



Responsible Business Conduct in the State-Owned Enterprise Sector in Asia

Stocktaking of National Practices



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FOREWORD

This report provides an overview of national practices to enable responsible business conduct (RBC) in state-owned enterprises (SOEs) by examining relevant legislation, policies and practices applicable to SOEs in a sample of OECD countries and developing and emerging economies. The findings in the report are based on desk research and responses to an OECD questionnaire by the countries participating in the OECD Asia-Pacific Network on Corporate Governance of State-Owned Enterprises. The Network provides a forum for government representatives and relevant non-governmental stakeholders from 22 economies in Asia-Pacific and other parts of the world to share experiences, identify good practices and develop recommendations for reform to improve state ownership practices and strengthen the corporate governance of SOEs.

The responses to the questionnaire submitted by national governments have been compiled into this report including good practices on national approaches towards enhancing RBC in SOEs. This includes establishing and enforcing an adequate legal regulatory framework that protects the public interest and underpins responsible business conduct across countries in Asia. An interim version of the report was circulated to the Network member countries for review and consideration. Nine countries volunteered to provide self-reported information: Cambodia, India, Indonesia, Kazakhstan, Korea, Malaysia, Pakistan, Turkey and Viet Nam.

This report focuses on incorporated SOEs which are subject to ordinary corporate law (joint stock or limited liability companies). Listed companies are included but not considered in detail, on the basis that their RBC practices may in many cases emulate those of listed private sector companies. RBC practices for other SOE forms (e.g. statutory corporations) are also included when specific practices were brought to the attention of the OECD Secretariat.

The report is structured as follows. Part I highlights the importance of enabling RBC in SOEs considering the impact that RBC and business integrity measures have had or could potentially have in some jurisdictions, based on available academic literature on this subject. It also provides a brief overview of internationally recommended practices for ownership entities in the area of SOE RBC practices – introducing key relevant policy tenets of the [OECD Guidelines on Corporate Governance of State-Owned Enterprises](#) (SOE Guidelines), [OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises](#) (ACI Guidelines), the [OECD Guidelines for Multinational Enterprises](#) (MNE Guidelines) and the [UN Guiding Principles on Business and Human Rights](#).

Part II takes stock of measures for enhancing responsible business conduct in SOEs within Asian economies that have contributed to the OECD survey on SOE RBC practices (See Annex A). The information included in this section draws upon desk research and self-reporting from nine countries that participated in the OECD survey. Part II examines and compares national efforts in (i) embedding responsible conduct in national frameworks through commitments to international standards; (ii) enhancing national requirements bearing on RBC within SOEs; (iii) monitoring RBC performance in SOEs; and (iv) supporting stakeholder engagement. Further details regarding national practices based on the survey responses can be found under Annex B.

Part III highlights common challenges and key policy issues for consideration in order to ensure an effective legal and regulatory framework for organising and enabling RBC practices by SOEs. It proposes key policy issues for consideration, including: exercising ownership on a whole-of-government basis; implementing good practices for aggregate reporting and SOE financial reporting; establishing robust auditing systems; enhancing efficiency of systems for monitoring and benchmarking SOE performance ; and implementing RBC due diligence. The OECD Secretariat will use this stocktaking report to continue to promote good governance of SOEs through policy dialogue with OECD and non-OECD countries.

The report was prepared by Chung-a Park of the Corporate Governance and Corporate Finance Division of the OECD Directorate for Financial and Enterprise Affairs, with inputs from Nina Chitaia and Benjamin Michel from the OECD Centre for Responsible Business Conduct. Special thanks are due to those who provided expert comments and inputs, including Hans Christiansen with Corporate Governance and Corporate Finance Division of the OECD Directorate for Financial and Enterprise Affairs; Tihana Bule, Coralie Martin, Shivani Kannabhiran, Jingjing Chen and Tuong Dung Nguyen with the OECD Centre for Responsible Business Conduct; and Sejeong Ha and Seok-hoon Kang with Korea Institute of Public Finance. The author is grateful for contributions from delegates from all jurisdictions, who reviewed and updated the information to ensure accuracy. This publication and project were finalised thanks to the inputs from Henrique Sorita Menezes and Greta Gabbarini from the OECD Directorate for Financial and Enterprise Affairs.

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ACRONYMS AND ABBREVIATIONS

CPSE	Central Public Sector Enterprises (India)
CSR	Corporate Social Responsibility
CVC	Central Vigilance Commission (India)
CVO	Central Vigilance Officer (India)
DPE	Department of Public Enterprises (India)
EU	European Union
GLC	Government Linked Company (Malaysia)
KPI	Key performance indicator
MCA	Ministry of Corporate Affairs (India)
MOEF	Ministry of Economy and Finance (Korea)
NAP	National Action Plan on Business and Human Rights (Korea)
NHRCK	National Human Rights Commission of Korea
NHRI	Indonesian National Human Rights Institution (Indonesia)
NVG	National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business (India)
PCG	Putrajaya Committee for Government-Linked Companies High Performance (Malaysia)
PSC	Public Sector Companies (Pakistan)
RBC	Responsible Business Conduct
SCIC	State Capital Investment Corporation (Viet Nam)
SECP	Securities and Exchange Commission of Pakistan (SECP)
SOE	State-owned enterprise
SSM	The Companies Commission of Malaysia (SSM)

1 Introduction

1.1. Understanding responsible business conduct (RBC)

Responsible business conduct (RBC) principles and standards set out an expectation that all businesses – regardless of their legal status, size, ownership structure or sector – avoid and address negative impacts of their operations, while contributing to sustainable development where they operate. These expectations are prevalent throughout global value chains (GVCs) and are affirmed in the main international instruments on RBC – notably the OECD Guidelines for Multinational Enterprises (MNE Guidelines), the UN Guiding Principles for Business and Human Rights (UN Guiding Principles), and the fundamental International Labour Organization (ILO) Conventions – and increasingly in international trade and investment agreements and national development strategies, laws, and regulations worldwide.

RBC means integrating and considering environmental and social issues within core business activities, including throughout the supply chain and business relationships. The MNE Guidelines, for example, provide recommendations to businesses in the areas of disclosure; human rights; employment and industrial relations; environment; combatting bribery, bribe solicitation and extortion; consumer interests; science and technology; competition; and taxation. A key element of RBC is risk-based due diligence – a process through which businesses identify, prevent and mitigate their actual and potential negative impacts – including beyond the company itself – and account for how those impacts are addressed (OECD, 2011; OECD, 2015; OECD 2018; UN 2011).

RBC considerations influence the company's decision-making processes, risk management, disclosure, and relationships with stakeholders and investors. The process of undertaking RBC due diligence is influenced by the corporate governance framework and the relationships between board, management, shareholders and other stakeholders. The understanding of the term “responsible business conduct” can vary in perception among national governments, organisations and individuals. Indeed, Asian governments differ in their perceptions. The scope of RBC is cross cutting and broad as its influences on society concern various areas (e.g. disclosure, transparency, human rights, employment and labour, environment, anti-corruption, consumer interests, science and technology, competition and taxation).

Corporate Social Responsibility (CSR) is often used in a similar way as RBC, when defined beyond what has traditionally been considered CSR (mainly philanthropy). It is important to note that, while charity is a legitimate form for businesses to engage with the society, RBC is considered to be more comprehensive than philanthropy and integral to core business and legal regulatory framework. Many times both RBC and CSR (if used beyond philanthropy) aim to promote the same idea – that enterprises are expected to consider the impact of their activities beyond the impact on the company itself and positively contribute to sustainable development of the countries where they operate (OECD, 2011; OECD, 2015; OECD 2018; UN 2011).

Box 1.1. National definitions of CSR in selected Asian countries

Some countries have set out their own definitions of CSR:

- In **India**, CSR is defined as any company activities that promote poverty reduction, education, health, environmental sustainability, gender equality, and vocational skills development under the Companies Act 2013. It further mandates companies to spend at least 2% the average net profits of the company made during the three immediately preceding financial years on CSR activities (Section 135 and Schedule VII of the Companies Act, 2013);
- In **Korea**, the government considers RBC as core social value that can contribute to public interest and all areas of society, including community, economy, environment, and culture. The main features and functions include ethical management, safety and environment conservation; regional development; co-existence; equal opportunity; social integration and job creation.
- In **Malaysia**, according to the Corporate Responsibility Agenda issued by the Company Commission of Malaysia, focus is on Corporate Responsibility (CR). CR is defined as “a commitment by corporations and businesses towards achieving sustainability in the social, economic and environmental conditions in furtherance to the pursuit of profitability.” It further says “CR is not confined to the notion of philanthropy and may include a wide array of initiatives and multi-party co-operation towards creating long term sustainability of companies”.

1.2. Importance of enabling RBC practices by SOEs

The presence of state-owned enterprises (**SOEs**) in the global economy, doing cross-border investment and trade in competition with private enterprises, has grown strongly in recent years. According to OECD calculations, around a fourth of the largest global companies are entirely or largely owned by the state (OECD, 2020a). Among the world's listed companies, public sector ownership comprises of 14% of global market capitalisation (OECD, 2019). This is particularly driven by the growth of emerging market economies in Asia, where SOEs are often dominant economic actors, and especially by China's “Go Global Strategy” launched in 2001. State-owned enterprises in many developing economies are found well beyond the key public service providers, in many cases accounting for a significant share of the financial sector and the manufacturing industry. Therefore, the actions of SOEs have a significant impact on the global economy and RBC and integrity are critical for the performance of SOEs.

Setting a tone of integrity at the top

The government should set a “tone at the top” that supports and demonstrates the SOE's commitment to RBC and integrity. The tone could provide a basis for a corporate culture within an SOE sector that can be communicated to personnel at all levels of an SOE. It is further a matter of policy coherence as states have greatest means to ensure that relevant policies regarding RBC are implemented. Government should support and equip departments and agencies that shape business practices of SOEs to be informed of and act in a manner compatible with RBC principles and standards (UN, 2016). At the same time, the government will face considerable reputational risks if its SOEs are not seen as good corporate citizens. The [OECD Due Diligence Guidance for Responsible Business Conduct](#) provides practical examples of how this commitment can be communicated and integrated at the top.

Challenges emerge from increasing internationalisation of SOEs

Over the past decade, SOEs have rapidly modernised and commercialised their operations overseas, which further highlights the need for a level playing field and the host economy's strong capacity for promoting and enabling RBC standards across all firms in its jurisdiction and enforcing an enabling framework that underpins RBC. Asian SOEs in particular are playing an important role both for national development strategies and internationally through international trade, foreign direct investment (FDI) activities and intensifying of commercial links in global supply chains. Through cross-border mergers and acquisitions (M&A) – since 2007, M&A activity by SOEs has expanded rapidly– especially from emerging Asian markets – with a notable growth during the 2008-09 economic and financial crisis, and with continued growth compared to overall M&A or foreign direct investment (OECD, 2016). In this respect, it is worth noting that China promoted RBC standards with a focus on overseas investment by central SOEs (see Box 1.2).

Box 1.2. China's investments overseas and its initiatives relevant to enhancing RBC practices

- In 2008, the State-owned Assets Supervision and Administration Commission (SASAC) issued Guidelines for the State-owned Enterprises Directly under the Central Government on fulfilling Corporate Social Responsibilities.
- In 2013, the Ministry of Commerce (MOFCOM) and the Ministry of Environmental Protection (MEP) issued the joint Guidelines on Environmental Protection in Investment and Protection Overseas. In 2014, the MOFCOM stipulated in the Revised Measures for Foreign Investment Management that enterprises should require its overseas subsidiaries to abide by local laws and regulations and respect local manners and customs, perform social responsibility, and undertake activities in environmental protection, labour protection and enterprise cultural construction to better integrate into localities.
- The 2015 U.S. - China statement at the U.S.- China Strategic and Economic Dialogue also recognises the importance of RBC by both countries' firms operating abroad.
- In 2016, the SASAC released the Guiding Opinions on Better Fulfilling Social Responsibilities of State-owned Enterprises, pointing out that CSR performance plays its part in deepening SOE reform and serves as an absolute choice to adapt to the sustainable development of economic society.
- In 2017, the National Development and Reform Commission (NDRC) issued the Measures for the Administration of Overseas Investment of Enterprises which came into effect in March 2018. They encourage investing entities to protect labour's rights, fulfil CSR and respect environment.
- In 2018, the SASAC issued Guidelines for Compliance Management of Central Enterprises (for trial implementation) which requires central SOEs to strengthen compliance management and build compliance management system.
- In 2019, SASAC established a Bureau of Technology, Innovation and Social Responsibility, to guide and put forward policy recommendations for promoting social responsibility.

Sources: OECD (2016), State-Owned Enterprises as Global Competitors: A Challenge or an Opportunity?, OECD Publishing, Paris, <https://doi.org/10.1787/9789264262096-en>; US Department of State (2016), Responsible business conduct : First national action plan for the United States of America, 16 December, 2016, <https://www.state.gov/documents/organization/265918.pdf>.

Integrating RBC as part of core business decision-making for SOEs is an effective risk management tool

Risk-based due diligence is a key element of RBC. Implementing RBC due-diligence strategies as part of supply chain management can help enhance trust and minimise adverse impacts. Social and environmental issues are considered to be “financially material” and they should be reflected in risk management practices to meet investors’ expectations and minimise their losses (OECD, 2017a). An increasing number of governments across the world are putting in place legislation on due diligence in supply chains. For instance, the new EU legislation requires due diligence for importers of tin, tungsten, tantalum, gold, and ores originating from conflict and high-risk areas.

More evidence is indicating that RBC can improve financial performance of businesses

According to a number of studies, companies that work towards ensuring responsible practices and sustainable supply chains are able to improve their financial performance (OECD, 2017a). Other studies also indicate that there may be a positive (though not causal) correlation between observed levels of economic output and improvement in the perceived level of corruption in an economy (Crane-Charef, M., 2015). Similarly, a cross-sector study on the performance of companies over a period of 18 years, found that “high sustainability” companies, those with strong environmental, social and governance systems and practices in place, outperformed “low sustainability” companies, as measured by stock performance and in real accounting terms (Eccles, Ioannou, Serafeim, 2012).

An enabling policy framework for RBC can also enhance reputation and credibility of Asian region as a location for production and investment. Indeed, while Asian economies are among the fastest-growing in the world, the perceived levels of corruption and irregular practices in the region could reduce the benefits of foreign direct investment (FDI) and adversely affect business operations of companies, whether private or state-owned. Ultimately, SOEs could potentially serve as a main driver for levelling the playing field for RBC. According to the recent OECD Survey on Anti-Corruption and Responsible Business Conduct in Southeast Asia which was responded by 229 company representatives in 10 ASEAN countries, 58% of the respondents cited corruption as a key sustainability risk followed by environmental issues, transparency and governance issues (OECD, 2020b).

Balancing commercial objectives with non-commercial objectives

According to the OECD SOE Guidelines and the previous study conducted by the OECD (Christiansen, H., 2013), in order to ensure a balance between commercial and non-commercial priorities, an important challenge for policy makers is to ensure that SOEs receive an adequate compensation for the public policy priorities they are asked to undertake. They should neither be put at a competitive disadvantage nor have their competitive activities effectively subsidised by the State. At the same time any obligations and responsibilities that an SOE is required to undertake in terms of public services beyond the generally accepted norm should be clearly mandated by laws or regulations. Such obligations and responsibilities should also be disclosed to the general public and related costs should be covered in a transparent manner (Christiansen, H., 2013). Implementation of RBC standards can help governments align their sustainable development priorities while ensuring that competitive neutrality and main corporate governance provisions related to state ownership entities and separation of functions are respected.

1.3. International standards related to RBC and SOEs

Every SOE operates within a specific legal institutional and economic context, and any attempt to improve its governance needs to be tailored to those circumstances. SOEs are subject to varying degrees of enforcement and restrictions depending on their regulatory environment as well as the sector in which they

operate. Nevertheless, there are key messages and lessons on SOE governance reform, both general and focused on SOE RBC practices, which countries can garner from the internationally-agreed standards.

Inclusion of sustainable development and RBC in international policy standards, agreements and instruments has become a dominant trend in recent years (OECD, 2018a; Gordon, K., J. Pohl and M. Bouchard, 2014). Main international instruments on RBC clearly indicate their applicability to SOEs. Adherence to or ratification of relevant international and/or regional instruments on promoting and enabling responsible business conduct in state-owned enterprises could help countries bring their national legislations and SOE practices in line with agreed standards. It could also help the governments meet the need to stimulate developments on the topic and allow for a flexible regime that develops in stages over time. In their policies to stimulate companies including SOEs, the countries in this research reference a core set of internationally recognised instruments or initiatives on RBC to define and implement RBC.

OECD Guidelines on Corporate Governance of State-Owned Enterprises

The importance of RBC in SOE activities is explicitly recognised in the ***OECD Guidelines on Corporate Governance of State-Owned Enterprises*** (SOE Guidelines). The ***Guidelines*** recommend that the state ownership policy fully recognise SOE responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders, as well as to make clear any expectations the state has in respect of RBC by SOEs (OECD, 2015: Chapter V). The SOE Guidelines further recommend concrete measures to report on foreseeable risks, including in the areas of human rights, labour, the environment, and risks related to corruption and taxation.

The state's expectations on RBC should be clearly defined and communicated via the ownership policy. This could help reduce any concerns about undue disadvantages, and disruptions to efficiency, as well as questions about a level playing field with private companies (See Box 1.3). The annotations to the SOE Guidelines lend some support to a broad interpretation in that they refer to the OECD Guidelines for Multinational Enterprises, the Anti-Bribery convention and the ILO Declaration on Fundamental Principles as codes of behaviour with which SOEs should comply. The OECD also issued Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises (ACI Guidelines) in the year 2019, which focuses on actions that state ownership entities can take to ensure, or maximise the likelihood that, SOEs and their staff act with integrity. The ACI Guidelines has a section on implementing transparency and stakeholder engagement at all stages of the state's decision-making process to promote accountability and the public interest.

The OECD SOE Guidelines and the G20/OECD Principles of Corporate Governance have been approved by both OECD member States and the Group of 20 (G20). As such, they have achieved the rank of an international benchmark and are promoted beyond OECD members States¹ (UN Human Rights Council, 2016).

These and other internationally agreed standards on RBC that are applicable to SOEs and that are positioned as an evolving global framework for RBC on SOEs are as follows (also see Table 1.1).

¹ The Russian Federation, as well as Colombia and Latvia before their accession to the OECD, had formally associated themselves with the SOE Guidelines.

Box 1.3. Select SOE Guidelines' provisions on stakeholder relations and responsible business of SOEs

The OECD Guidelines on Corporate Governance of State-Owned Enterprises (SOE Guidelines) outline good practice standards for enhancing engagement with stakeholders on SOE ownership. The text of Chapter V on stakeholder relations and responsible business is as below.

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

- A. Governments, the state ownership entities and SOEs themselves should recognise and respect stakeholders' rights established by law or through mutual agreements.
- B. Listed or large SOEs should report on stakeholder relations, including where relevant and feasible with regard to labour, creditors and affected communities.
- C. The boards of SOEs should develop, implement, monitor and communicate internal controls, ethics and compliance programmes or measures, including those which contribute to preventing fraud and corruption. They should be based on country norms, in conformity with international commitments and apply to the SOE and its subsidiaries.
- D. SOEs should observe high standards of responsible business conduct. Expectations established by the government in this regard should be publicly disclosed and mechanisms for their implementation be clearly established.
- E. SOEs should not be used as vehicles for financing political activities. SOEs themselves should not make political campaign contributions.

Source: OECD (2015), *Guidelines on Corporate Governance of State-Owned Enterprises*, OECD Publishing, Paris.

OECD Guidelines for Multinational Enterprises ("the MNE Guidelines"). The MNE Guidelines provide recommendations addressed by governments to businesses on RBC. The MNE Guidelines state that a precise definition of multinational enterprises is not required for the purposes of the Guidelines. These enterprises operate in all sectors of the economy. They usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways. While one or more of these entities may be able to exercise a significant influence over the activities of others, their degree of autonomy within the enterprise may vary widely from one multinational enterprise to another. Ownership may be private, State or mixed. The Guidelines are addressed to all the entities within the multinational enterprise (parent companies and/or local entities). According to the actual distribution of responsibilities among them, the different entities are expected to co-operate and to assist one another to facilitate observance of the Guidelines.

