

ANNEX A

Analytical Framework for the Accession Review

As noted in the Foreword, the Corporate Governance Committee (then known as the Steering Group on Corporate Governance) was requested to examine Slovenia's position with respect to core corporate governance features and to provide the OECD Council with a formal opinion on Slovenia's willingness and ability to implement the recommendations laid down in the *Principles of Corporate Governance* and the *Guidelines on Corporate Governance of State-Owned Enterprises*. At the same time, Council requested the Committee to carry out accession reviews on the same basis for four other countries – Chile, Estonia, Israel, and the Russian Federation.

The OECD Council identified five core corporate governance features to guide the Committee's accession reviews:

- Ensuring a consistent regulatory framework that provides for the existence and effective enforcement of shareholder rights and the equitable treatment of shareholders, including minority and foreign shareholders.
- Requiring timely and reliable disclosure of corporate information in accordance with internationally recognised standards of accounting, auditing and non-financial reporting.
- Establishing effective separation of the government's role as an owner of state-owned companies and the government's role as regulator, particularly with regard to market regulation.
- Ensuring a level playing field in markets where state-owned enterprises and private sector companies compete in order to avoid market distortions.
- Recognising stakeholder rights as established by law or through mutual agreements, and the duties, rights and responsibilities of corporate boards of directors.

In November 2007, the Committee adopted an analytical framework for the conduct of these country accession reviews. The analytical framework addresses each of the five core corporate governance features in turn, integrating both general issues of corporate governance and those concerned specifically with state-owned enterprises (SOEs). The analytical framework was designed to structure the accession reviews to ensure even-handed treatment among the five accession countries while giving necessary emphasis to issues of particular concern in each country.

To focus discussion of the corporate governance landscape, the analytical framework relied on four principles drawn from the *OECD Principles of Corporate Governance*:

Principle I.A: "The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets."

Principle I.B: “The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable.”

Principle I.C: “The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.”

Principle I.D: “Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfill their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.”

To address the five core features of corporate governance, the framework selected the main items in the *OECD Principles* and the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* as shown in the five boxes that follow, it being understood that all principles and guidelines remained relevant to the accession reviews.

Finally, the *OECD Methodology for Assessing the Implementation of the OECD Principles of Corporate Governance, 2007*, played an important role in the accession reviews. The *Methodology* emphasises the importance of focusing on implementation and outcomes, rather than on the legal and regulatory framework alone. It also emphasises “functional equivalence”, meaning that the outcomes advocated by the *Principles* can be achieved by different legal or institutional approaches. Accordingly, the Committee’s assessment and recommendations take account of each country’s specific corporate governance arrangements and how they relate to its overall market characteristics and corporate governance landscape.

Box A.1. Five core corporate governance features of the Accession Roadmap and the relevance of individual Principles of Corporate Governance and Guidelines for State-Owned Enterprises

Core Feature 1: Ensuring a consistent regulatory framework that provides for the existence and effective enforcement of shareholder rights and the equitable treatment of shareholders, including minority and foreign shareholders.

- Principles II.E, II.F, II.G: The implementation will depend on country circumstances.
- Principle III.A: All shareholders of the same series of a class should be treated equally.
- Principle III.B: Insider trading and abusive self-dealing should be prohibited.
- Principle III.C: Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.
- Guideline III.A: The coordinating or ownership entity and SOEs should ensure that all shareholders are treated equitably.

Core Feature II: Requiring timely and reliable disclosure of corporate information in accordance with internationally recognised standards of accounting, auditing and non-financial reporting.

- Principle V.B: Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure.
- Principle V.C: An annual audit should be conducted by an independent, competent and qualified, auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.
- Disclosure of i) the ownership and voting structure of the company (in accordance with Guideline V.E.2, Principle II.D and Principle V.A.3); ii) related party transactions (in accordance with Guideline V.E.5, Principle V.A.5); and iii) corporate governance structures and policies (in accordance with Principle V.A.8).

Box A.1. Five core corporate governance features of the Accession Roadmap and the relevance of individual Principles of Corporate Governance and Guidelines for State-Owned Enterprises

- Guideline V.C: SOEs, especially large ones should be subject to an annual independent audit based on international standards.
- Guidelines V.D: SOE's should be subject to the same high quality accounting and audit standards as listed companies. Large or listed SOE's should disclose financial and non-financial information according to high quality internationally recognised standards.

Core Feature III: Establishing effective separation of the government's role as an owner of state-owned companies and the government's role as regulator, particularly with regard to market regulation.

- Guideline I.A: There should be a clear separation between the state's ownership function and other state functions, particularly with regard to market regulation.
- Guideline I.B: Governments should strive to simplify and streamline operational practices and legal forms under which SOEs operate. Their legal form should allow creditors to press their claims and to initiate insolvency procedures.
- Guideline I.C: Obligations that the SOE are required to undertake should be mandated by laws or regulations, publicly disclosed and funded in a transparent manner.
- Guideline I.D: SOEs should not be exempt from the general application of laws. Stakeholders, including competitors, should have access to efficient redress and even-handed ruling when they consider that their rights have been violated.
- Guideline I.F: SOEs should face competitive conditions regarding access to finance. Their relations with state owned banks...should be based purely on commercial grounds.

Core Feature IV: Ensuring a level playing field in markets where state-owned enterprises and private sector companies compete in order to avoid market distortions.

- Combining Guidelines I.A-I.F with elements of Principles I.A-I.D

Core Feature V: Recognising stakeholder rights as established by law or through mutual agreements and the duties, rights and responsibilities of corporate boards of directors.

- Principle IV.A: The rights of stakeholders that are established by law or through mutual agreements are to be respected.
- Guideline IV.A: Governments, the coordinating or ownership entity and the SOEs themselves should recognise and respect stakeholders' rights established by law or through mutual agreements, and refer to the *OECD Principles of corporate governance* in this regard.
- Principle IV.B: Where stakeholders' interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.
- Principle IV.E: Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.
- Guideline IV.C: The boards of SOEs should be required to develop, implement and communicate compliance programmes for internal codes and ethics. These codes of ethics should be based on country norms, in conformity with international commitments and apply to the company and its subsidiaries.
- Principle VI.A: Board members should act on a fully informed basis, in good faith, with due diligence and care and in the best interests of the company and its shareholders.
- Guideline II.B: The government should not be involved in the day to day management of the SOEs and allow them full operational autonomy to achieve their defined objectives.



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