis, and it provides reliable information for decision-making.

Another avenue of concern relates to the rights and interests of minority shareholders and stakeholders. There is the need to avoid utilizing golden share clauses and ensure equal treatment of shareholders. There should be adequate safeguards and protection for the rights of stakeholders such as employees and creditors. A high standard of socially responsible business conduct should be an integral part of SOEs.

9. Conclusion

In Ethiopia, SOEs have dominance in several strategic sectors, provide public services, and hire a significant number of employees. They are an integral part of the country’s economic, social, and political goals. To this end, the state has enacted laws on the corporate governance of SOEs. However, the existing laws relevant to the corporate governance of SOEs exhibit significant gaps, ambiguities, disparities, overlaps, and conflicts; and some laws are outdated and insufficient to address current governance issues. These laws need to be updated in light of the OECD Guidelines, the World Bank Toolkit, and best practices in the national laws of various countries.

The state's skepticism regarding the implementation of these standards further complicates the situation and hinders progress in achieving robust corporate governance for SOEs. These deficiencies adversely affect the corporate governance of SOEs. The absence of standardized legal status and formalized objectives undermines their operational clarity and purpose. Moreover, SOEs suffer from ineffective state ownership and oversight arrangements, along with a lack of strong, professionalized, and depoliticized boards. Transparency and control practices are notably inadequate, characterized by delayed or low-quality reporting and limited external auditing. Furthermore, SOEs often fail to adequately address the concerns of minority shareholders and other stakeholders. Frequent state intervention exacerbates these governance challenges, leading to further inefficiencies and mismanagement.

Thus, the current corporate governance legal framework and practices of SOEs require significant improvement. It is essential to develop a policy on state owned enterprises that standardizes the corporate governance scheme across SOEs. This shows the need to reform existing laws and enact new legislation that integrates corporate governance principles and good practices applicable to SOEs. The policy on SOEs or corresponding laws should be clear and comprehensive in order to address critical issues such as state ownership, transparency and disclosure, and the protection of minority shareholders and other stakeholders within SOEs. They should also standardize the nomination and appointment processes for board members and ensure the establishment of a professional and depoliticized board. Moreover, it is crucial that these laws mandate the application of international accounting and auditing standards within SOEs. By doing so, they would foster an environment of accountability and transparency, thereby enhancing the overall governance and performance of SOEs. ■

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