The MNE Guidelines are also aligned with International Labour Organization Conventions and the UN Guiding Principles on Business and Human Rights, and cover a broader range of areas, including: disclosure; human rights; employment and industrial relations; environment; combatting bribery, bribe solicitation and extortion; consumer interests; science and technology; competition; and taxation.

The MNE and the SOE Guidelines are mutually supportive and each suggest that state ownership entities should give due regard to the content of the other when communicating their expectations for RBC to the SOEs under their purview. The MNE Guidelines consider corporate governance relevant for the implementation of RBC. Both also indicate that state's expectations on RBC should be clearly defined and communicated via the ownership policy. The OECD SOE Guidelines for instance provide that "State ownership policy should fully recognise SOEs' responsibilities towards stakeholders [...] It should make

clear any expectations that state has in respect of responsible business conduct by SOEs [...] SOEs should observe high standards of responsible business conduct” (OECD, 2015). It should be noted that the notion of “stakeholder” may vary when used in relation to corporate governance or in relation to RBC. Whereas RBC considers stakeholders as persons or groups who have interests that are or could be impacted by an enterprise’s activities (OECD, 2018d), corporate governance tends to have a limited understanding of the concept, which includes the company’s management and employees and its shareholders, creditors, suppliers and customers.

Adherents to the Guidelines, currently 50 countries, are required to set up a National Contact Points for the Guidelines. NCP are agencies established by adhering governments to promote and implement the Guidelines. The NCPs assist enterprises and their stakeholders to take appropriate measures to further the implementation of the Guidelines. They also provide a mediation and conciliation platform for resolving practical issues that may arise.

Based on the Guidelines, the OECD has developed guidance on due diligence to provide practical support to enterprises on the implementation of the OECD Guidelines for Multinational Enterprises:

OECD Due Diligence Guidance for Responsible Business Conduct. The 2018 OECD Due Diligence Guidance for Responsible Business Conduct is a government-backed standard for corporate due diligence on RBC applicable to company operations and supply chains in all sectors of the economy. It addresses a range of risks in business operations and supply chains, including human rights, labour, the environment and corruption. The Guidance aims at promoting a common understanding on due diligence for business and avoiding the potential for conflicting expectations. The Guidance was developed in close consultation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), ILO and UN Working Group on Business and Human Rights. It aligns with UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

Box 1.4. List of Sectoral OECD Due Diligence Guidance

In order to promote the effective observance of the Guidelines, the OECD has developed sectoral guidance which helps enterprises identify and address risks to people, the environment and society associated with business operations, products or services in particular sectors. The sectoral guidance establishes a common understanding among governments, business, civil society and workers on due diligence for responsible business conduct, and can enable business to build supply chain resilience, manage uncertainty and drive long-term value:

- **OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector;** this guidance supports a common understanding of due diligence and responsible supply chain management in the garment and footwear sector.
- **OECD Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises;** this guidance highlights key considerations for institutional investors in carrying out due diligence to identify and respond to environmental and social risks.
- **OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;** this guidance provides detailed recommendations to help companies respect and avoid contributing to conflict through their mineral purchasing decisions and practices.

- **OECD-FAO Guidance for Responsible Agricultural Supply Chains;** the OECD and the UN FAO have developed guidance to help enterprises observe standards of responsible business conduct in the agricultural supply chain.
- **OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector;** this guidance provides a practical framework for identifying and managing risks with regard to stakeholder engagement activities.

The importance of RBC in SOE activities has been recognised beyond the OECD MNEs Guidelines and sectoral Guidance, in particular in the following international standards:

UN Guiding Principles for Business and Human Rights (Guiding Principles). UN Guiding Principles on Business and Human Rights are guidelines addressed to all governments and all businesses including SOEs, outlining standards to prevent and remedy violations of human rights that occur during business operations. The *Guidelines* embody a principle that SOEs should be subject to governments' commitments concerning the conduct of businesses operating in their jurisdictions. The *Guidelines* stipulate that states should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State (UN, 2011: Guiding Principle 4).

United Nations Convention against Corruption. The United Nations Convention against Corruption (UNCAC) state a range of legally binding and voluntary measures to prevent, criminalise and punish corruption offenses. States that are parties to UNCAC are notably required to criminalise a number of specific corrupt acts in their national legislation and co-operate internationally. It also provides for the provision of cross-border legal assistance in investigating and prosecuting corruption. 178 countries or jurisdictions are parties to UNCAC. It entered into force in 2005.

OECD Anti-Bribery Convention. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) is an international anti-corruption instrument that is focused on the 'supply side' of the bribery transaction. It establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. Its signatory countries are all 34 OECD member countries as well as Argentina, Brazil, Bulgaria, Colombia, Latvia, Russia and South Africa. It entered into force in 1999.

OECD Policy Framework for Investment (PFI). The OECD Policy Framework for Investment provides useful guidance to governments on how to create an enabling environment for RBC. The PFI is a policy tool to help governments improve business climate and has a dedicated chapter that calls on states to promote and enable RBC. It recommends that governments lead by example and model RBC principles and standards in their own practices, i.e. as employers, business partners, through procurement and contracting practices, and in commercial activities. This includes the activities of SOEs.

ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy. The ILO Declaration of Principles concerning MNEs provides direct guidance to enterprises (multinational and national) on social policy and inclusive, responsible and sustainable workplace practices. Its principles are targeted at multinational and national enterprises, governments of home and host countries, and employers' and workers' organizations providing guidance in such areas as employment, training, conditions of work and life, industrial relations as well as general policies. The guidance is founded substantially on principles contained in international labour standards. To stimulate the uptake of its principles by all parties, the ILO Governing Body has adopted operational tools. The Declaration was adopted 40 years ago and amended several times, most recently in March 2017.

ILO Fundamental Conventions. The International Labour Organisation (ILO)'s Governing Body has identified eight conventions as "fundamental", covering subjects that are considered as fundamental

principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles are also covered in the ILO's Declaration on Fundamental Principles and Rights at Work (1998). There are currently over 1,367 ratifications of these conventions, representing 91.4% of the possible number of ratifications. A further 129 ratifications are still required to meet the objective of universal ratification of all the fundamental. The eight fundamental Conventions include:

Freedom of Association and Protection of the Rights to Organise Convention, 1948 (No.87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); and Discrimination (Employment and Occupation) Convention, 1958 (No.111).

Other relevant initiatives

These initiatives are non-binding voluntary initiatives which aim at increasing transparency and promote best practices among businesses in relation to RBC:

Global Reporting Initiative. Global Reporting Initiative (GRI) is conceived of as a support to guide all corporations that decide to produce reports on the economic, social and environmental aspects of their activities, products and services, by suggesting a methodology and guidelines. The GRI is intended to strengthen the comparability and credibility of practices relating to sustainability reports on a global scale. The GRI first published guidelines for the voluntary production of reports on sustainability in 1999. It provides indicators for measuring and reporting economic, social and environmental performance, albeit without recommending the implementation of specific policies, standards or codes of conduct on Global Responsibility issues including conduct of business, commitment to local communities, the environment, workers, and so on.

Extractive Industries Transparency Initiative. Extractive Industries Transparency Initiative (EITI) is the global standard to promote the open and accountable management of extractive resources by addressing the key governance issues of the oil, gas and mining sectors. The EITI, which was launched by a number of companies in the extractive industries and endorsed by the G-8, is currently being implemented by 51 emerging markets, and its membership is growing. The EITI aims at improving local business environments in these countries, attracting more foreign direct investment, and ensuring competitive tendering of public procurement contracts.

UN Global Compact Principles. The 10 Principles guide companies to operate in ways that meet fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption. The 10 Principles are derived from: the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.

ISO 26000 Guidance on Social Responsibility. ISO 26000 provides guidance on how businesses and organisations can operate in a socially responsible way and share best practices relating to social responsibility, globally. This means acting in an ethical and transparent way that contributes to the health and welfare of society. It provides guidance rather than requirements, so it cannot be certified to unlike some other well-known ISO standards. It is aimed at all types of organizations regardless of their activity, size or location.

Table 1.1. Summary of relevant RBC provisions in internationally agreed standards as related to SOEs

International Standard	Provisions related to RBC
OECD Guidelines for Multinational Enterprises	A detailed definition of multinational enterprises is not required for their purpose and ownership may be private, State or mixed (Chapter I: Concepts and Principles, par 4). Recognise that public scrutiny is often magnified when a State is the final owner (Commentary on General Policies, par 10).
UN Guiding Principles for Business and Human Rights	Applicable to all states and all enterprises. The Principles apply to all entities within the enterprise in all sectors, whether of private, state or mixed ownership. Guiding Principle 4 stipulates that “States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence”.
ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies	Invites governments of States, Members of the ILO, the employers’ and workers’ organizations concerned and the multinational enterprises operating in their territories to observe the principles embodied therein. The declaration stipulates that “to serve its purpose the MNE Declaration does not require a precise legal definition of multinational enterprises”. It also states that “multinational enterprises include enterprises – whether fully or partially state owned or privately owned – which own or control production, distribution, services or other facilities outside the country in which they are based. They may be large or small; and can have their headquarters in any part of the world.”
OECD Guidelines on Corporate Governance of State-owned enterprises	Recommend that the state ownership policy fully recognise SOE responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders, as well as to make clear any expectations the state has in respect of RBC by SOEs (Chapter V). Recommend (and rely on the Board of Directors to the executive management) extensive measures to report on foreseeable risks, including in the areas human rights, labour, the environment, and risks related to corruption and taxation. Note that states should not use SOEs to implement non-commercial objectives in a non-transparent or ad hoc manner. The state’s expectations on RBC should be clearly defined and communicated via the ownership policy. Explicitly call for any non-commercial objectives to be clearly defined and financed by the state budget. This helps to avoid any undue disadvantages which could jeopardise efficiency and the level playing field with private companies.
OECD Guidelines on Anti-Corruption and Integrity in State-Owned Enterprises	Focuses on actions that state ownership entities can take to ensure, or maximise the likelihood that, SOEs and their staff act with integrity. The Guidelines has a section on implementing transparency and stakeholder engagement at all stages of the state’s decision-making process to promote accountability and the public interest.
OECD Policy Framework for Investment	Recommends that governments should lead by example and reflect RBC standards in their own practices and operations, i.e. as employers, business partners, through procurement and contracting practices, and in commercial activities. This includes the activities of SOEs.
OECD Anti-Bribery Convention	Where relevant, a list of agents engaged in connection with transactions with public bodies and State-owned enterprises should be kept and made available to competent authorities, in accordance with applicable public disclosure requirements (Section 7, par 4)
United Nations Convention against Corruption	States that are parties to UNCAC are notably required to criminalise a number of specific corrupt acts in their national legislation and companies including SOEs and co-operate internationally
OECD Due Diligence Guidance for Responsible Business Conduct	It is a tool for companies including SOEs to respond to the due diligence expectations of all leading international instruments on responsible business conduct. The OECD has further developed a set of sectoral guidance in a number of sectors (box 1.4), namely minerals, extractive industries, garment and footwear, agriculture and the financial sector.
ILO Fundamental Conventions	They are considered as fundamental principles and rights at any workplace

Source: OECD Guidelines on Corporate Governance of State-owned enterprises; OECD Guidelines for Multinational Enterprises; UN Guiding Principles for Business and Human Rights; ILO Fundamental Conventions; ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies; OECD Policy Framework for Investment; OECD Due Diligence Guidance for Responsible Mineral Supply Chains; OECD Due Diligence Guidance for Responsible Business Conduct; OECD Anti-Bribery Convention; United Nations Convention against Corruption; OECD Note on Responsible business conduct and state-owned enterprises, <http://mneguidelines.oecd.org/global-forum/2017-GFRBC-Session-Note-RBC-SOEs.pdf>.

2 Enhancing RBC in SOEs: comparing national practices in Asia

This chapter takes stock of measures for enhancing responsible business conduct in SOEs within Asian economies that have contributed to the OECD survey on SOE RBC practices (See Annex A). The information included in this section draws upon desk research and self-reporting from nine countries that participated in the OECD survey from August 2018 to December 2020.² Further details regarding national practices based on the survey responses can be found under Annex B. To develop a broad understanding with regard to responsible conduct in SOEs within selected countries and identify good practices, the following sections examine and compare efforts in (i) embedding responsible conduct in national frameworks through commitments to international standards; (ii) enhancing national requirements bearing on RBC within SOEs; (iii) monitoring RBC performance in SOEs; and (iv) supporting stakeholder engagement.

2.1. Promoting RBC in national frameworks through commitments to international benchmarks

Implementing international RBC instruments is one of the most straightforward ways for promoting and streamlining RBC practices within national frameworks and business practices. For example, the OECD MNE Guidelines reflect the expectations from both governments and businesses on acting responsibly, covering areas such as protecting human and labour rights, the environment, and consumer interests. To create an enabling environment for RBC, national legal and regulatory requirements can be further streamlined based on the recommendations under the Guidelines. In addition, Due Diligence Guidance on Responsible Business Conduct provides practical support to enterprises on implementing the MNE Guidelines and mitigating adverse impacts throughout company operations, supply chains and business relationships. With an increasing internationalisation of SOEs, governments may also co-operate with each other in promoting international policies and principles on RBC, while adopting corrective measures in their operations abroad as needed.

In promoting RBC within national frameworks, some of the surveyed countries have started taking steps towards adhering to international RBC standards...

Most of those surveyed do not have an overarching policy to promote RBC, though they have started putting in place frameworks to enable responsible conduct. In particular, these include the adoption of laws and regulations related to corruption, human and labour rights, and environmental protection, among others. (Examining the extent to which these legislations and regulations have been enforced goes beyond the scope of this report). To further streamline RBC practices, the countries have started committing or

² Countries that participated in the OECD Survey include Cambodia, India, Indonesia, Kazakhstan, Korea, Malaysia, Pakistan, Turkey and Viet Nam. Individual profiles can be found in Annex B.

adhering to (or, as the case may be, signing, ratifying or acceding to) internationally recognised instruments regarding RBC. For example, a number of those surveyed have become parties to the ILO Conventions, UN Convention against Corruption, UN Guiding Principles on Business and Human Rights, the OECD MNE Guidelines and the OECD Anti-Bribery Convention, among others. Most of the respondents have also started taking part in other frameworks, such as the Global Reporting Initiative and the Extractive Industries Transparency Initiative. In addition, all of the reviewed countries are active members of the OECD Asia-Pacific Network on Corporate Governance of SOEs. Some, such as, Malaysia have yet to commit formally to instruments, such as the OECD MNE Guidelines and the UNGP, and to become a member of other frameworks, including the EITI.

These standards have been further advanced through awareness raising...

In particular, adherents to the OECD MNE Guidelines, including Korea, Turkey and Kazakhstan, have established National Contact Points, which help raise awareness regarding the OECD RBC instruments. Other entities and institutional actors can also be helpful in promoting RBC instruments. For instance, in Cambodia, the UN Office of High Commissioner of Human Rights promotes UN Guiding Principles. The country has also established a national CSR platform and has continued to engage with civil society organisations (such as the Cambodian Centre for Human Rights and the Cooperation Committee of Cambodia) to promote international RBC standards. Malaysia has established a local UN Global Compact Network, which aims to facilitate the implementation of the UN Global Compact and enhance sustainable practices in companies. Others are also working towards taking steps to introduce relevant frameworks. For example, Viet Nam has established an SOE co-ordination agency to align RBC-related practices with international standards, which remain to be implemented.

...and through bilateral agreements and engagement with international partners.

Notably, the EU's Free Trade Agreement with Viet Nam called for implementation and co-operation on RBC and CSR, using internationally agreed standards on RBC as reference. To comply with relevant commitments (as well as ILO Conventions), Viet Nam drafted a New Labour Code (in force in January 2021), which recognises the right of employees to set up their own representative organisations and bargain collectively. The country also works with multilateral organisations such as German Agency for International Co-operation (GIZ) and Japan International Cooperation Agency (JICA) on implementing projects to enhance SOE management and business integrity. Similarly, India adopted Model Bilateral Investment Treaty (BIT) in 2015, which contains provisions regarding the protection of human rights in dealing with investment or trade-related disputes with companies, along with other legislation related to promoting due diligence practices.³

While RBC practices remain to be adopted more widely in Pakistan, its engagement with international partners has contributed to raising awareness and promoting responsible conduct. In particular, the EU has a mandate to review Pakistan's human rights progress every two years with respect to the Generalised Scheme of Preferences (GSP+) regime, which allows developing countries to pay less or no duties on their exports to the EU, providing them with an opportunity to engage in international trade and earn additional revenues that can be used to reduce poverty, provided that the countries ratify and implement 27 international covenants, treaties and conventions. In 2016, the National Assembly of Pakistan also inscribed the UN Sustainable Development Goals (SDGs) as national development goals, and, with assistance from the United Nations Development Programme (UNDP), the government has established provincial SDG Support Units.

While some of those surveyed have also sought to use international benchmarks to develop RBC national action plans, results have been mixed...

³ The legislations include the: Section 54 of the UK Modern Slavery Act; Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307); California Transparency in Supply Chains Act of 2010; and the French law on the corporate duty of vigilance.

For example, Korea's National Human Rights Commission (NHRCK) presented the government with recommendations for the National Action Plan on Business and Human Rights (NAP) in 2016. The NAP covered areas, such as institutionalisation and implementation of human rights-centred management, and publication of relevant outcomes (which was targeted at SOEs), though it remains to be determined whether these recommendations will be implemented. In 2018, the Korean State Council adopted the Human Rights National Action Plan, which contains a chapter on business and human rights. In most countries, however, such action plans remain to be developed or are currently underway. Notably, India's Ministry of Corporate Affairs is undertaking consultations with relevant stakeholders to finalise its NAP, and a draft was presented to the public on February 2019 (Global NAP, 2019). In addition, the UN Working Group on Business and Human Rights reported that Kazakhstan's civil society, in collaboration with the National Human Rights Institution, have started taking steps to develop an action plan.

The Malaysian Government is also planning to prepare an action plan, following its endorsement of the Strategic Framework for a National Action Plan on Business and Human Rights in March 2015, produced by the National Human Rights Commission of Malaysia (SUHAKAM).⁴ Certain (draft) NAPs, however, remain to be further streamlined and improved. For example, the Indonesian National Human Rights Institution worked towards developing its National Action Plan on Business and Human Rights based on the UN Guiding Principles, which was presented to the government in June 2017 and remains to be adopted. Despite reflecting the three pillars of the UN Guiding Principles, the action plan could have benefitted from containing further elements, such as those related to promoting RBC in agriculture, mining and tourism sectors.

2.2. Enhancing national legislation, policies and measures bearing on RBC through SOE corporate governance

RBC and corporate governance reinforce each other, as the latter can be a good entry point in implementing and strengthening responsible conduct in SOEs. It is considered good practice for governments to facilitate RBC by offering guidance to SOEs' governing bodies on how to meet expectations regarding RBC. Governments may take measures to provide resources to relevant government agencies, and ensure the development and enforcement of an effective legal and regulatory framework that enhances RBC in SOEs. Incentives could also be provided by the government, such as awards for SOEs that have implemented RBC standards. International RBC instruments also call for ensuring contracting and procurement processes based on well-recognised standards and market rules, rather than applied on an ad hoc or case-by-case basis (for example, see the profile for Korea in Annex B). Box 2.1 at the end of this section highlights SOE-specific policies and measures on RBC undertaken in some OECD member countries.

Most of those surveyed have yet to develop policies specific to SOEs to enhance RBC, though other national frameworks to promote responsible practices generally apply...

In most of the surveyed countries, laws and corporate governance requirements are still evolving and are not rigorous enough to entrench RBC in SOEs. Policies often remain piecemeal and fragmented, and approaches to these issues are not systematic in a majority of the reviewed countries. Despite the absence of comprehensive policies, all of the respondents indicated that SOEs are subject to binding and non-binding laws, regulations, and policies that are related to RBC and corporate governance, which could in

⁴ The Strategic Framework sets out policy objectives and related recommendations, based on the UN Guiding Principles, for the Government's consideration in developing its NAP on Business and Human Rights. The SUHAKAM has held a series of consultations with major multinational companies and SOEs, various government agencies, regulatory authorities and NGOs to reflect their views and feedback on the plan to develop a NAP on Business and Human Rights in the country.

turn strengthen the effectiveness of RBC measures. For example, Cambodia has adopted human rights laws and has adhered to international instruments, with which certain companies are required to comply. Notably, public enterprises must have strategic management policies in place that support stakeholder rights, promote corporate social responsibility, and allow for remediation. Similarly, while Viet Nam has no specific laws, policies or regulations to enhance RBC in SOEs, other laws and regulations – particularly on protecting labour rights – are applicable. Similar laws and policies can also be observed in other surveyed countries, as detailed in Table 2.1.

Table 2.1. Government policies and requirements relevant to RBC in SOEs

Main government policies and requirements in the SOE sector

Cambodia	The Article 31 of the Constitution of the Kingdom of Cambodia articulates international human rights obligations: “The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.”
India	<p>Companies Act 2013. This law mandates that annual reports of companies should contain a separate section on Corporate Governance with details of compliance. SOEs are required to submit quarterly compliance report to their administrative ministries. It requires enhanced disclosures with respect to Board’s Reports, Prospectus, AGM notice, Annual return, director’s responsibility statement, Audit Committee constitution, Vigil mechanism etc. CPSEs are required to obtain a certificate from auditors/company secretary regarding compliance with these guidelines.</p> <p>DPE Guidelines on Corporate Social Responsibility and Sustainability 2013. This includes a section covering sustainability disclosure and reporting.</p> <p>National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business 2011.</p>
Indonesia	The government is expected to establish a National Action Plan on Business and Human Rights, reflecting core elements of the UN Guiding Principles on Business and Human Rights. The government regulates and governs areas relevant to RBC including labour rights, environment protection and anti-corruption through relevant laws although they are in general not well-enforced. SOEs are obliged to disclose and provide transparency for some data and information to the public as required by current regulations, inter alia, Law No. 14/2008 (Article 14), the Minister of SOE’s Regulation No. 9/2012 on Good Corporate Governance. In terms of human rights, SOEs are obliged to apply their corporate responsibilities as required by the Law No. 40 Year 2007 on Company, and the Minister of SOE’s Regulation on Partnership Program and Social Responsibility that cover activities in areas such as combatting poverty, developing rural and remote areas, supporting education, and micro as well as small business.
Kazakhstan	<p>A new Entrepreneurial Code 2016 elaborates on the scope of RBC in a new Chapter on Social Responsibility of Business. It states that the state itself should also commit to create conditions for social responsibility and separate the functions of state and businesses, underlining that the state should not interfere with businesses regarding exercising of charity.</p> <p>Reforms in the 2050 Strategy integrate environmental considerations in economic objectives to facilitate assessment of potential impacts of business activities on environment.</p>
Korea	<p>According to the ‘Act on Management of Public Institutions’, every public institution that provides public service should establish and publish a customer charter containing procedures for processing complaints about the service provided and liability for damages. The MOEF instructs SOEs to conduct a consolidated survey on customer satisfaction level at least once a year and publish the results. The questionnaire of the survey includes many substantial social responsibility aspects.</p> <p>In 2018, the government has stepped up its efforts to prioritise RBC practices by designating “public institutions as a driving force for achieving social values” as one of 100 major national tasks of the administration’s 5 year administrative plan. It has established a group of indicators to monitor performance of SOEs and new public institutions, with respect to human rights, ethical management, safety and environment conservation, co-existence, equal opportunity, social integration and job creation.</p> <p>The Anti-Corruption & Civil Rights Commission (ACRC) – national anti-corruption body- was established in 2008 to fight corruption and address public complaints and administrative appeals. The organisation has also been undertaking an annual assessment of integrity and policy enforcement</p> <p>Act on the Management of Public Institutions Official Information Disclosure Act 1998. This Law requires that information</p>

	on the operation of the government agencies, SOEs, and public institutions be disclosed.
Malaysia	Silver Book : Achieving Values through social responsibility, a manual published in 2015 by the Putrajaya Commission on GLC High Performance (PCG) Corporate Responsibility Agenda and Best Business Practice Circular 6/2017 on Business Review Report: Guidance to Disclosure and Reporting announced by the Securities Commission of Malaysia in 2009.
Pakistan	Public Sector Companies are notably subject to the Companies Act 2017, the 2013 Rules on Corporate Governance of Public Sector Companies and the 2018 Guidelines on Compliance which offer guidance that outline the responsibilities of CEOs.
Turkey	Turkish Code of Ethics – applicable to all public institutions – aims at promoting RBC and an ethical business culture throughout Turkish public administration including SOEs. The Council of Ethics for Public Service was founded in 2004 and has a legal mandate to develop a code of ethics
Viet Nam	The Decree No. 87/2015/ NĐ-CP sets up a supervision mechanism for SOEs including RBC issues. SOEs are subject to inspections and audits by the Government Inspectorate and the State Audit Office.

Source: Questionnaire responses submitted by national authorities; OECD (2018); (2017b); OECD (2016).

...and translate into efforts to promote RBC through SOE corporate governance.

While most of the surveyed countries have not yet fully mainstreamed RBC into legal and regulatory frameworks underpinning SOEs per se, their laws, regulations and corporate governance codes related to SOEs increasingly deal with issues related to RBC, including accountability, transparency, anti-corruption and stakeholder engagement. For example, legislation, policies and voluntary guidelines adopted by India have sought to enhance RBC in companies, including SOEs. Policies have shifted from supporting philanthropic activities towards mandatory reporting, along with recognising the importance of RBC and efforts to advance responsible practices through partnerships. Boards are also to ensure that companies spend at least 2% of net profits on CSR activities and to provide justification if otherwise. Other elements include the adoption of voluntary guidelines on social, environmental and economic responsibilities, which urges businesses to ensure that financial performance is harmonised with expectations related to RBC.

In some cases, RBC-related policies are further embedded in SOEs through provisions under corporate governance codes. For instance, in Turkey, SOEs are generally subject to the same laws as private companies, including on corruption, environmental protection, occupational health and safety and consumer protection, though the country has also adopted a code of ethics applicable to SOEs. Kazakhstan has also taken significant steps to embed RBC-related policies into SOEs through a corporate governance code, which is applicable to entities in which the country's sovereign wealth fund is a majority shareholder. Some elements covered by the code include promoting transparency and accountability, protecting human rights, preventing environmental abuse, avoiding corrupt practices and managing risks, among others.

These efforts, however, have been arguably more advanced in certain economies, including Korea. In 2018, the Korean government designated public institutions to achieve social values and develop evaluation criteria to assess SOE performance across areas, including human rights, environmental protection, and occupational safety. Under a new administration's agenda to create and maximise social values, the Ministry of Economy and Finance (MOEF), the country's state ownership entity, has been responsible for streamlining RBC policies applicable to SOEs. SOEs are also expected to adhere to other national requirements related to RBC, including transparency and disclosure requirements, and anti-corruption measures, as well as international guidelines and benchmarks (especially in protecting human rights).⁵ Moreover, as the Korean Exchange joined the Dow Jones Sustainability Index in 2015, further

⁵ Some institutions, such as Korean National Pension Fund, are signatories to the UN Principles on Responsible Investment (PRI), meaning that it should incorporate environmental, social and corporate governance issues into

requirements are applicable to listed SOEs, 200 of which are evaluated based on their non-financial performance by external institutions.

While Malaysia currently lacks policy framework for SOE governance, RBC policies have been applicable to its SOEs, such as promoting and incentivising corporate social responsibility.⁶ In 2009, the Companies' Commission of Corporate Responsibility launched an agenda to define standards and objectives to promote responsible practices. The Commission has also outlined good practices with regard to human rights, environmental protection, stakeholder engagement, gender equality, transparency and taxation, which is applicable to both state-owned and private companies. Businesses have also been encouraged to submit reports outlining both financial and non-financial risks, while listed SOEs are subject to annual reporting, which contains a CSR component.⁷ To further incentivise RBC, Malaysian authorities also provide awards, including the Prime Minister's CSR Award and the ICRM Award by the Institute of Corporate Social Responsibility of Malaysia.

In some cases, however, more needs to be done to advance RBC policies and frameworks within SOEs, and ensure implementation...

For example, Indonesia has adopted relevant laws and regulations, including those related to labour and environmental protection, and anti-corruption, and some of its SOEs have started developing and implementing CSR programmes. However, the country has witnessed significant levels of complaints with regard to human rights violations, while efforts to protect stakeholder rights remain to be improved. In addition, Pakistan currently has no state ownership policy or national RBC policy, which, despite having some policy co-ordination, renders it challenging to actively promote and enhance responsible practices in SOEs. For example, while voluntary guidelines on meeting requirements under the corporate governance code have been introduced, efforts to advance RBC specifically are less apparent.

Along with Indonesia and Pakistan, in Cambodia and Viet Nam there is a lack of awareness regarding the importance of RBC standards as a tool for enhancing SOE competitiveness. Some economically significant SOEs have not yet put in place comprehensive policies to enhance RBC, nor are they systematically subject to high-quality corporate governance standards to ensure transparency and accountability. More broadly, stronger measures are needed to implement reforms to establish disclosure requirements and performance management mechanism, enhance transparency, and strengthen minority shareholders' protection. The UN Working Group on the issue of human rights and transnational corporations and other business enterprises (in charge of promoting and disseminating the UN Guiding Principles) have reached similar conclusions, and called upon the states to take "additional steps" to embed respect for human rights into SOEs practices (UN Human Rights Council, 2016).

investment analysis and decision-making processes, while seeking appropriate disclosure on ESG issues by the entities in which it invests, disclosed through the annual Transparency Report (PRI, 2020).

⁶ RBC and CSR can be used in a similar way, when defined beyond what has traditionally been considered CSR (mainly philanthropy). RBC is understood to be comprehensive and integral to core business. Many times both RBC and CSR (if used beyond philanthropy) aim to promote the idea that enterprises are to consider the impacts of their activities beyond the impact on the company itself and contribute positively to sustainable development in countries where they operate.

⁷ It is worth noting that between 2006 until 2015, Malaysia's Government Linked Company (GLC) Transformation Programme sought to promote better practices within SOEs. As part of the initiative, *the Silver Book: Achieving Values through Social Responsibility* was issued, which sought to clarify the government's expectations about social contribution of GLCs, as well as specific guidelines for CEOs and board members and a scorecard for the entities to evaluate their social contribution.

Box 2.1. National practices in OECD countries : policy and institutional measures relevant to enhancing RBC in SOE sector

Finland

Finland's ownership policy ["government resolution on state-ownership policy, 13.5.2016"] clearly expects companies to set an example in value leadership and corporate social responsibility as part of the company values. It requires that 'as a responsible corporate citizen, the company will contribute to the long-term development and renewal of society'.

France

In 2010, the French Parliament adopted the Grenelle Act which has made CSR reporting mandatory not only for listed companies but also for unlisted companies with more than 500 employees and at least 100 million euros in revenue. The Act also made CSR reporting mandatory for state-owned enterprises and asset management companies. The list of subjects was extended to 42 social, environmental and societal criteria to be included on a comply or explain basis. This Act also made external verification of the CSR information in the annual reports mandatory. Most recently in 2017, France transposed the EU Non-Financial Reporting Directive. It applies to public interest entities (listed companies, credit institutions, and insurance providers) with over 500 employees, with a net turnover of 40 million euros of a balance sheet total of over 20 million euros.

In 2017, France further enacted the Duty of Vigilance law, which requires very large French companies – including SOEs – and other companies with a substantial presence in France to publish and implement a "vigilance plan" and account for how they address human rights and environmental impacts in their global operations.

The Netherlands

In the Netherlands, all state-owned enterprises in the country are expected to establish a "credible" corporate social responsibility (CSR) policy, but there are no specific requirements from the ownership function regarding the contents. The lack of a commonly enforced level of aspiration is based partly on the premise that, to avoid market distortions, there should be no unique requirements to SOEs. The view of the Dutch authorities is also that a good CSR policy needs to be internalised as a part of corporate strategies and hence specific to the individual SOEs or the sector in which they operate. Finally, the strong reliance on legislation and regulation to influence the path of SOEs in the Netherlands has contributed to a widely held view that "if the government wants its companies to implement specific CSR standards then it will have to issue these as regulations".

To encourage individual companies to implement sound CSR practices, high standards of transparency are applied. SOEs are requested to report according to the Global Reporting Initiative, at least at the lowest (category C) level of application of this guideline. They further participate in the Transparency Benchmark of the Ministry of Economic Affairs, which jointly benchmarks the CSR practices of around 500 Dutch companies, most of which private enterprises.

Since 2009, Dutch SOEs are required to report on their non-financial performance, using the GRI Guidelines. Their sustainability information is also subject to external verification. Every year, the Ministry of Economic Affairs performs the Transparency Benchmark – an assessment of companies' transparency on non-financial topics among the largest 500 companies in the Netherlands. The benchmark was updated in 2013 to reflect the UN Guiding Principles on Business and Human Rights and the EU non-financial reporting directive.

New Zealand

In New Zealand, The SOE Act requires every SOE to: exhibit a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so. This means that SOEs have corporate social responsibility (CSR) obligations that go beyond other companies. SOEs are expected to formulate and report on CSR objectives on an equal footing with financial objectives. Specifically, shareholding Ministers expect each SOE to have the following in place:

- Specification of CSR values and behaviours, and how these are incorporated into the fabric of the company;
- Objectives and performance targets reflecting good social responsibility practice; specific CSR programmes; and
- Reporting framework to be used.

CSR objectives and targets are therefore included in each SOE's Statement of Corporate Intent and reported on in its Annual Report, both of which are public documents. A prescriptive approach to CSR is not seen as helpful, and a number of SOEs have adopted versions of the international frameworks that provide guidance and/benchmarking on CSR. A principle of CSR is that integration within an organisation's day to day operations is critically important. New Zealand SOEs commonly publicly assert that CSR is simply good business practice. Where SOEs have been found to underperform financially relative to private sector peers, CSR obligation has not been cited as a contributory factor.

Norway

In Norway, the 2011 White Paper goes in great detail with the expectations that the government owners have for SOEs in terms of CSR, and the linkages between these expectations and existing internationally endorsed recommendations. These expectations are broadly similar to those previously stipulated for "ethical investment" by the Government's two oil-funded pension reserve funds. They draw generously on existing international recommendations, including by the OECD. Regarding SOEs' overall efforts toward corporate social responsibility, the following expectations are communicated. SOEs shall be expected to: Be leaders in the work on CSR within their field. They are expected to follow actively, and help shape, good practices in the areas relevant to their activities.

- Have ethical guidelines which are communicated to the general public.
- Develop guidelines for their work with CSR, which are communicated to the general public.
- If they have international activities, associate themselves with the UN Global Compact. (Companies with international value chains are should consider doing the same.)
- If they have international activities or value chains, study and implement the OECD Guidelines for Multinational Enterprises.
- If they have international activities or value chains, base their activities on ILO's eight core conventions.
- Develop indicators for the extent of their social responsibility, in cooperation with main stakeholder groups.

Sweden

In Sweden, in 2016, the level of ambition for the work of the SOEs in the area of sustainable business was raised further by inclusion of the UN's 2030 Agenda with 17 global Sustainable Development Goals in the state ownership policy. All SOEs in Sweden are required to analyse the Global Goals and identify the goals that the SOE impacts on and contributes to through its operations. In 2019, Sweden new SOE

ownership policy expects individual SOEs to have an agenda for sustainable value creation in a way that promotes long-term sustainable development (OECD, 2020b).

Switzerland

In Switzerland, in 2015, the Federal Council published the “CSR Document de position du Conseil Fédéral”. It states that the Confederation should act as a role model in particular when the Confederation acts e.g. as the owner of state owned companies.

Source: OECD (2020c), Implementing the OECD Guidelines on Corporate Governance of State-Owned Enterprises: Review of Recent Developments, OECD Publishing, <https://doi.org/10.1787/4caa0c3b-en>. ; Excerpts from Christiansen, H. (2013), “Balancing Commercial and Non-Commercial Priorities of State-Owned Enterprises”, OECD, Corporate Governance Working Papers, No. 6, OECD Publishing, <http://dx.doi.org/10.1787/5k4dkhzt9r-en>, OECD; Change in Context (2018), “Government Policy to stimulate international responsible business conduct”, <https://www.business-humanrights.org/sites/default/files/government-policy-to-stimulate-international-responsible-business-conduct.pdf>.

2.3. Monitoring RBC performance in SOEs

It is considered good practice for governments to monitor performance of SOEs and establish relevant bodies through which the government communicates expectations on RBC to SOEs (i.e. public relations bodies, investment promotion agencies, etc.). It is also recommended that clear and accessible information on responsible business practices in SOEs be provided to public and relevant stakeholders. Ideally, individuals and organisations should be able to gain access to and publish information on the activities and performance of the SOE sector on RBC related issues (e.g. social and/or environmental concerns, human rights and related issues).

However, some of the surveyed countries do not have comprehensive or regular channels through which the government communicates or monitors its expectations regarding RBC in SOEs. Specifically, this can be complicated if there is no single ownership entity, ministry or agency responsible for co-ordinating RBC expectations in SOEs (see Box 2.2 and Table 2.2). In addition, a majority of those surveyed do not produce aggregate reporting, and non-financial reporting by individual SOEs is often voluntary, which hampers accountability of the state as an owner and prevents the development of a comprehensive picture of SOE performance from an RBC perspective. Moreover, SOEs often lack relevant functions within their corporate governance, which can impede the enhancement of responsible practices. For example, the absence of internal and external audits can compromise the quality of information disclosed.

Box 2.2. Ownership models in surveyed countries

SOEs are usually subject to ordinary company law of the country in which they are incorporated. This implies limitations to how the state may dispose over their assets and free cash flow – especially where minority investors are invited into their shareholder structure (OECD, 2020a). Most of the countries reviewed in this report have a decentralised state ownership model*, although some of them have adopted policy co-ordination to some extent through a holding company or a central coordinating organisation in charge of overseeing a portfolio of strategic SOEs. The SOE Guidelines posit that centralisation of the ownership function can be a strong driver in the development of key corporate governance elements such as disclosure and performance management measures placed on SOEs, and in many cases, it can have a positive impact on the extent to which SOEs abide by those requirements.

At the same time, centralisation of the ownership function can help reinforce and mobilise competencies relevant to RBC as it requires organising pools of experts on key matters, such as financial reporting, disclosure, performance management or board nomination. Centralisation can also help to ensuring co-ordination across relevant domestic government bodies as well as with sub-national government bodies and authorities on cross-cutting issues related to RBC of SOEs. Nonetheless, the enforcement power of the central coordinating entity could have a non-trivial impact on the extent to which SOEs comply with corporate governance and RBC requirements even with elements of centralisation in place. Table 2.2 outlines national approaches to exercising ownership functions in SOEs.

Note: *State ownership models can be broadly categorised into four types: centralised model; co-ordinating agency model; twin track model; and decentralised model. The countries with a centralised model for state ownership, have established a central holding company for an important portfolio of SOEs, or have established a central co-ordinating agency, often charged with monitoring performance or coordinating governance practices across the SOE sector. Co-ordinating agency model indicates countries where specialised government units act in an advisory capacity to other shareholding ministries on technical and operational issues, and their most important mandate often is to monitor SOE performance. The characteristics of the twin track model can be defined as functionally equivalent to the centralised model, but with two individual portfolios of SOEs overseen by two different government institutions. The most common state ownership model in Asia is a decentralised model. It indicates a highly decentralised system, with the ownership of SOEs being exercised by a multitude of line ministries and no co-ordinating agency in place.

Source: OECD questionnaire responses from national authorities; OECD (2020a); OECD (2018); OECD (2017b)

Table 2.2. National approaches to exercising the ownership function

	Ownership Model	Institution(s) responsible for Ownership Function	Objectives set by whole-of-government, or by individual ministry
India	Decentralised with coordinating agency	The Department of Public Enterprises (DPE) acts as the “nodal” agency for all SOEs. DPE formulates all policies pertaining to performance improvement and evaluation, financial accounting, personnel management and related areas.	SOEs’ vision, mission and long/short term objectives developed by line-ministry and SOE in a “consultative manner”, keeping in view the overall Federal policy direction of the government.
Indonesia	Decentralised with coordinating Agency	The institutions that are responsible for exercising state-ownership rights in SOEs are the Ministry of Finance based on its authority given by Law No. 1 Year 2004, and the Ministry of State-Owned Enterprises based on its authority given by Government Regulation No. 41 Year 2003. As for the Ministry of SOE, it currently supervises 114 SOEs where the Government of Indonesia owns more than 50% of the companies’ shares.	The objectives for state ownership are articulated in the Law No. 1 Year 2004 and the Government Regulation No. 41 Year 2003.
Kazakhstan	Centralised with exceptions (holding company model)	There are three separate holding companies in Kazakhstan which account for almost all of the SOE sector. Samruk-Kazyna is one of them.	The general objectives for State’s enterprise ownership are presented in Article 192 of the Entrepreneurial Code of the Republic of Kazakhstan
Korea	Centralised under one ministry	Ministry of Economy and Finance is the only government body which exercises the ownership of all the public institutions including SOEs in the country through the Ownership Steering Committee. At the same time, each line ministry controls a portfolio of businesses and related policies regarding SOEs under its jurisdiction. The Ownership Steering Committee makes decisions on the key policy issues regarding the oversight of SOEs. The Committee, headed by the Minister of Strategy and Finance, consists of government representatives and no more than eleven civilian members with acknowledged expertise	The MOEF is in charge of defining and promulgating managerial guidelines for the public institutions including SOEs, monitoring and assessing their enforcement and performance. The performance goals of SOEs are established with consideration of the government policies. By law, each SOE is required to develop medium and long-term management goals and then submit them to MOEF and the related line-ministries.

	Ownership Model	Institution(s) responsible for Ownership Function	Objectives set by whole-of-government, or by individual ministry
Malaysia	Centralised with exceptions (holding company model)	Malaysia has placed a non-trivial portfolio of Government-Linked Companies (GLCs) under the purview of Kazanah Nasional Berhad, a sovereign wealth fund of the government and several other large holding companies.	A reform programme titled Silver Book (2015) was introduced to facilitate policy coordination targeting the GLCs.
Pakistan	Decentralised	State ownership is exercised solely by the line ministries responsible for sectoral policy and regulation in the relevant markets.	There is no uniform state ownership policy in Pakistan. Depending on their categorisation and legal form, SOEs are subject to different regulations.
Turkey	Twin Track Model	The Privatisation Administration (PA) is an executive body that directs the restructuring and privatisation process of SOEs. Most SOEs are still solely under Treasury, Directorate General of State-Owned Enterprises however. Commercial SOEs owned wholly or partially by state can be transferred to Turkey Wealth Fund upon decision of Council of Ministers	SOEs is prepared jointly by the Treasury and the Ministry of Development and approved by the Council of Ministers and announced to public via the Official Gazette. Board nominations are undertaken jointly.
Viet Nam	Decentralised with coordinating agency	The government established in late 2018 a special co-ordination agency acting state ownership function named the Committee for Management of State Capital (CMSC) in accordance with the Law on Management and Use of State Capital. Its aim was to integrate state ownership functions of the government, line ministries and provincial committees. As of now, CMSC is managing 19 biggest SOEs and SOE groups. However, state ownership is still exercised by the line ministries, provincial committees and State Capital Investment Corporation (SCIC) responsible for sectoral policy and regulation in the relevant markets.	Viet Nam has yet to develop a concrete and unified ownership policy. The legal and institutional framework for state ownership builds on a number of documents specifying policy priorities in the area of state ownership and management. Viet Nam National Assembly promulgated Law on Management and Use of State Capital in 2014 which plays an important role in exercising the state ownership function. Government entities that are responsible for developing ownership-related policies are the Ministry of Finance, Ministry of Planning and Investment, Ministry of Justice, Ministry of Home Affairs, and Ministry of Labour, Invalids and Social Affairs.

Source: OECD questionnaire responses from national authorities; OECD (2022 forthcoming); OECD (2018); OECD (2017b); OECD (2016)

RBC-related performance can be monitored through annual reporting, though efforts across surveyed countries vary and often remain piecemeal...

In most countries, SOEs are generally expected to produce annual reports, including their practices related to RBC. However, the effectiveness of RBC performance monitoring and disclosure can significantly vary between countries, depending on whether relevant instruments have been introduced. For example, SOEs in India are subject to information disclosure, including sustainability reporting, while implementing guidelines on social responsibility issued by Department of Public Enterprises (DPE). In addition, their statements are monitored by authorities and are subject to external audits, though establishing internal audit units are not required. Moreover, DPE publishes annual public enterprise surveys containing both financial and non-financial information, which is also presented to the parliament and disclosed.

Annual reporting and disclosure practices, however, vary in most of those surveyed and are usually focused on the company's financial, rather than non-financial performance. In Korea, the authorities do not produce an annual aggregate report on SOEs per se, but the ALIO disclosure system be considered as functionally equivalent (see www.alio.go.kr). In Kazakhstan, annual reporting is undertaken by the state holding company Samruk Kazyna, which reflects performance of companies under its portfolio. SOEs in Turkey are required to publish their annual reports and up-to-date information about their activities. However, commercial confidentiality considerations concerning contracts between SOEs and business partners may prevent certain information from being publicly disclosed. Some countries (such as Malaysia, Pakistan and Viet Nam) have no SOE-specific reporting requirements or guidelines applicable to SOEs

and do not produce any form of regular reporting, though listed SOEs generally have stronger reporting and disclosure requirements. Moreover, while nearly all of those surveyed stated that a state audit office or comptroller is involved in monitoring SOE financial reports, and requirements to conduct external audits have been introduced, the establishment of internal audit units is rare.

...though, in some cases, RBC performance monitoring in SOEs is more active...

This is particularly the case in Korea, which, along with enforcing financial reporting and disclosure, undertakes performance evaluation of SOEs with regard to RBC practices. The process involves publishing a manual consisting of KPIs that reflect the government's expectations, including recommendations on integrating responsible conduct in business activities. At the end of the year, authorities undertake performance evaluation of SOEs, and, in case requirements are not met or there is false reporting, performance-based income can be adjusted accordingly. Institutions with high scores usually obtain incentives and rewards, such as performance bonuses.

Following efforts to maximise social value of state-owned entities in 2018, performance evaluation system in Korea was further streamlined and indicators monitoring SOE performance have focused on ethical management, safety and environmental protection, among other areas. In order to fulfil social responsibility criteria, all SOEs have established internal divisions dedicated to promoting social values and have increased resources to achieve relevant targets. Moreover, Korea's ownership entity, the Ministry of Economy and Finance (MOEF), has released concrete guidelines for incorporating criteria into performance evaluation, while looking to assist the central government with developing budget plans and expanding investments to promote human rights, occupational safety, and social inclusion. MOEF also seeks to establish a fund dedicated to maximising social value in state-owned companies. Following a recent Korea Land and Housing Corporation (LH) scandal that had revealed that some of the company's employees had pursued their private interests using internal information, the National Assembly has enacted the Anti-Conflict of Interest Act. How the government and SOEs will actively apply these principles in the context of internal control compliance remains to be seen.

Though less stringent, efforts to improve RBC performance monitoring have also been identified in other countries that were surveyed. Notably, in Kazakhstan, SOEs are subject to provisions outlined in the corporate governance code of the country's sovereign wealth fund. As the code covers elements specific to RBC issues, including human rights, transparency and environmental protection, company practices in these aspects are usually disclosed and discussed during board meetings. The fund also provides a framework to promote responsible practices through corporate governance of SOEs using performance evaluation of senior officials, which can contain elements related to RBC.

However, more needs to be done to promote RBC performance monitoring and disclosure...

Notably, though Pakistan has introduced some disclosure requirements, in practice SOEs disclose information on an ad hoc basis. Disclosure practices for listed entities are monitored by state bodies, including the Securities and Exchange Commission, while boards, where they exist, are responsible for submitting annual reports to shareholders. Certain companies publish information regarding CSR activities and their ability to meet ESG criteria on their websites, but such practices remains to be adopted on a broader scale. In other countries, such as Cambodia, some SOEs have taken steps towards implementing programmes and trainings to raise awareness on RBC practices (including on business integrity and anti-corruption), though there is limited information regarding efforts to promote and standardise RBC performance monitoring.

In addition, despite the existence of certain requirements, efforts to enforce monitoring of responsible practices is often unclear. For example, in Indonesia, both ownership entities and SOEs are required to publish financial information and ensure accessibility online. SOEs also receive awards for their corporate governance practices and are obliged to engage in activities related to CSR, including addressing challenges related to poverty, engaging in the development of remote areas, and supporting small

businesses. However, there is a lack of clarity regarding how RBC performance is monitored in SOEs in Indonesia and whether non-financial information disclosure is systematic. Moreover, while Viet Nam has created a mechanism to supervise SOEs and monitor financial reports, information regarding non-financial activities, including RBC, remains fragmented, and efforts to improve are hampered by challenges in intergovernmental and interdepartmental communication.

2.4. Supporting stakeholder engagement in SOEs

Based on good practice, governments should support active engagement with various stakeholders (e.g. industry, civil society, worker organisations, and local communities) of SOEs to promote responsible practices in the state sector. Various platforms for policy dialogue and engagement should be provided based on laws or regulations. The government is also encouraged to provide accessible legal processes for stakeholders adversely impacted by the actions of SOEs. Ideally, whistleblowers, individuals or organisations that report legal misconduct (e.g. regarding social or environmental regulations, corruption, human rights) of either the state or SOEs, should be protected by law. The government should also encourage SOEs to report (suspected) violations of international law, or risks of violations, regarding their business operations (e.g. as outlined in the Voluntary Principles on Human Rights and Security or in UN Sanctions). While consultations with stakeholders by SOEs are done regularly based on laws and regulations in some countries, in other countries they are done voluntarily or on an ad hoc basis. Moreover, only half of the surveyed countries provide non-judicial mechanisms for conflict management.

Most of those surveyed have started taking steps to develop frameworks that promote policy dialogue and stakeholder engagement within SOEs on matters pertaining to RBC...

Broadly, laws and regulations in most countries contribute to promoting stakeholder engagement on issues, including environmental protection, anti-corruption measures and labour rights, among others. For example, Pakistan has introduced guidance on RBC-related components, including whistleblower protection and environmental impact assessment, while requiring public and private organisations to have internal codes of conduct on safe working conditions. Mechanisms have also been introduced to promote anonymous reporting of legal misconduct and harassment, and, if needed, to launch investigations. Other countries have also adopted relevant programmes to promote stakeholder engagement in SOEs. For example, in Korea, along with the adoption of relevant laws and regulations on protecting the rights of stakeholders, SOE employees undergo relevant trainings on stakeholder interaction.

Further examples include Malaysia, where transformation programme for GLCs between 2005-2015 contained provisions to promote stakeholder engagement. Progress reports and reviews that were released provided stakeholders with information regarding company activities. In addition, GLCs sponsored organised events and discussion around RBC-related topics, including labour protection and anti-corruption. In 2011, Business Council for Sustainability and Responsibility Malaysia (BCSRM) was created to build capacity and raise awareness on issues related to social governance. Moreover, CSR policies and guidelines in India have been used as a means to ensure that business is conducted in a sustainable manner, while a memorandum of understanding between the federal government and SOEs contains provisions regarding stakeholder engagement.

Some of those surveyed have also started taking international standards into consideration while interacting with stakeholders within the SOE sector. Notably, in Kazakhstan, the Samruk Kazyna Fund has established channels for dialogue and co-operation with stakeholders using instruments, including the Accountability Principles Standard 2008 (AA 1000), Stakeholder Engagement Standard 2011 (AA 1000), and Guidance on Social Responsibility (ISO 26000), while adhering to the Global Reporting Initiative (GRI) (see Table 2.3). The Fund has also developed a roadmap of stakeholder engagement to reflect risks (including those related to RBC) and to rank them based on the degree of impact, liabilities, circumstances and influence, among other aspects. Furthermore, the country has adopted other laws and regulations,

including those with regard to conflicts of interest and whistleblowing policies, as well as a code of business ethics, with which SOEs are expected to comply.

Table 2.3. Means of interacting with stakeholders in Kazakhstan according to AA 1000 Stakeholder Engagement Standard

Level of interaction	Means of interaction
Consultations Bilateral interaction; the Stakeholders respond to questions by the Fund and the Organisations	Questionnaires Focus groups Meetings with the Stakeholders Public meetings Seminars Feedback through means of Communication Advisory Councils / Boards
Negotiations	Collective bargaining based on the social partnerships principles
Engagement Bilateral and multilateral interaction; building knowledge and experience by all parties, the Stakeholders and the Organisations act independently	Multilateral forums Advisory panels Consensus processes Joint decision-making Focus groups Feedback systems
Cooperation Bilateral and multilateral cooperation; joint building of knowledge and experience, taking decisions and measure	Joint projects Joint ventures Partnerships Joint initiatives by the Stakeholders
Delegating powers The Stakeholders (if applicable) participate in business governance	Integrating interaction with Stakeholders into management practices, Strategy and day-to-day operations

Source: Questionnaire response submitted by Kazakhstan authority.

...while some have taken steps to establish grievance mechanisms.

In particular, Korea has adopted legal and regulatory frameworks for stakeholder protection, with guidance provided by ALIO (the SOE information disclosure system). Stakeholders are able to submit complaints directly through SOE websites in case of illegal conduct, lack of impartiality and corruption, among other issues. The government also runs a website where individuals can voice concerns if they have been adversely impacted by actions of an SOE. Other institutions to which stakeholders can appeal include the Presidential Office Blue House, as well as anti-corruption and civil rights commissioners, and government agencies dealing with human and labour rights, environmental issues, public procurement, and gender equality. In addition, in 2015 a state conflict management manual for public institutions was released, which included procedures for non-judicial mechanism for conflict resolution.

In addition, countries that are adherents to the OECD MNE Guidelines can use the National Contact Points (NCPs) as a non-judicial mechanism. This is particularly the case in Turkey, where an NCP established by the country's Ministry of Economy helps enterprises, including the SOEs, and stakeholders to take appropriate measures in implementing the Guidelines, though issues can also be brought to courts. Others that were surveyed have also started introducing mechanisms for submitting and handling complaints. For example, India has introduced a mechanism where employees, end-users and consumers, can submit grievances against SOEs. In Cambodia, the SOEs have started integrating stakeholders' demand to respect their rights and protect the environment by implementing a consumer relations system to submit complaints regarding issues related to RBC.

In practice, stakeholder consultations take place on an ad hoc basis...

While similar policies and frameworks have been introduced in most of those surveyed, implementation is often fragmented. In Indonesia, stakeholder rights are stipulated across various laws and regulations, and they can submit complaints and bring SOEs before courts, with specific procedures detailed on government websites. In addition, the government encourages parliamentary hearings and the establishment of working groups to handle conflicts between industries or investors, and local communities. However, these processes frequently lack systematisation and consultations are usually held on an ad hoc basis.

Similarly, in Turkey, stakeholder consultations are mostly carried out on an ad hoc basis, though some consultations are institutionalised. For example, the government and trade unions sign a collective bargaining agreement every two years to improve labour rights and address relevant challenges. The processes also involve discussion of other issues, including those related to RBC, and employees are generally protected from facing termination for reporting misconduct.

...and there have been challenges in protecting their interests.

These challenges usually stem from the absence of or existing contradictions within legal and regulatory provisions to protect stakeholder interests. For example, Turkey currently does not have a framework to protect whistleblowers, which can only be implemented by companies voluntarily. While Malaysia has introduced relevant provisions, conflicting laws have rendered it difficult (and, at times, impossible) to report corruption and violation of certain acts.⁸ Notably, the country's penal code does not allow for information that has been obtained during work to be used (regardless of the size of the case), which undermines laws pertaining to whistleblower protection.

In addition, Viet Nam has issued relevant laws and regulations to protect stakeholder rights, and to manage civil complaints. SOE charters usually indicate the roles and responsibilities of stakeholders involved in SOE business operations, while labour unions have mechanisms in place to protect employees and can organise meetings. However, if consultations with stakeholders are not defined within the existing frameworks, they can only take place voluntarily. Moreover, the government provides no legal processes (other than a non-judicial conflict management mechanism) for individuals and investors that have been adversely impacted by SOEs, though issues can be negotiated directly with the government (authorised ownership entity) or an SOE.

⁸ An example of this is a scandal involving 1Malaysia Development Berhad (1MDB), a strategic development company owned by the Minister of Finance Incorporated Malaysia, in which the final audit report was placed under the OSA. To expose the corruption within this particular SOE, the whistleblower violated this section of the law and became ineligible for protection. In addition to this, Section 203A of the Penal Code states: "Whoever discloses any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under any written law shall be punished with fine of not more than 1 million ringgit, or with imprisonment for a term which may extend to 1 year, or with both." (www.agc.gov.my)

3 Key takeaways

3.1 Raising the bar on corporate governance practices in SOEs is a key element for promoting and enabling responsible business conduct

Awareness of the importance of RBC as a core business issue has increased in recent years. Expectations that SOEs implement RBC standards, guidelines, policies and good practices at both the international and national levels are growing, including in Asia. RBC is increasingly considered to be important for SOE efficiency and governance. While gaps in implementation remain, governments, state-owned enterprises, and other various stakeholders have been developing innovative policy initiatives aimed at filling them.

An increasing number of jurisdictions are making efforts to promote and enable RBC and sustainable development, both through the promotion and the implementation of the internationally agreed standards as well as through legislations, corporate policies or voluntary initiatives. Increasing pressure for accountability and transparency in all forms of corporate behaviour is supporting innovations and improvements in practices by SOEs.

A policy framework for promoting and enabling RBC in SOE sector is in many ways similar to an enabling framework for corporate governance in general. This includes a strong government commitment on RBC at both government level and enterprise level; concrete efforts to implement RBC standards at the SOE level (including policies preventing and stamping out corruption); adequate institutional capacity to design, implement and monitor RBC performance; and policies that supporting and incentivise RBC in SOE sector.

SOEs themselves can implement the new OECD Due Diligence Guidance on RBC (adopted in May 2018) - which provides practical support to enterprises and provides plain language explanations of RBC due diligence – can facilitate these efforts significantly. Implementing the recommendations in the guidance can help enterprises avoid and address adverse impacts related to workers, human rights, the environment, bribery, consumers and corporate governance that may be associated with their operations, supply chains and other business relationships.

RBC practices in SOE sector differ significantly among the countries that are reviewed in this report. The diversity reflects the institutional arrangements for SOE governance within member countries, the different legislative, regulatory or policy requirements of the countries, and whether the RBC practices in SOE sector is incentivised. Despite a strong and growing awareness of the benefits of RBC, ensuring RBC in the SOE sector is still a challenge for many countries. More remains to be done to implement RBC, governance, accountability and transparency standards, performance management schemes as set out in the [OECD Guidelines on Corporate Governance of State-Owned Enterprises and the OECD Guidelines for Multinational Enterprises \(MNE Guidelines\)](#). Policy makers could consider the following options to achieve further progress:

- **Exercising ownership on a whole-of-government basis.** The SOE Guidelines posit that centralisation of the ownership function can be a strong driver in the development of corporate governance requirements including disclosure and reporting practices on state ownership. Centralisation of the ownership function can help reinforce and mobilise competencies relevant to

RBC as it requires organising pools of experts on matters that are essential to enhancing RBC, such as financial reporting, disclosure, performance management or board nomination.

- **Good practices for aggregate reporting and SOE financial reporting.** Strengthening RBC disclosure requirements and rules would be beneficial. Governments can significantly improve transparency and quality of financial reporting by SOEs through annual publication of an aggregate report that covers all SOEs. The government should clearly include RBC issues in the list of disclosure items. Moreover, good practice calls for the use of web-based communications to facilitate access by the general public. At the same time, special attention should be given to avoid burdening SOEs with excessive information requirements.
- **Robust auditing systems.** In many cases in practice, the quality and credibility of SOEs' RBC practices is limited by lack of strong internal control systems which are essential for monitoring compliance with laws and regulations and reporting any irregularities to the board. Setting out a clear expectation that SOEs should implement risk-based RBC due diligence can help ensure checks and balances within the SOE, and, increasingly, improve the performance of arms-length audits of such activities by external parties hired by the SOEs. Implementing RBC due diligence and having a robust auditing system is considered good corporate governance practice.
- **Efficient systems for monitoring and benchmarking SOE performance.** Ownership entities should ensure that they have access to relevant, accurate and timely information from SOEs and establish efficient processes to regularly monitor performance. A best practice calls for adopting a formal mechanism that involves developing key performance indicators that can measure quality of RBC practices, supplemented by informal mechanism including meetings with SOE boards to discuss performance. For example, expecting the SOEs to have a credible plan for undertaking RBC due diligence can assist with these goals. Insofar as all SOEs have boards of directors, SOE boards should be assigned a clear mandate and have ultimate responsibility for the company's performance on RBC.
- **Implementing RBC due diligence.** Regardless of how the state chooses to exercise its ownership function, SOEs themselves are expected to implement RBC standards (OECD, 2018d). The OECD Guidelines for MNEs acknowledge and encourage the positive contributions that business can make to economic, environmental and social progress, but also recognise that business activities may result in adverse impacts related to corporate governance, workers, human rights, the environment, bribery, and consumers. Due diligence is the process enterprises should carry out to identify, prevent, mitigate and account for how they address these actual and potential adverse impacts in their own operations, their supply chain and other business relationships, as recommended in the OECD Guidelines for MNEs. Effective due diligence should be supported by efforts to embed RBC into policies and management systems, and aims to enable enterprises to remediate adverse impacts that they cause or to which they contribute.

Some business operations, products or services are inherently risky because they are likely to cause, contribute to, or be directly linked to adverse impacts on RBC issues. In other contexts, business operations may not be inherently risky, but circumstances (e.g. rule of law issues, lack of enforcement of standards, behaviour of business relationships) may result in risks of adverse impacts. Due diligence should help enterprises anticipate and prevent or mitigate these impacts. In some limited cases, due diligence may help them decide whether or not to go ahead with or discontinue operations or business relationships as a last resort, because the risk of an adverse impact is too high or because mitigation efforts have not been successful.

Effectively preventing and mitigating adverse impacts may in turn also help an enterprise maximise positive contributions to society, improve stakeholder relationships and protect its reputation. Due diligence can help enterprises create more value, including by: identifying opportunities to reduce costs; improving understanding of markets and strategic sources of supply; strengthening management of company-specific business and operational risks; decreasing the probability of incidents relating to matters covered by the

OECD Guidelines for MNEs; and decreasing exposure to systemic risks. An enterprise can also carry out due diligence to help it meet legal requirements pertaining to specific RBC issues, such as local labour, environmental, corporate governance, criminal or anti-bribery laws.

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Annex A. Questionnaire for the OECD Asia-Pacific Network on RBC and Corporate Governance of State-Owned Enterprises

Background

Over the past decade, SOEs have rapidly modernised and commercialised their operations. Asian SOEs in particular are playing an important role both for national development strategies and internationally through international trade and FDI activities. However, despite a strong and growing awareness of the benefits of responsible business conduct (RBC), ensuring RBC in the SOE sector is still a challenge for many countries. More remains to be done to implement responsible business conduct, governance, accountability and transparency standards, as set out in the [OECD Guidelines on Corporate Governance of State-Owned Enterprises and the OECD Guidelines for Multinational Enterprises \(MNE Guidelines\)](#).

While it is the role of SOE boards and managers to ensure that their companies act responsibly, governments should protect the public interest from potential negative impacts of business activities and provide an enabling framework for RBC. This point also goes to the heart of the existent OECD recommendations, as well as the [UN Guiding Principles on Business and Human Rights](#).

The term Responsible Business Conduct (RBC) can vary in perception among national governments, organisations and individuals. Indeed, Asian governments differ in their perception towards RBC. RBC means that businesses a) make a positive contribution to economic, environmental and social progress with a view to achieving sustainable development and b) avoid and address adverse impacts through their own activities and prevent or mitigate adverse impacts directly linked to their operations, products or services by a business relationship. Risk-based due diligence is a key element of RBC, as it is essential in identifying, preventing and mitigating actual and potential adverse impacts. The scope of RBC is cross cutting and broad as its influences on society concern various areas (e.g. disclosure, transparency, human rights, employment and labour, environment, anti-corruption, consumer interests, science and technology, competition and taxation).

Purpose and structure

This questionnaire has been prepared by the OECD Secretariat to gather information from countries participating in the Asia-Pacific Network on Corporate Governance of State-Owned Enterprises. The responses to the questionnaire will be compiled into a stock-taking report including good practices on national approaches towards enhancing responsible business conduct in SOEs, in particular regarding establishing and enforcing an adequate legal regulatory framework that protects the public interest and underpins RBC across countries in Asia. The questionnaire focuses on general policy, legal and institutional measures for enhancing RBC in state-owned enterprises including the dominant state ownership model in the respondent country. Each section comprises a set of broad questions, where respondents are invited to highlight related recent reform experiences and challenges in detail, and to provide relevant company case examples which highlight examples of good practice.

Scope

Respondents should also focus their answers on **incorporated SOEs** subject to ordinary corporate law (joint stock or limited liability companies). Listed companies should be included but will not be considered in detail, on the basis that their RBC practices may in many cases emulate those of listed private sector companies. Delegates may choose also to include RBC practices for other SOE forms (e.g. statutory corporations) if they consider that specific practices should be brought to the attention of the Network.

Questionnaire

General policy, legal and institutional measures for enhancing responsible business conduct of state-owned enterprises: Establishing and enforcing a legal and regulatory framework

Please provide an overview of your government's policy for enhancing the role of state in ensuring and enhancing responsible business conduct in state-owned enterprises, as well as practices for implementing this policy. The response should include (but not be limited to) the following issues:

- Please briefly describe the institutional arrangements for the exercise of the state ownership function. Which institution(s) is (are) responsible for exercising state ownership rights in SOEs? Please provide information on the legal form, mandate and SOE portfolio of all institutions involved in exercising the state ownership function.
- As stated in the **SOE Guidelines**, the state ownership policy should fully recognise SOEs' responsibilities towards stakeholders and request that SOEs report on their relations with stakeholders. It should make clear any expectations the state has regarding responsible business conduct by SOEs. In this context, what are government policies, requirements and expectations regarding responsible business conduct (RBC) in SOEs?
- Are the government's efforts to ensure the RBC of SOEs anchored in an overall national RBC policy or framework? Is it coordinated across government agencies? (Examples could include ensuring co-ordination across relevant domestic government bodies as well as with sub-national government bodies and authorities on cross-cutting issues related to RBC of SOEs, reflecting RBC considerations in national development plans and/or other sectoral development strategies.)
- Has the government formally committed to, or does it plan to do so, internationally recognised instruments or initiatives on RBC and incorporated them into domestic legal regulatory framework? (e.g. OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies, ILO Fundamental Conventions)?

RBC and the exercise of ownership rights

- How and through what channels does the government communicate its expectations regarding RBC to SOEs? Does the government provide any mechanism to monitor performance of SOEs in this area? If so, please elaborate.
- Through what relevant bodies does the government communicate expectations on RBC for SOEs to the public? (i.e. public relations bodies, investment promotion agencies, etc.)? Does the government provide clear and accessible information on SOEs' responsible business practices to stakeholders? How do they report to relevant stakeholders?
- Are individuals and organisations able to gain access to and publish information on the activities and performance of the state-owned enterprise sector on RBC related issues (e.g. social and/or environmental concerns, human rights and related issues)?

Facilitating SOEs in meeting expectations of RBC

- Does the government facilitate SOEs' ability to meet expectations of RBC? Does the government offer guidance or capacity-building on SOE management practices to meet these expectations? If so, please elaborate.
- What measures has the government taken to provide human and financial resources to relevant government agencies to ensure development and enforcement of an effective legal and regulatory framework that enhances RBC in SOEs?

- While RBC should in principle be profitable rather than costly for the SOEs some governments have in practice taken steps to subsidise or support RBC. Does the government in your country provide incentives, such as awards of recognition to SOEs, for implementing RBC standards?
- What government measures are in place to ensure that contracting and procurement processes are based on well-recognised standards and market rules rather than applied on an ad hoc or case-by-case basis?

Enhancing stakeholder engagement in RBC

- Does the government support stakeholder engagement in RBC of SOEs? Does the government encourage active engagement with various stakeholders (e.g. industry, civil society, worker organisations, local communities) on RBC of SOEs? What platforms for dialogue and engagement are provided?
- Are consultations with stakeholders done on an ad hoc basis or regularly? Are they voluntary or based on laws or regulations?
- Does the government provide any publically accessible legal processes for stakeholders that are adversely impacted by the actions of an SOE? What measures has the government taken in this regard?
- Does the government provide non-judicial mechanisms for conflict management involving investors that are negatively impacted by the business activities of an SOE?
- Are “whistle-blowers”, individuals or organisations who report legal misconduct (e.g. regarding social or environmental regulations, corruption, human rights) of either the state or SOEs, protected by the law?
- Does the government encourage SOEs to report (suspected) violations of international law, or risks of violations, regarding their business operations? (e.g. as outlined in the Voluntary Principles on Human Rights and Security or in UN Sanctions) If yes, please elaborate.

Promoting RBC through international co-operation: promoting international RBC policies and principles

- Does the government encourage domestic SOEs operating abroad to undertake due diligence across business relationships, including throughout supply chains, to address actual and possible harmful environmental and social impacts? If so, please elaborate.
- Does the government co-operate with other governments in promoting international policies and principles for RBC?
- If the foreign operations of an SOE give rise to controversy abroad, what, if any, corrective mechanisms may be invoked? If the issue has arisen in practice in recent years you are invited to provide concrete examples.

Annex B. RBC practices in SOEs: surveyed country profiles

Cambodia

Legal and regulatory frameworks, and international commitments bearing on RBC

Relative to other ASEAN countries, RBC is not a new concept in Cambodia, particularly when it comes to employment and industrial relations (OECD, 2018b). UN Office of the High Commissioner for Human Rights (UN OHCHR) in Cambodia actively promotes the UN *Guiding Principles*, as well as economic and social rights more broadly. The UN human rights office (OHCHR) of Cambodia plays an important role in engaging stakeholders of RBC in the country using the basic principles of business and human rights, whether through monitoring, technical cooperation, capacity building of relevant local actors, and strengthening the accountability of companies.

Other initiatives include establishing a National CSR Platform in 2015 by a number of civil society organisations and businesses to advocate for adoption of a national CSR framework by 2018 and to promote further adoption of guidelines, tools and principles (CSR Cambodia, 2016). Civil society has also been active beyond this effort; some NGOs, such as the Cambodian Centre for Human Rights and the Cooperation Committee for Cambodia (CCC), are running specific programmes to promote due diligence and business respect for human rights, including the OECD Guidelines. Foreign chambers of commerce have also taken on CSR issues. The European Chamber of Commerce launched a CSR Award, administered by the French Foreign Trade Advisors with the support of French Chamber of Commerce, in order to encourage and highlight best practice of Cambodia-based businesses linked with the French foreign trade network. The American Chamber of Commerce (2016) “reinvigorated” its CSR Committee in 2016, with planned monthly meetings, in recognition of the fact that CSR is an “increasingly important component of all companies activities as a way to demonstrate their commitment to support the community in which they operate, and one which has been demonstrated to serve corporations’ overall success”. The UN Global Compact Network is not active in Cambodia. Cambodia has ratified all the fundamental ILO Conventions and accessed the UN Convention against Corruption on 5 September 2007.

National legislation, policies and institutional measures in support of RBC and applicability to SOEs

The Article 31 of the Constitution of the Kingdom of Cambodia articulates international human rights obligations: “The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.” As such, the standards on business and human rights are applicable to the Kingdom of Cambodia through their international legal commitments and domestic law. There is also an increasing awareness in the country about the importance of enhancing RBC in key business sectors including agribusiness, industrial production related to factories and economic land concessions, extractive industries, tourism, energy projects and family-run businesses.

Listed public enterprises are required to have a clear strategic management policy which supports and protects stakeholders' rights, ensures compliance with labour law, and respects corporate social responsibilities (CSR) including protection of consumer and environment as per article 44 of the Prakas on Corporate Governance for Listed Enterprises (December 2010). As such, listed public enterprises are required to put this policy and mechanism in place and disclose such information in their annual reports. In recent years, SOEs have issued a number of notifications and measures to cope with complaints on frauds or any other misconducts toward their consumers.

RBC and the exercise of ownership rights: performance management of SOEs

Besides regulations, SOEs have developed and implemented training program to raise awareness on RBC practices among their employees. In particular, trainings on business integrity and anti-corruption have been rolled out to acknowledge employees right to voice concerns and report misconduct. Other type of trainings have been rolled out to increase environmental awareness and cultivate environmentally friendly behaviours in business practices and staff daily life.

Supporting stakeholder engagement

Cambodia's SOEs are increasingly integrating stakeholders demand for respecting their rights and protecting the environment. To that effect, SOEs are implementing "consumer relation" system for consumers to fill out complaint related to RBC, frauds or other misconduct.

India

Legal and regulatory frameworks, and international commitments bearing on RBC

There is a general awareness of importance of RBC at industrial level including SOEs in India. The country has ratified a number of international human rights and labour instruments that impose explicit or implicit obligations on the government to ensure that enterprises including SOEs operating in India do not violate human rights. Namely, India has ratified 6 out of 8 of the ILO core Conventions. The government also adopted a Model Bilateral Investment Treaty (BIT) in 2015 to ensure the regulatory space for protecting human rights in dealing with investment or trade-related disputes with companies. At the same time it is notable that key end markets for the Indian industry especially with regards to textile and apparel sector have seen an increasing number of legislations related to due diligence in recent years.⁹ India's Ministry of Corporate Affairs is currently undertaking consultations with relevant stakeholders to finalize a National Action Plan (NAP). A first draft was presented to the public on February 2019 (Global NAP, 2019). India is not an adherent to the OECD Guidelines nor the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Afflicted and High-Risk Areas nor Extractive Industries Transparency Initiative (EITI). The country is nevertheless actively collaborating to disseminate the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector.

National legislation, policies and institutional measures in support of RBC and applicability to SOEs

The Transparency International (TI) Corruption Perceptions Index 2017 rated India at 81 of 180 countries, with a score of 40 out of 100. India is ranked 130 out of 190 countries in the World Bank Group's annual

⁹ The legislations include the: Section 54 of the UK Modern Slavery Act; Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307); California Transparency in Supply Chains Act of 2010; and the French law on the corporate duty of vigilance.

report “Doing Business 2017,” one rank up from last year. Facing the challenges, the government has put in place legislations, policies and voluntary guidelines to enhance RBC in companies including SOEs.

The Indian approach to RBC has undergone major changes from philanthropy and charity to Companies Act 2013 which provides for mandatory reporting. The Department of Public Enterprises (DPE) under the Ministry of Heavy Industries and Public Enterprises (the nodal agency of all SOEs in India) plays the role of a state ownership coordinating entity and sets expectations concerning the ethical conduct of SOE officials in its corporate governance guidelines applicable to SOEs. Any RBC obligations of Indian SOEs would be incorporated in the company Memorandum of Association (MoA) agreed upon between the enterprise and the Ministry. Increasingly, Indian SOEs related to the federal sector are now expected to integrate Environmental Social and Governance (ESG) practices in their MoA and report on their practices. This trend is not applicable to sub-national enterprises. Further the Government of India and the sub-national governments have not come out with a direct policy with regard to RBC.

The Companies Act 2013 recognizes the importance of corporate social responsibility (CSR) as part of a firm’s long-term business strategy and seeks to create an enabling environment for synergizing partnerships between corporates, governments, civil society and academic institutions. CSR provisions of the Companies Act define the role of CSR committees and the amount to be spent as CSR. It states that the board of every company shall ensure that the company spends, in every financial year, at least two percent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its corporate social responsibility policy. If the company fails to meet the two percent target, the board shall provide explanations for not spending the amount. The Companies Act also specifies a list of areas where CSR activities should be undertaken in view of national priorities that CSR efforts may take up.

The Ministry of Corporate Affairs (MCA) administers the Companies Act of 2013, and is responsible for regulating companies in accordance with the law. In 2009, the Ministry issued the National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business (NVGs) with a view to provide a clear, broad-based framework for carrying out responsible business and be accountable to its stakeholders. It urges businesses to embrace the “triple bottom-line” approach whereby its financial performance can be harmonised with the expectations of society, the environment and the various stakeholders it interfaces with in a sustainable manner. The guidelines are articulated in the form of nine Principles with the core elements to actualize each of the principles. Elements of RBC in the Indian Acts and the MCA Principles are elaborated as below:

Table B.1. Additional information on the Indian Acts

RBC-related thematic area	Relevant Indian Acts	Relevant MCA Principles
Combating Bribery, Bribe Solicitation and Extortion	<ul style="list-style-type: none"> • Industrial Disputes Act, 1947 • Factories Act, 1948 • Companies Act, 2013 • Equal Remuneration Act, 1976 • Environment (Protection) Act, 1986 • Prevention of Corruption Act, 1988 • The Information Technology (Amendment) Act, 2008 • Trade Union’ Act, 1956 • Bureau of Indian Standards Act, 1986 	<p>Principle 1 Businesses should conduct and govern themselves with Ethics, Transparency and Accountability.</p> <p>Principle 7 Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner</p>
Human Rights	<ul style="list-style-type: none"> • Industrial Disputes Act, 1947 • Factories Act, 1948 • Companies Act, 2013 • Equal Remuneration Act, 1976 • The Information Technology (Amendment) Act, 2008 • National Commission for Backward Classes Act, 1993 	<p>Principle 1 Businesses should conduct and govern themselves with Ethics, Transparency and Accountability.</p> <p>Principle 5 Businesses should respect and promote human rights</p>

RBC-related thematic area	Relevant Indian Acts	Relevant MCA Principles
	<ul style="list-style-type: none"> Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 National Rural Employment Guarantee Act, 2005 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 	
Science & Technology	<ul style="list-style-type: none"> Bureau of Indian Standards Act, 1986 Consumer Protection Act, 1986 Environment (Protection) Act, 1986 The Information Technology (Amendment) Act, 2008 	Principle 2 Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle.
Environment	<ul style="list-style-type: none"> Bureau of Indian Standards Act, 1986 Consumer Protection Act, 1986 Environment (Protection) Act, 1986 Land Acquisition (Amendment) Act, 2013 The Information Technology (Amendment) Act, 2008 Public Liability Insurance Act, 1991 Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 National Commission for Backward Classes Act, 1993 New Competition Act, 2002 National Commission for Minority Educational Institutions Act, 2004 	<p>Principle 2 Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle.</p> <p>Principle 6 Business should respect, protect, and make efforts to restore the environment</p> <p>Principle 8 Businesses should support inclusive growth and equitable development</p>
Employment and Industrial Relations	<ul style="list-style-type: none"> Industrial Disputes Act, 1947 Factories Act, 1948 Trade Union' Act, 1956 Equal Remuneration Act, 1976 Public Liability Insurance Act, 1991 National Commission for Backward Classes Act, 1993 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 Companies Act, 2013 Environment (Protection) Act, 1986 Prevention of Corruption Act, 1988 Right to Information Act, 2005 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 	<p>Principle 3 Businesses should promote the wellbeing of all employees.</p> <p>Principle 4 Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.</p>
Taxation	<ul style="list-style-type: none"> Industrial Disputes Act, 1947 Factories Act, 1948 Companies Act, 2013 Trade Union' Act, 1956 Bureau of Indian Standards Act, 1986 Environment (Protection) Act, 1986 Designs Act, 2000 New Competition Act, 2002 	Principle 7 Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner
Competition	<ul style="list-style-type: none"> Factories Act, 1948 Companies Act, 2013 Trade Union' Act, 1956 Bureau of Indian Standards Act, 1986 Prevention of Corruption Act, 1988 Designs Act, 2000 New Competition Act, 2002 Public Liability Insurance Act, 1991 National Commission for Backward Classes Act, 1993 National Commission for Minority Educational Institutions Act, 2004 	<p>Principle 7 Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner</p> <p>Principle 8 Businesses should support inclusive growth and equitable development</p>
Consumer interests	<ul style="list-style-type: none"> Public Liability Insurance Act, 1991 New Competition Act, 2002 	Principle 8 Businesses should support inclusive growth and equitable development

RBC-related thematic area	Relevant Indian Acts	Relevant MCA Principles
	<ul style="list-style-type: none"> • National Commission for Minority Educational Institutions Act, 2004 • National Rural Employment Guarantee Act, 2005 • Bureau of Indian Standards Act, 1986 • Consumer Protection Act, 1986 • Public Liability Insurance Act, 1991 • Juvenile Justice (Care and Protection of Children) Act, 2000 • New Competition Act, 2002 • Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules, 2008 	Principle 9 Businesses should engage with and provide value to their customers and consumers in a responsible manner

Source: R.K. Mishra et al. (2018), Responsible Business Conduct – Indian Business Practices towards Social Inclusiveness.

In consonance with the NVGs, the DPE Guidelines on CSR and Sustainability issued in 2011 defines that corporate social responsibility is a company's commitment to its stakeholders to conduct business in an economically, socially and environmentally sustainable manner that is transparent and ethical.

RBC and the exercise of ownership rights: performance management of SOEs

Under the 2013 Companies Act, Indian SOEs are subject to the information disclosure requirements and are also encouraged to implement the DPE guidelines which are addressed to administrative ministers and Central Public Sector Enterprises (SOEs in national nomenclature). In particular, the DPE developed the Guidelines on Corporate Social Responsibility and Sustainability in 2013, which include a section covering sustainability disclosure and reporting.

In India, all SOEs are required to adhere to the disclosure norms prescribed by the government and have a Central Vigilance Officer reporting to the Central Vigilance Commission of the central government. Central SOEs (CPSEs) are monitored and evaluated following negotiation of a performance agreement between the SOE and its administrative ministry. This has been a means to ensure accountability of CPSE according to the government. SOEs' financial statements are subject to both a constitutional audit by the supreme audit institution (CAG) and statutory audits by an external auditor. The audits are undertaken in accordance with the standards set by the Institute of Chartered Accountants of India. However, SOEs are not required to establish an internal audit function. Under the SOE governance guidelines, all SOE boards are required to elaborate an internal code of conduct applicable to board members and senior management and include a suggested list of items to be incorporated in the code of conduct as well as a model code. The annual performance evaluation system reviews whether or not SOE boards respect this requirement.

The DPE publishes an Annual Public Enterprises Survey with information on financial and non-financial performance of CPSEs which is presented to Parliament each year. SOEs in India disclose financial as well as non-financial information including composition of Board of Directors, balance sheet, Audit committee and its term of reference. They also include terms of reference of Remuneration Committee, Remuneration policy, Resolution passed in AGMs, details of compliance, details of non-compliance by the company, penalties, structures imposed on the company, quarterly results, newspaper wherein results normally published, website, Audit qualifications etc. However, the government has not yet developed web-based disclosure tool for reporting SOE information.

Supporting stakeholder engagement

CSR is being used as an effective tool by all stakeholders including Governments, Corporates and Civil Societies to address issues of education, health, environment and livelihoods through various interventions. The DPE guidelines on CSR and Sustainability defines Corporate Social Responsibility as

a company's commitment to its stakeholders to conduct business in an economically, socially and environmentally sustainable manner that is transparent and ethical. MoU between the Federal Government and the SOE provides a mechanism for an overall stakeholder engagement especially of those managing and working in SOEs. It provides also for judicial mechanisms available for stakeholders (end-users, consumers, employees, etc.) with specific grievance against the SOE. Otherwise, SOEs have to engage with stakeholders as prescribed by the laws or regulations.

Indonesia

Legal and regulatory frameworks, and international commitments bearing on RBC

Indonesia refers to internationally recognised instruments when drafting laws and regulations related to SOEs. With respect to the UN Guiding Principles, the Indonesian National Human Rights Institution (NHRI) had prepared a National Action Plan on Business and Human Rights (NAP) which was presented to the Government in June 2017. The NHRI's NAP has not been formally adopted by the government for implementation, but contains recommended actions reflecting the three pillars of the UN Guiding Principles. The NAP should include specific considerations to improve RBC in agriculture, mining and tourism. Indonesia has also undergone two Voluntary National Reviews (VNR) in 2017 and 2019, which looked at Indonesia efforts in implementing SDGs-aligned policies. There have also been sector or thematic policy commitments. For example, Indonesia participates in the ILO/IFC Better Work Programme, which aims to improve working conditions and respect for labour rights for workers, and to boost the competitiveness of apparel businesses. Indonesia participates in the EITI since 2010. In 2020, the country scored "meaningful progress" in the EITI progress status, indicating that significant aspects of the EITI requirements have been implemented and/or are being fulfilled¹⁰. The government has various co-operation projects with other governments and international organisations to promote RBC-related topics in Indonesian SOEs.

National legislation, policies and institutional measures in support of RBC and applicability to SOEs

In general, RBC has not been mainstreamed into a management paradigm of Indonesian companies including SOEs and the government does not have a comprehensive legal regulatory framework on RBC. However, the government regulates and governs areas relevant to RBC including labour rights, environment protection and anti-corruption, through relevant laws. While implementation of these laws can be challenging, SOEs that are already enlisted in the Fortune 500 companies and the companies that are prepared to enter into the list, it is the policy of the government that they should comply and fulfil requirements stipulated by environmental laws and regulations as well as undertake necessary measures to minimise adverse impact of companies' activities. Indonesian National Human Rights Institution (NHRI) has suggested to the government to establish a National Action Plan on Business and Human Rights which reflects core elements of the UN Guiding Principles on Business and Human Rights. According to a 2013 report by the Komnas HAM, the national human rights institution, there were 1,009 complaints related to corporate human rights abuses filed that year, making businesses the second largest group (after state police) being implicated in human rights violations. The Financial Services Authority (OJK) plays a role in regulating corporate governance issues, but laws and regulations on protection of stakeholders and shareholders are considered to be improved.

¹⁰ EITI requirements include: implement a national multi-stakeholder group put in place the process nationally (1), provide information about the governance of the extractive sector and report annually with recommendations to improve local governance of the sector (2), and ensure that information is widely disseminated to inform public debate and recommendations are often followed up (3).

Some Indonesian companies including SOEs have developed and implemented corporate social responsibility (CSR) programs aimed at fostering economic development and providing community development services, educational programs and projects. This is partially because such programs and projects are often required in the environmental impact assessment (AMDAL) of resource extraction companies. The assessments are mandatory for any project with the potential to cause negative impacts such as environmental degradation.

RBC and the exercise of ownership rights: performance management of SOEs

The Ministry of Finance and/or the Ministry of SOE are required to have a regular communication and hearing with the Parliament to discuss issues related to SOEs and their performance. Such ministries along with SOEs themselves are also required to publish financial reports on their major activities and relevant information about their board of directors and board of commissioners and provide website links for inquiry points. The information can be accessed through SOEs' individual websites as well as the website of the Ministry of SOEs. Furthermore, the government allocates some funds in budget to support that goal. The government regularly provides awards to SOEs for various categories such as award for the best SOE, award for the best of corporate governance practices, award for best services, etc. The government has long established and enacted regulations on government procurement as well as procurement guidelines to be implemented by SOEs that refer to the international best practices. In terms of disclosure and transparency, SOEs are obliged to disclose and provide transparency for some data and information to the public as required by current regulations, inter alia, Law No. 14/2008 (Article 14), the Minister of SOE's Regulation No. 9/2012 on Good Corporate Governance. In terms of human rights, SOEs are obliged to apply their corporate responsibilities as required by the Law No. 40 Year 2007 on Company, and the Minister of SOE's Regulation on Partnership Program and Social Responsibility that cover activities in areas such as combatting poverty, developing rural and remote areas, supporting education, and micro as well as small business.

Supporting stakeholder engagement

The government supports stakeholder's engagement through, inter alia, hearing with the Parliament to discuss issues related to SOE matters. The government also encourages active engagement with stakeholders through establishment of working group to handle problems faced by industries or investors that may conflict with the interest of communities. The government also provides and encourages a legal basis for the establishment of worker organisations in SOEs. However, in general, the consultations are on an ad hoc basis. The association for such consultations are stipulated in various laws and regulations. For instance, issues related to environment impact caused by development are referred to the environmental law. Under environmental regulations, the stakeholders have the rights to make complaints or bring the SOEs before the court and such procedures can be found in the website of the Ministry of Environmental Affairs. According to the Law No. 30 Year 1999 on Arbitration and Alternative Dispute Resolutions, it is advised that disputes should be handled by the pacific settlement mechanism. Protection of whistle-blowers is stipulated in the Minister of SOE's Regulation No. PER-13/MBU/10/2015 on Guidance of Whistle-blowing System.

Kazakhstan

Legal and regulatory frameworks, and international commitments bearing on RBC

Kazakhstan has ratified 24 ILO Conventions. The country's Labour Code which entered into force in 2016 reflects ILO standards, according to the government officials. As an adherent to the OECD Declaration on

International Investment and Multinational Enterprises¹¹, Kazakhstan has established a National Contact Point (NCP). Kazakhstan's formal establishment of a NCP under the Guidelines could help to consolidate existing efforts and further promote RBC principles and standards, both within the government and with the wider public. Additionally, the country has declared to be compliant with the EITI with a “*meaningful progress*” status under the organisation ranking system. The UN Working Group on Business and Human Rights recently reported that Kazakhstan civil society in collaboration with the National Human Rights Institution have begun steps in the development of a NAP. For further information on the RBC policy landscape in Kazakhstan, please refer to the OECD Investment Policy Review of Kazakhstan.

National legislation, policies and institutional measures in support of RBC and applicability to SOEs

Considering that public and state-owned companies account for a large share of GDP, totalling more than 7 000 companies, they have significant leverage and can improve the quality of the business environment. In addition to having set out a CSR policy, Samruk-Kazyna, the [sovereign wealth fund](#) and [joint stock company](#) in [Kazakhstan](#) which owns, either in whole or in part, several companies¹² in the country, has recently taken important steps to improve its corporate governance framework. A new Corporate Governance Code was adopted in 2015 and applies to all organisations in which the fund owns more than 50% of voting rights. The code calls for transparency and accountability of internal audit systems, comprehensive and systemic risk management, observance of human rights, prevention of environmental abuse, intolerance of corruption and other integrity related aspects. It also requires disclosure of these issues in the annual reports of the fund and its subsidiaries. The Code sets out that the fund and its organisations should develop action plans on sustainable development, with the Guidelines mentioned as a relevant international standard (Samruk-Kazyna, 2015). The government has reported that the Code is currently being introduced in Samruk-Kazyna affiliated companies (OECD, 2017c).

RBC and the exercise of ownership rights: performance management of SOEs

SOEs in Kazakhstan are subject to the general reporting requirements stated in the Law on Accounting and Financial Reporting and the Ministry of National Economy is required to undertake performance evaluation and monitoring of SOEs. SOEs are also required to abide by disclosure-related provisions of Kazakhstan's sovereign wealth fund Samruk Kazyna's 2015 Corporate Governance Code, applicable to all state-owned joint stock companies in the holding company's portfolio. The Code has a chapter specific to RBC issues, covering accountability and transparency, human rights and environmental protection. The Code also requires disclosure of these issues in the annual reports of the Fund and its subsidiaries. The information that follows concerns the performance evaluation of Samruk Kazyna, the state holding company with shares in an important portfolio of SOEs (OECD, 2017c).

Samruk Kazyna, the sovereign wealth fund and joint-stock company has made notable efforts to promote corporate governance and RBC. The Fund has a two-tiered board system and the Government of Kazakhstan is considered sole shareholder of the Fund. The Prime Minister – Head of Government – chairs the Fund's board of directors (hereafter referred to as “supervisory board”) and representatives of the Government are ex-officio members. Currently the Minister of National Economy and the Minister of Finance serve on the supervisory board of the Fund in compliance with the Law on Sovereign Wealth Fund

¹¹ First adopted in 1976, the Declaration is a policy commitment by adhering governments to provide an open and transparent environment for international investment and to encourage the positive contribution multinational enterprises can make to economic and social progress. All parts of the Declaration are subject to periodical reviews. The most recent review - completed in May 2011 - concerned the Guidelines for Multinational Enterprises.

¹² At least 22 national companies operating in the mining, energy sector, related to the sea and air transportation of goods and passenger transportation, generation and distribution of electricity, metallurgy and pipeline infrastructure are included in the holding accounted for 24% of Kazakhstan's GDP.

and the internal regulations of the Fund. The supervisory board of the Fund annually undertakes its performance evaluation based on the report on implementation of the Development Plan of the Fund over the past year. The report includes the strategic key performance indicators (KPI) of the Fund, their planned and actual values, and the consolidated audited financial statements for the past year, prepared by independent international auditors in accordance with International Financial Reporting Standards. The consolidated audited financial statements of the Fund for the latest year are approved by the state as shareholder, i.e. through Decree of the Government of Kazakhstan. The interaction between the government and the Fund is regulated by the Decree of the Government of the Republic of Kazakhstan No. 1599 dated December 14, 2012 (OECD, 2017c).

The Fund also participates in management of the companies through the Board of Directors, in the order determined by charters of the companies and the Corporate Governance Code of the Fund. The Fund provides its expectations for the next financial year to the Chairman as well as the Fund's representatives of the Company's Board of Directors. The new Corporate Governance Code was adopted in 2015 and applies to all organisations in which Samruk-Kazyna directly or indirectly owns more than 50% of voting rights. The Code explicitly states role of the Government as ultimate shareholder, describes specifics of Samruk-Kazyna in relation to its portfolio, emphasizes the role of the Board of directors and risk management, and the issue of sustainable development is also addressed. The Code provides principles on sustainable development, calling for transparency and accountability, observance of human rights, prevention of environmental abuse, corruption prevention and other integrity related aspects. It requires the companies to disclose and report on these issues on the meeting of the Board in their annual and sustainability reports (OECD, 2017c).

Supporting stakeholder engagement

In Kazakhstan, the Samruk-Kazyna Fund uses international standards (AA 1000 Accountability Principles Standard 2008, AA 1000 Stakeholder Engagement Standard 2011, ISO 26000 Guidance on Social Responsibility; Global Reporting Initiative (GRI) and others) when engaging with its stakeholders.

The Fund has established channels for regular dialogue and long-term cooperation with their Stakeholders. For instance, it has come up with a map of their stakeholders which reflects the relevant risks and rank them depending on the degree of their impact (direct or indirect), liabilities, circumstances (paying special attention to high-risk areas), influence, and various prospects. Means of interacting with stakeholders include, but are not limited to, the following according to AA 1000 Stakeholder Engagement Standard 2011.

According to the Law on the fight against corruption, individuals with managerial functions in entities with majority state-owned stock are considered as persons authorized for the execution of state functions. In this status, upon appointment they are obliged to submit income and property declarations to tax authorities. They are also subject to restrictions and incompatibilities, for example, they are not allowed to engage in other paid activity except pedagogical, scientific or creative (managerial personnel of the group may combine paid positions within the group). Rules against conflicts of interest are found also in the Law on Joint-Stock Companies and the Corporate Governance Code of the Fund (the Code). According to the Code members of the Board of Directors shall not allow situations to arise where their personal interest can influence proper discharge of the obligations of a member of the Board. The Fund also has a Policy and Corporate Standard for the prevention of the conflict of interest upon attraction by organizations of the group of the Fund of consultative services. The Code of Business Ethics of the Fund contains an anti-corruption commitment and rules. The Fund has a whistle-blowing policy, which envisages a possibility to submit information from bottom to up without any pressure and discrimination (including through a hotline and confidence mail).

Korea

Legal and regulatory frameworks, and international commitments bearing on RBC

Korea has ratified some internationally recognised conventions related to RBC. Since its accession to the ILO Conventions in 1991, the government regularly reviews its national laws and practices. It has so far ratified 29 ILO Conventions, of which 27 are in force (4 of 8 Fundamental Conventions, 3 of 4 Governance Conventions, 22 of 177 Technical Conventions). In accordance with the OECD MNE Guidelines, the government established the National Contact Point (NCP) in 2000, in which both the government and the public jointly participate to implement the Guidelines and provide resolution mechanism, and promote co-operation with NCPs from other countries.

The government adopted the National Human Rights Commission Act and established the National Human Rights Commission of Korea (NHRCK) in 2001. The Commission presented the government with its recommendations for the National Action Plan on Business and Human Rights (NAP) in July 2016. For the NAP, the NHRCK recommends that public institutions including SOEs institutionalise and implement human rights-centred management and publish relevant outcomes on a regular basis. Other recommendations include considering human rights in public procurement and supporting non-state-based grievance mechanisms. Most recently in 2016, the NHRCK made another specific recommendation that the Ministry of Economy and Finance include human rights-centred management as a performance indicator in the Public Institutions Performance Management and Evaluation system to efficiently monitor the efforts of public institutions and SOEs regarding mainstreaming human rights into business operations. It remains to be seen whether the recommendations for the NAP will be implemented or not.

On August 2018 the Korean State Council adopted the Human Rights National Action Plan – a standalone action plan, which contains a chapter on business and human rights. The National Human Rights Commission of Korea has also helped SOEs operating abroad to strengthen management. The government encourages SOEs to follow the ISO 26000 Guidance and co-operate with the UN Global Compact.

National legislation, policies and institutional measures in support of RBC and applicability to SOEs

In 2018, the Korean government designated “public institutions as a driving force for achieving social values” and included them as one of 100 major national tasks of the government’s five-year administrative plan. The government has defined a set of indicators to monitor the performance of SOEs and new public institutions with respect to human rights, ethical management, occupational safety, environment conservation and social integration (OECD, 2020b)

The government views that good RBC policies should be internalised as part of corporate strategies and hence specific to the individual SOEs or the SOE sector in which they operate. Under the new administration’s presidential agenda to create and maximise social values, the state ownership entity – the Ministry of Economy and Finance (MOEF) is in charge of aligning RBC-related policies on SOEs with policies of other ministries and agencies. As such, all SOEs are expected to establish “credible” RBC-related policies. Listed Korean SOEs have to abide by the rules of the Korea Exchange, which joined the Sustainable Stock Exchanges Initiative in 2015 (SSE, 2019). The Korea Exchange uses the Dow Jones Sustainability Index Korea. RobecoSAM, along with the Korea Productivity Centre, evaluates non-financial elements of 200 companies listed on the Korean Exchange.

According to the Act on Management of Public Institutions, every public institution that provides public service should establish and publish a customer charter containing procedures for processing complaints about the service provided and liability for damages. The MOEF instructs SOEs to conduct a consolidated survey on customer satisfaction level at least once a year and publish the results. The survey questionnaire

includes many social responsibility aspects. In addition, the Anti-Corruption & Civil Rights Commission (ACRC) – national anti-corruption body – was established in 2008 to fight corruption and address public complaints and administrative appeals. Since then, the organization has been undertaking an annual assessment of integrity and policy enforcement of 268 public institutions, including all SOEs.

In 2014, the National Human Rights Commission of Korea published ‘The guidelines and checklist for human rights management’ and recommended that all SOEs and quasi-governmental organisations follow it. Based on the UN Guiding Principles on Business and Human Rights, the Guidelines encourage companies (SOEs) to report (suspected) violations of international law, or risks of violations, regarding their business operations and improve human rights education and the procedure of relief.

Box B.1. Public procurement practices: Case of Korea

The Act on Contracts to which the State is a Party (“State Contract Act”) establishes a principle under which the government engages in legal acts as a private economic entity. Civil law principles relating to contracts, such as the Principle of Party Autonomy, Principle of Good Faith, and Principle of Abuse of Rights apply to matters not addressed in the special laws or State Contract Act.

While the Ministry of Economy and Finance in Korea has primary responsibility for central procurement (including housing Public Procurement Service), the Ministry of Government Administration, the Ministry of Home Affairs, the Ministry of Land, Infrastructure and Transport, the Ministry of Trade, Industry and Energy, the Ministry of Health and Welfare, the Ministry of Employment and Labour; and the Ministry of Small and Medium Business Administration all have legal authorities related to public procurement. The public procurement system in Korea is comprised of a combination of centralized and decentralised procurement requirements, with legal requirements contained in different sources depending on the type of entity. While requirements for central government entities are contained in the State Contract Act; the Local Government Contract Act governs procurement by local government entities, and public institutions including SOEs are governed by the Act on the Management of Public Institutions.

To ensure fair, transparent and market-based public procurement system, the PPS follows the 2015 OECD “Recommendation of the Council on Public Procurement”, and uses the Korean Online E-Procurement System (KONEPS), which pays attention to both policy and market dimensions. KONEPS processes nearly two-thirds of all public procurement in Korea.

Source: questionnaire responses from the Ministry of Economy and Finance of Korea

Most recently in 2018, the government has designated “public institutions as a driving force for achieving social values” and included them as one of 100 major national tasks of the current administration’s five-year administrative plan. It has established a group of indicators to monitor performance of SOEs and new public institutions, with respect to human rights, ethical management, safety and environment conservation, regional development, co-existence, equal opportunity, social integration and job creation. High standards of transparency and accountability are applied at both the government and SOE level to encourage individual companies to implement sound RBC practices. Korea’s efforts to improve public procurement practices to meet the government’s expectations on RBC are elaborated as above (Box 2.1). Its practices on transparency, disclosure and performance management are elaborated in the following section on ownership rights and RBC.

Further, the Korean National Pension Fund (NPF) is the third largest pension fund in the world with a fund reserve of 524 trillion KRW. The NPF is a signatory to the UN Principles on Responsible Investment (PRI) which means that it should incorporate environmental, social, and corporate governance (ESG) issues into

investment analysis and decision-making processes, and seek appropriate disclosure on ESG issues by the entities in which it invests, disclosed through the annual Transparency Report (PRI, 2020). It is currently the Ministry of Health and Welfare which has oversight of the NPF (Korea Ministry of Health and Welfare, 2020).

RBC and the exercise of ownership rights: performance management of SOEs

Under the Official Information Disclosure Act, all public institutions including all SOEs are required to report and disclose corporate information to the general public through the internet-based portal called ALIO (All Public Information in One) inventory system (see www.alio.go.kr). The disclosure items include information on number of employees, executives, financial statement, profit and loss statement, income and expense statement, tax, audit report, internal and external evaluation reports conducted by the National Assembly, the Board of Audit and Inspection and the Ministry of Economy and Finance (MOEF) among many others. Failure to disclose and false disclosure result in heavy penalties for the relevant SOEs. The internal audit function is mandated in SOEs, and it is monitored by, and it reports directly to the board and the audit committee. Furthermore, whenever the MOEF makes changes to its SOE policy, it posts relevant press release on its website so that the public can easily view them.

The state owned entity – the MOEF undertakes annual performance evaluation of public institutions. At the beginning of each year, the MOEF mobilises a performance evaluation management team, a group of independent experts consisting of professors, Certified Public Accountants and consultants and develops and publishes the Manual for performance evaluation management of public institutions on its website. The Manual consists of a series of performance monitoring indicators that reflect the government's expectations. It recommends that SOEs integrate RBC-related issues into their business activities for the whole year.

At the end of each year, the team undertakes performance evaluation for public institutions including all SOEs in accordance with the Manual and the MOEF publishes final evaluation results online for the public's view. The results are used for review of remuneration for employers and employees and the MOSF's budget allocation to the companies. Moreover, in case a public institution, an SOE or a quasi-government institution fails to meet the performance targets or presents false reports, the MOEF is required to reflect it in the performance-based remuneration through deliberation and resolution by the Steering Committee, and take measures, such as caution and warning, against the institution concerned, or request the heads of the responsible ministry or institution to take personnel actions against relevant persons. In such cases, if an auditor or an audit commissioner of an audit committee fails or neglects to perform its relevant duties, the MOEF may dismiss the auditor or the audit commissioner concerned through deliberation and resolution by the Steering Committee or propose dismissal to his/her appointing authority, according to the "Act on the Management of Public Institutions." Public institutions and SOEs with higher score get rewarded with incentives such as performance bonuses. Also, the MOSF awards best practice institutions that have scored high on the quality of public service through customer satisfaction survey.

In particular, in 2018, the government adjusted the performance evaluation system of public institutions and SOEs to include a number of items linked to creating and expanding social value. The government has established a group of indicators to monitor performance of SOEs and new public institutions, with respect to ethical management, safety and environment conservation; regional development; co-existence; equal opportunity; social integration and job creation. In order to fulfill these social responsibility criteria to obtain high score on performance evaluation, every SOE and public institution has newly formed and organised a team or a division dedicated to the issue of "social values" and has increased financial resources on the subject. The MOEF released concrete guidelines for incorporating the new criteria into the performance evaluation. The guidelines also aim at helping the central government and local governments with developing their budget plans and expanding fiscal investment in the areas of human

rights, safety, environment and socially marginalised people. The MOEF plans to set up a fund that is purely dedicated to support maximisation of social value.

Supporting stakeholder engagement

Consultations with stakeholders of SOEs are broadly done regularly based on laws and regulations in Korea. The government's ALIO website provides laws, regulation and guidelines on public institutions including SOEs. At the same time, any citizen including relevant stakeholders can report through each SOE website when adversely impacted by illegal subcontract, impartiality and corruption. The central government also runs a website where individuals can voice their complaints when adversely impacted by the actions of an SOE. In particular, both the Presidential Office Blue House (<https://www1.president.go.kr/petitions>) and the Anti-Corruption & Civil Rights Commission run websites (<https://www.epeople.go.kr/jsp/user/on/eng/intro01.paid>) respectively dedicated to those who want to report and disclose wrongdoings of government agencies and public institutions including all SOEs. The website also provides detailed information on the legal processes for stakeholders that are adversely impacted by the actions of an SOE.

The Article 54 of the Act on the Management of Public Institutions states that the Commercial Act should apply *mutatis mutandis* to the exercise of minority stockholders' rights and stockholders' proposal to public corporations and quasi-governmental institutions, the stocks of which have not been listed in the securities market prescribed by Presidential Decree. Currently, there are eight listed SOEs in Korea, and they all follow the investor protection clause of the Commercial Act. As mentioned earlier, each SOE uses its website to receive investor petition(s).

The Act on the Protection of Public Interest and Whistle-blowers was enacted to protect and support people who report violations of the public interest. The compensation & reward program for whistle-blowers and the procedures for recovery of illegally amassed wealth is in full operation. Also, training and education programmes on business integrity and education have been in place for SOE employees.

The Act on Anti-Corruption and the Anti-Corruption & Civil Rights Commission, the Article 61 of the State Public Officials Act, the Article 53 of the Local Public Officials Act, the Public Service Ethics Act, and the Code of Conduct of Public Officials, and most recently the Improper Solicitation and Graft Act all implement whistle blowers protection measures. In December 2016, the Office of Government Policy Coordination released a conflict management manual for public institutions, and it covers some non-judicial mechanisms for conflict management involving investors that are negatively impacted by the business activities of an SOE.

Finally, government has put in place institutions and measures to support stakeholder engagement in various issues related to RBC in SOE sector as follows:

- **Human rights.** The National Human Rights Commission engages in various human rights issues of SOEs and holds consultations with relevant stakeholders on a regular basis. The Anti-Corruption and Civil Rights Commission and SOEs have also signed a social transparency pact on ethical management and corporate sustainability management of SOEs. With the Commission's initiative, several SOEs have joined the UN Global Compact.
- **Environment protection.** The Ministry of Economy and Finance (MOEF) encourages SOEs to follow the ISO 26000, International Guidance Standard on Organisational Social Responsibility. The MOEF and the Ministry of Environment are responsible for addressing environment issues of SOEs by organising consultations and policy dialogues with relevant stakeholders. The Presidential Commission on Sustainable Development monitors SOEs' activities and progress towards the International Environment Agreement.

- **Public procurement.** Government bodies such as the Presidential Commission on Sustainable Development, the Public Procurement Service (PPS) and the Presidential Committee on Balanced National Development encourage engagement with various stakeholders of public procurement.
- **Labor union.** The Ministry of Employment and Labour and the Economic and Social Development Commission of Korea engage in labour relations and labour union issues of SOEs.
- **Gender equality and health.** The Ministry of Gender Equality and Family and the Ministry of Health and Welfare encourage engagement with relevant SOE stakeholders.

Malaysia

Legal and regulatory frameworks, and international commitments bearing on RBC

Malaysia has had a local UN Global Compact Network since 2008, which aims to facilitate implementation of the ten UN Global Compact principles and enhance sustainability of companies. The country is also a member of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, which aims at helping governments with meeting international anti-corruption standards such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption. The government does not participate in the Extractive Industries Transparency Initiative (EITI). The Malaysian Government is planning to develop a NAP, after endorsing the Strategic Framework for a National Action Plan on Business and Human Rights in March 2015, produced by SUHAKAM, the National Human Rights Commission of Malaysia. The Strategic Framework sets out policy objectives and related recommendations, based on the UN Guiding Principles, for the Government's consideration in developing its NAP on Business and Human Rights. The SUHAKAM has held a series of consultations with major multinational companies and SOEs, various government agencies, regulatory authorities and NGOs to reflect their views and feedback on the plan to develop a NAP on Business and Human Rights in the country.

National legislation, policies and institutional measures in support of RBC and applicability to SOEs

Malaysia has promoted corporate social responsibility (CSR) in various ways over the years, including incorporating CSR into national development strategies, enhancing disclosure measures for listed companies, and giving CSR awards. Although there is no comprehensive policy framework for governing SOEs, the Company Commission of Malaysia and the Securities Commission of Malaysia have issued laws that can inform SOE practices on RBC. In 2009, Malaysia's Companies Commission of Corporate Responsibility launched the *Corporate Responsibility Agenda*. It defines the applicable standards, outlines the objectives that the Commission aims to achieve, as well as outlining the approaches, projects, and initiatives to be carried out by the Commission to enhance responsibility in companies, including SOEs.

The Company Commission of Malaysia has published Best Business Practice Circulars since 2010 that have covered various aspects related to corporate responsibility. The latest circular *Best Business Practice Circular 6/2017 on Business Review Report: Guidance to Disclosure and Reporting* provides a guidance on how to prepare business review reports. The document outlines good practices as related to law abiding; respecting human rights; preventing and mitigating corruption; being good tax payers; respecting employees; being environment-friendly; enhancing transparency and disclosure; and enhancing stakeholder engagement. The Commission envisions the document to be applicable for both public and private companies including SOEs that are incorporated and regulated under the Companies Act. Other Best Business Practice Circular topics have included recommendations on gender equality and promotion of a corporate integrity system.

From 2006 to 2015, Malaysia's Government Linked Company (GLC)¹³ Transformation Programme includes aspects related to promote better business practices within SOEs. The main government agency responsible for the programme was the Putrajaya Commission for GLC High Performance (PCG), which was formed to catalyse the GLC Transformation Programme as part of the government's national economic development strategy to enhance performance of GLCs by strengthening governance and stakeholder management. Within this programme, the PCG published the "Silver Book: Achieving Values through Social Responsibility" in 2006. The manual clarifies the government's expectations about GLCs' contribution to society and provides a set of principles and guidelines to Chief Executive Officers and the Board of Directors of GLCs so that they can proactively contribute to society whilst still creating value for their shareholders.

The Silver Book also provides SOEs with a scorecard for evaluating their existing contribution levels; improving execution and management; and ensuring effective governance. The programme introduced key performance indicators (KPI), board composition initiatives, the revamp of Khazanah Nasional Berhad, a sovereign wealth fund of the Malaysian government, as well as organisational changes for a number of GLCs. It was applicable to five federal-owned holding companies, namely, EPF, Khazanah, LTAT, LTH, and PNB, as well as 20 GLCs under them. With regards to procurement practices, the PCG has published the *Red Book: Procurement Guidelines and Best Practices* to assist the GLCs in implementing good procurement practices including developing a stable and competitive supplier base. The GLC programme ended in 2015 but there is a plan to create a "successor entity" to continue the programme and maintain the network of the GLCs involved.

Despite the absence of recent special framework for the SOEs, there are laws and frameworks issued by the Company Commission of Malaysia and the Securities Commission of Malaysia that can inform the SOEs on RBC best practices. Further, in 2016, the Company Commission of Malaysia publically encouraged businesses, including SOEs, to submit a "Business Review Report", as part of Section 253;3 of the Companies Act. This report should include a description of the principal risks and uncertainties facing the company, likely future developments, and particulars of important matters related to the company's business that have occurred during this financial year. Risks included are not limited to financial risks and included RBC issues deemed materials for the business.

It is further noted that any SOE intending to be listed on the Malaysian Stock Exchange are required to submit an Annual Report including a Corporate Responsibility Report. In addition to the above frameworks, companies, including SOEs, incorporated under the Companies Act 1956 are regulated by RBC laws such as the Environmental Quality Act 1974, Employment Act 1955 and the Industrial Relations Act 1967.

In order to incentivise companies to be more responsible, there are a number of awards given to companies with good practices. For example, in 2017 the Ministry of Women, Family and Community Development established the Prime Minister's CSR Awards, which has become one of most prominent awards in the country. Other awards include ICRM Award launched by the Institute of Corporate Responsibility Malaysia (ICRM) and the CSR Reporting Awards which was launched by the Association of Certified Chartered Accountants (OECD, 2013).

Despite encouraging companies to adopt RBC standards, the Malaysian government has not formally committed to adhere to internationally recognised instruments, nor do they promote adherence to

¹³ Malaysia has a two tier system of SOEs. Firstly, Government Linked Companies (GLCs) refer to the total of 30 listed companies which represent about 35% of the stock market. The State controls around 30 – 40 % of the shares of each GLC. They are also mainly controlled by Government Linked Investment Companies (GLICs) which have strong links to the Government via the Ministry of Finance or relevant Ministries. There are five GLICs in total. Secondly, there are the Ministry of Finance Incorporated (MoF Inc) companies which can also be referred to as SOEs. There are about 44 companies of which the MoF has at least 99% of shareholdings. These are non-listed and are under direct control of the Finance Minister.

principles such as the OECD MNEs Guidelines or the UNGPs. Malaysia is also not a member of the Extractive Industries Transparency Initiative (EITI). However, Malaysia GLCs do work with countries who have committed to respect the EITI standards. For example, Malaysia's largest GLC, Petroliaam Nasional Berhad, more commonly known as Petronas, possesses offshore operations in Myanmar which is an implementing nation of the EITI. This should indirectly ensure the Malaysian company complies with the standards and regulations of EITI. Malaysia is also a member of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, which was established to help governments in this area to meet international anti-corruption standards. The initiative supports the objectives of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption (OECD, 2013).

RBC and the exercise of ownership rights: performance management of SOEs

Malaysia has no SOE-specific reporting requirements or guidelines applied to all SOEs. Publicly listed SOEs are subject to the Bursa Malaysia listing requirements, fully corporatised SOEs to relevant provisions of the companies act, and statutory SOEs to individual reporting requirements. As of 2016, Section 253(3) of the Companies Act stipulates that companies' business review report should form part of the directors' report. The business review report should include a fair review of the company's business, a description of the principal risks and uncertainties facing the company, likely future developments, and particulars of important matters related to the company's business that have occurred during this financial year. For SOEs that intend to be listed at the Malaysian Stock Exchange, they are required to submit an Annual Report in which a report on Corporate Responsibility should be included. In addition to the above frameworks, companies incorporated under the Companies Act 1956 are regulated by laws such as the Environmental Quality Act 1974, Employment Act 1955 and the Industrial Relations Act 1967.

Previously, the GLC Transformation Programme launched by the Putrajaya Committee on GLCs' High Performance (PCG) had governed performance management of GLCs, involving KPIs and performance linked compensation and performance contracts. The PCG conducted an audit on the implementation of the KPIs. On the basis of that audit, PCG recommended that personal performance reviews be on a semi-annual basis where each manager's performance is reviewed against targets, resulting in differentiated evaluations with meaningful personal feedback, rewards and consequences. It also recommended that the base pay be comparable to industry peers and that GLCs offer meaningful performance bonuses depending on individual performance. It indicated that promotion, recognition and other non-financial rewards should be based on merit and significantly correlated with performance.

Supporting stakeholder engagement

As mentioned above, The GLC Transformation Programme, which ran from 2005 through to 2015, was important in terms of engaging with stakeholders and enhancing their awareness of the activities of GLCs. Throughout the programme, reports on the progress of the transformation programme were released to the public. Progress reviews were published from 2006 to 2014, providing stakeholders with detailed information regarding progress of the GLCs, inclusivity, sustainability and plans to move forward.

Bursa Malaysia, an exchange holding company, requires that all listed companies provide social responsibility reports (Bursa Malaysia, 2015) and these reports are available to the public. As for non-listed companies, the public can access information about them including their financial statement and business review reports as long as they are submitted from the Companies Commission of Malaysia. GLCs also sponsor or organise events in which discussions about corporate governance, environmental and labour protections, anti-corruption and transparency take place.

In 2011, a community of business leaders from various industries formed a national organisation named the Business Council for Sustainability and Responsibility Malaysia (BCSRM) to enhance responsible and

sustainable practices in SOE sector. It was formed through a merger of the Business Council of Sustainable Development and the Institute for Corporate Responsibility Malaysia. The organisation is involved in capacity development, awareness building, advocacy and thought leadership activities for environmental, social and governance related issues ([/https://www.wbcsd.org/Overview/Global-Network/Regions/Asia/Malaysia/BCSD-Malaysia](https://www.wbcsd.org/Overview/Global-Network/Regions/Asia/Malaysia/BCSD-Malaysia)). Stakeholders who are adversely affected by the actions of any particular SOE may use the Whistle-blower Protection Act 2010 to report any alarming activity.

However, despite such laws and laws in place, conflicting laws in Malaysia have made it difficult to obtain such protection when reporting legal misconduct of SOEs. For example, Section 6(1) of the Act prohibits the disclosure of information prohibited by written law. With SOEs being government-run, a lot of information can easily be placed under the Official Secrets Act 1972 (OSA), thus making it impossible to report acts of corruption or violations of certain rights or laws.¹⁴ This particular section of the Penal Code rejects the use of information obtained during work, regardless of the size of the case. This in turn undermines the Whistle-blower Protection Act as most cases of whistleblowing will occur with the use of information obtained during the work of an individual. The Malaysian government has also performed corrective measures when needed to mitigate RBC risks caused or directly linked to SOEs.¹⁵

Pakistan

Legal and regulatory frameworks, and international commitments bearing on RBC

While responsible business practices have yet to gain ground in Pakistan, the government has been strengthening its efforts to introduce international standards. The government has so far ratified 8 ILO Fundamental Conventions, 7 UN Conventions/Covenants on human rights, and gender and racial discrimination, 9 UN Conventions/Protocols on Environment and 4 UN Conventions on Narcotics and Corruption. The European Union (EU) is also mandated to review Pakistan's human rights progress every two years with respect to the Generalised System of Preferences (GSP+) regime which allows developing countries to pay less or no duties on their exports to the EU, providing them with the opportunity to engage with international trade and earn additional revenues that can be used to reduce poverty, provided the countries ratify and implement 27 international covenants, treaties and conventions.. In February 2016, the National Assembly of Pakistan inscribed the UN Sustainable Development Goals (SDGs) as national development goals. In addition, with assistance from the United Nations Development Programme (UNDP) for achieving the SDGs in provinces, the government has established provincial SDG Support Units.

¹⁴ An example of this is a scandal involving 1Malaysia Development Berhad (1MDB), a strategic development company owned by the Minister of Finance Incorporated Malaysia, in which the final audit report was placed under the OSA. To expose the corruption within this particular SOE, the whistleblower violated this section of the law and became ineligible for protection. In addition to this, Section 203A of the Penal Code states: "Whoever discloses any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under any written law shall be punished with fine of not more than 1 million ringgit, or with imprisonment for a term which may extend to 1 year, or with both." (www.agc.gov.my)

¹⁵ It was the case when an audit report of Petroliam Nasional Berhad (Petronas) uncovered Petronas' problems with severe corrosion and incompetent personnel in their British Columbian projects. The report lead to a public outcry, with Aboriginal and conservation groups questioning why the Canadian government had not properly looked into the history of Petronas in regards to environmental and safety issues (O'Neil, 2015). As a result of this backlash, Petronas introduced a program to improve health and safety at its global oil-and-gas operations, including actions to improve best practices and including recommendations to enhance safety standards (Meissner, 2015).

National legislation, policies and institutional measures in support of RBC and applicability to SOEs

There is no clear state ownership policy nor overall national RBC policy or framework in place in Pakistan. Co-ordination exists to a certain degree among the line ministries, regulatory bodies and the Auditor General of Pakistan. The latter reports on various functions and issues of SOEs to the Parliament. Through respective regulatory bodies like the Securities and Exchange Commission of Pakistan (SECP), the government has issued statutory notifications for public sector companies (PSCs), comprising of policies, rules and requirements that may address RBC-related issues. In 2018, the SECP issued Public Sector Companies (Corporate Governance Compliance) Guidelines. Previously in 2013, it issued the Voluntary Guidelines for Corporate Social Responsibility for PSCs. Listed SOEs such as the Pakistan International Airlines and National Bank of Pakistan are subject to the Code of Corporate Governance including when operating abroad.

The 2013 Rules on Corporate Governance of Public Sector Companies offer guidance which outline the responsibilities of CEOs. It states that the chief executive is responsible for the management of the Public Sector Company and for its procedures in financial and other matters, subject to the oversight and directions of the Board, in accordance with the Ordinance. The responsibilities include implementation of strategies and policies approved by the Board, making appropriate arrangements to ensure that funds and resources are properly safeguarded and are used economically, efficiently and effectively and in accordance with all statutory obligations. The Rule also states that company executives and board members should ensure that the directors and executives uphold the reputation of the company by treating the general public, institutional investors and other stakeholders with integrity and ensuring service quality.

Training is provided to various government bodies to support the development and enforcement of an effective legal regulatory framework. According to the Rule, Board Directors are required to undergo training “in order to ensure that the directors are well conversant with the corporate laws and practices. They are encouraged to have certification under an appropriate training or education program offered by any institution, local or foreign. Under the MOU signed by both Pakistan Procurement Regulatory Authority (PPRA) and the Competition Commission of Pakistan (CCP) on exchange of knowledge and expertise, the PPRA is recommended to regularly provide training to CCP officials on matters related to public procurement processes while the CCP is recommended to provide training to the PPRA officials on ensuring fair competition in public procurement process. In addition, the two organisations are committed to develop partnerships with other organisations that can contribute to capacity building of their staff and co-operate in developing guidelines for public procurement agencies and potential bidders regarding anti-competitive practices. The Ministry of Finance also offers training programs including the ones related to anti-corruption to executives of government organisations and SOEs.

Cross-cutting issues such as competition, procurement, public accountability and fiscal transparency are co-ordinated by several regulatory bodies as below:

- **Competition.** The Competition Commission of Pakistan (CCP) is an independent quasi-regulatory, quasi-judicial body that helps ensure healthy competition among companies. The Commission aims at preventing abuse of a dominant position in the market, certain types of anti-competitive agreements, and deceptive market practices. It also reviews mergers of undertakings that could potentially lead to lesser competition. Combined with its advocacy efforts, the Commission seeks to promote voluntary compliance and develop a ‘competition culture’ in the economy.
- **Procurement.** The Pakistan Procurement Regulatory Authority (PPRA) is responsible for prescribing regulations and procedures for public procurements by Federal Government owned public sector organisations with a view to improve governance, management, transparency, accountability and quality of public procurement of goods, works and services. It also monitors

procurement practices of public sector organisations and has been delegated necessary powers under the Public Procurement Regulatory Authority Ordinance 2002, which specifies methodology for pre-qualification, qualification, and disqualification of suppliers and contractors.

- **Policy development for economic growth.** Additionally, the Planning Commission (PC) is a financial and public policy development institution of the Government of Pakistan. The Commission comes under Ministry of Planning, Development and Reforms. The Planning Commission undertakes research studies and state policy development initiatives for the growth of national economy.
- **Public accountability and fiscal transparency.** The Auditor General of Pakistan has a clear role 'to strengthen the legislative oversight by providing an independent and objective assessment of the process of governance both at the federal and provincial levels'.

RBC and the exercise of ownership rights: performance management of SOEs

In Pakistan, the government communicates its expectations to SOEs (Public Sector Companies or PSCs in national nomenclature) through circulars and notifications. However, Pakistan has not established a formal performance evaluation system for SOEs. Line ministries which oversee 175 PSCs evaluate SOE performance and information disclosure practices on an ad hoc basis. Government bodies including the Ministry of Finance and Auditor General of Pakistan set standards for operations at sectoral level. For example, the Securities and Exchange Commission of Pakistan (SECP) is responsible for ensuring timely information disclosure by listed companies in line with internationally recognised reporting standards.

The 2013 Rules (updated in 2018) on Corporate Governance of PSCs issued by the SECP with the approval of the Federal Government recommends that business activities of PSCs should be in line with policy objectives and development targets of the Government. SOEs are subject to the reporting requirements of the Companies Act as well as additional (and, in some cases, parallel) requirements set forth in the Rules. The rules also state how a PSC should have a sound internal control system effectively implemented at all levels. According to the Rule 17, the Board shall submit an annual report to shareholders.

The individuals and organisations are able to gain an access to and publish information on the activities and performance of some PSCs on RBC related issues. Some PSCs publish their Corporate Social Responsibility (CSR) and Environmental, Social and Governance Report (ESG), which is available on the website of the companies. For Example, the Pakistan State Oil (PSO) has incorporated ESG in the Company's Annual Financial Report (formulated as an Integrated Report). Additionally, the Securities and Exchange Commission of Pakistan (SECP) issued a Corporate Social Responsibility (CSR) Order in 2009 (updated in 2013) applicable to all public companies.

Supporting stakeholder engagement

The regulatory bodies that are in charge of managing SOEs advertise the public hearings of SOEs which are subject to their management in the newspapers and on their websites. For example, the Oil and Gas Regulatory Authority advertises both consultations and public hearings involving SOEs. Also, the Public Sector Companies (Corporate Governance) Rules 2013 offer the guidance for whistle-blowing policy and protection mechanism as follows:

- Rule 21.6: The Audit Committee which is 'responsible for managing the relationship of Public Sector Company with the external auditors'.
- Rule 5.7: The Board shall formulate significant policies of the Public Sector Company, which may include: 'the implementation of an effective communication policy with all the stakeholders of the Public Sector Company'; 'Corporate social responsibility initiatives including, donations, charities,

contributions and other payments of a similar nature'; 'development of whistle-blowing policy and protection mechanism'; 'health, safety and environment'.

At the same time, the Public Sector Companies (Corporate Governance) Rules, 2013 offers guidance for the Board to identify and monitor 'the principal risks and opportunities of the Public Sector Company'; 'ensuring that appropriate systems are in place to manage these risks and opportunities, including, safeguarding the public reputation of the Public Sector Company'.

The Environmental Impact Assessment (EIA) is a mandatory legal requirement in Pakistan since 1st July 1994. Both Listed and unlisted SOEs advertise the EIA undertaken by their companies on the website as shown by the example of Hyderabad Electric Supply Corporation (Unlisted) and Sui Southern Gas Company Limited (Listed) Respective. The following are examples of legislations that have made legal processes available to stakeholders:

- The Oil and Gas Regulatory Authority has a Complaint Resolution Procedure Regulations (2003), for licensees and dealers.
- The Punjab Commission on the Status of Women provides a helpline. The Punjab Women's Toll-Free Helpline is available 24 hours and the helpline team comprises all-women call agents, three legal advisors, supervisors and management staff to address inquiries and complaints.
- The Federal Ombudsman of Pakistan is a government body which offers an online complaint system for registering complaints about any government body. The mechanism for managing the complaint is clearly defined in the legislation entitled Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2013.
- The Securities and Exchange Commission of Pakistan has an online query/complaint system for listed companies which offers both guidance in filing the complaint and also a mechanism for filing the complaint.
- The Sindh Labour Policy (2018) has recommended that 'shop stewards' be appointed at each production level. The worker should be able to bring to notice to management of his grievance through the shop steward, if it is not resolved then the matter can be taken to labour union or labour court.

In most instances there is a process for anonymous reporting of legal misconduct. For example, The Protection against Harassment of Women at Workplace Act, 2010 has a system for anonymous reporting of harassment. The law requires all public and private organizations to adopt an internal Code of Conduct aimed at establishing a safe working environment, free of intimidation and abuse, for all working women. This law obligates employers' to set up an Inquiry Committee to investigate a harassment related complaint. The Committee has to have three members, at least one of whom has to be a woman. The Inquiry Committee shall:

- Launch an investigation against the accused
- Recommend the imposition of penalties if the accused is found guilty
- Forward recommendation to the Competent Authority which will implement the decision

Turkey

Legal and regulatory frameworks, and international commitments bearing on RBC

Turkey has ratified 8 ILO Fundamental Conventions. Overall, it has ratified 59 ILO Conventions, of which 55 are in force (8 of 8 Fundamental Conventions, 3 of 4 Governance Conventions, 44 of 177 Technical Conventions). Turkey is also represented in the OECD Corporate Governance Committee, the OECD

Working Party on State Ownership and Privatisation Practices and the OECD Working Party on Responsible Business Conduct.

Turkey adheres to the OECD Declaration on International Investment and Multinational Enterprises as well as the various corporate governance principles. It has established the National Contact Point (NCP) in the Ministry of Economy. Domestic SOEs operating abroad are expected to act in line with the Guidelines and undertake due diligence across their business relationships. In principle, the use of appropriate international dispute settlement mechanisms, including arbitration, can be used as a means of facilitating the resolution of legal problems arising from the foreign operations of an SOE.

National legislation, policies and institutional measures in support of RBC and applicability to SOEs

The government has enacted the Turkish Code of Ethics – to be applied to all public institutions – in order to promote an ethical business culture throughout Turkish public administration including SOEs. The Council of Ethics for Public Service was founded in 2004 and has a legal mandate to develop a code of ethics. In this framework, the Council issued an ordinance called the Ethical Behaviour Principles for Public Officials in 2005 indicating the main public values and ethical behaviour principles such as transparency, impartiality, integrity, accountability and protection of public interest. The purpose of the regulation is to embed a culture of ethics into public service, to determine the ethical rules of conduct that should be followed by public officials and increase the society's trust in the public administration. In order to prevent, mitigate or address adverse impacts linked to activities and operations of SOEs, SOEs are subject to the same laws as private sector. Such laws include environmental protection law, occupational health and safety law, laws regarding prevention of corruption, and law on the protection of consumer rights.

Turkey has not yet established a central co-ordinating office to assist public institutions including SOEs in their efforts to strengthen RBC practices, and the issues related to RBC are handled by the various ministries. Turkey has established the National Contact Point (NCP) in the Ministry of Economy upon adherence to the OECD Declaration on International Investment and Multinational Enterprises. As such, the Ministry of Economy is responsible for implementation of the OECD MNE Guidelines which apply to all enterprises in all sectors, whether of private, state or mixed ownership.

The NCP is staffed by experts from the Ministry of Economy, and in line with the objectives set out in the Guidelines, their responsibilities include: arranging promotion and dissemination activities; organising seminars and awareness-raising events on RBC; drafting the NCP annual report; providing advice and explanation about the NCP mandate; receiving complaints under the specific instance procedures, co-operating with other NCPs as necessary in dealing with specific instances. As such, SOEs can get guidance from NCP of Turkey to embed RBC practices into their organisations. The NCP budget is allocated from the general budget of the Ministry of Economy.

In order to ensure fair competition for all the companies including SOEs, Turkish government has taken important steps. First of all, Turkish Competition Authority was founded in 1997 as an independent regulatory body. All SOEs are also subject to Public Procurement Law regarding their utility and investment expenditures and the law on Procurement Contracts requires competitive bidding for major procurement and limits the extent of sole sourcing. All major bids beyond a certain threshold need to be advertised and tender notices are published on the website of the Public Procurement Authority.

RBC and the exercise of ownership rights: performance management of SOEs

State-owned enterprises are subject to both external auditing by the Turkish Court of Accounts and an independent external audit according to the Decree Law on SOEs No. 233 which in line with International Financial Reporting Standards. The Turkish Court of Accounts is responsible for auditing SOEs on behalf of the Turkish Parliament. The reports prepared by the Court are open to public and are reviewed at the

Parliament sessions. Disapproval by the Parliament could potentially lead to the dismissal of the board members and investigation of the board's activities by the courts. Furthermore, SOEs are required to establish internal control system and internal audit mechanism according to Annual General Investment and Financing Programs. State-owned enterprises are currently in the process of establishing their internal control systems and recruiting their internal auditors. SOEs should report to the Treasury twice a year on the developments of their internal control systems and should also send their annual independent audit reports to the Treasury.

Under the Cabinet Decree, every year, the Treasury announces SOEs' annual investment and financing programs to the public and determines the principles concerning their financial and non-financial activities in consultation with the Ministry of Development. The annual program is a policy tool for the government to engage with SOEs. The Treasury also monitors implementation of these SOE programs and makes necessary amendments during the year. The program covers various subjects including employment, price setting, outsourcing, monitoring, target setting, strategic plans and corporate governance, etc. Although the program doesn't have a chapter that is specific to RBC, there are separate pieces of provisions that can enhance RBC such as those related to disclosure, environment, employment, new technologies, etc. All of the laws and regulations are published in an Official Gazette which is available online. Policy dialogue is another form of communication between Turkish government and SOEs. In particular, issues related to SOE employees are discussed in "Advisory Committee for State Employees" with participation from relevant state institutions and labour unions. These meetings take place twice a year: one in March and one in November, and any issue including RBC can be proposed as an item for the agenda. SOE boards are responsible for incorporating RBC related issues into management systems so that they are implemented as part of the regular business processes.

However, Turkey does not have any specific mechanism to monitor performance of SOEs in the area of RBC in a comprehensive manner. As for the government's communication on expectations on RBC for SOEs to the public, SOEs are required to publish their annual reports and up-to-date information about their activities on a website since 2005. Also, while the right to information is protected by Turkish Law, contracts between SOEs and its business partners or commercial confidentiality considerations may prevent certain information from being publicly disclosed. In addition to this, the Turkish Treasury is in the process of preparing annual SOE reports that cover all public enterprises in the country. With support from the Turkish Statistical Institute, the Treasury announces information on SOEs to public on a regular basis.

Supporting stakeholder engagement

The government encourages engagement with relevant stakeholders before making decisions that may adversely affect stakeholders. In general, stakeholder engagement is provided through meetings or consultation where SOEs and stakeholders share opinions and perspectives to reach a mutual understanding. Although consultations with stakeholders take place mostly on an ad hoc basis and voluntary, there are some consultations that regularly take place based on laws or regulations.

Government and trade unions sign a collective bargaining agreement every two years to improve standards on workers/employees' rights and other employment-related issues. For example, issues related to SOE employees are discussed in an "Advisory Committee for State Employees" with the participation of relevant state institutions and labor unions. These meetings take place twice a year: one in March and one in November, and any issue including RBC can be proposed as an item for the agenda. In particular, when a decision is taken to restructure, close or privatise an SOE, the rights of workers/employees are bargained collectively by trade unions in order to mitigate potentially adverse employment impacts of the decision. Stakeholders that are adversely impacted by the actions of an SOE have the right to bring the issue to trial. Access to the court is a right guaranteed by the Constitution. The rights of workers/employees to form or join trade unions are protected by Turkish law. However, the system does not allow for employees to take place in the board of SOEs.

As mentioned above, the National Contact Point of Turkey, which is established in Ministry of Economy to assist enterprises (including SOEs) and their stakeholders to take appropriate measures to the implementation of the OECD Guidelines for Multinational Enterprises, provides a mediation and conciliation platform for resolving practical issues that may arise. The Turkish law does not provide statutory protection to whistleblowers or require companies to have whistleblower procedures. Although no regulations focusing on whistleblowing have been adopted in Turkey, legal entities can voluntarily adopt internal whistleblowing regulations as part of their policies and procedures. Such internal regulations on whistleblowing may thus become a part of the terms and conditions of employment. SOEs are not obliged to report (suspected) violations of international law, or risks of violations, regarding their business operations. However, as mentioned earlier, in order to ensure SOEs to be transparent in their operations and responsive to public demands for information, they have some disclosure requirements. Turkey is moving in the direction of increased information being made available for adversely affected stakeholders and the public in general. SOEs are obliged to publish their annual activity reports on their website so that stakeholders can have an access to information about their activities on a regular basis. When an employee reports suspicious conduct within a company, the company evaluates the report under the general principles of employment law. As such, if an employee reports irregularity, his or her employment agreement should not be terminated on that ground. Without a valid reason for termination, the employee may initiate a re-employment lawsuit within a month of the termination date.

Viet Nam

Legal and regulatory frameworks, and international commitments bearing on RBC

Viet Nam has ratified 7 out of 8 ILO Core Conventions. Viet Nam recently concluded two major treaties, the Trans-Pacific Partnership (CPTPP, 2018) and the EU-Viet Nam Free Trade Agreement (EVFTA, 2019), with explicit language on RBC and sustainable development. Specifically, the EVFTA references the promotion and co-operation on RBC and CSR in the Trade and sustainable Development chapter (art. 9 and 14), with the OECD MNE Guidelines directly mentioned as a relevant international standard. Other chapter that includes provisions related to RBC is the SOE chapter (art. 5) underlining co-operation efforts to ensure that SOEs observe internationally recognised standards of corporate governance, emphasising the strong role SOEs can play in promoting RBC. This is also a matter of compliance as the Law on Management and Use of State Capital (2014) requires that “investment, management and utilization of state capital in an enterprise [...] must comply with the international agreements to which Vietnam is a signatory.” (UNDP, 2020)

To comply with commitments under the EVFTA and ratification of ILO Conventions, Viet Nam drafted a New Labour Code (in force in January 2021), which now recognises the right of employees to set up their own representative organisations and bargain collectively. Besides, the government works with multilateral organisations such as the OECD, the United Nations Development Programme (UNDP), German Agency for International Co-operation (GIZ) and Japan International Cooperation Agency (JICA) on implementing several projects surrounding topics to enhance business integrity, promote responsible supply chains, and enhance SOE management in the country.

However, it does not yet have official co-operation initiatives with other governments in promoting international policies and principles for RBC. When foreign operations of an SOE give rise to controversy abroad, SOEs are required to report to the government or state ownership agencies and they are subject to local legal framework and other international agreements (OECD, 2018c).

In November 2018, Viet Nam established the Commission for the Management of State Capital at Enterprises (CMSC) as a special co-ordination agency to integrate state ownership functions of the government and line ministries in oversight, manage, and control over state capital invested in enterprises. The CMSC exercises ownership rights in 19 enterprises in which the state owns 100% of the charter

capital, and act as the representative of state capital in joint stock and limited liability companies with more than one shareholder.

In 2021, the CMSC, Ministry of Finance and OECD, together with other key stakeholders of SOE governance in the country, initiated OECD Review of the Corporate Governance of State-Owned Enterprises in Viet Nam, which is an important part of the activities foreseen by the new OECD-Viet Nam Memorandum of Understanding which was signed on 5 November 2021 by OECD Secretary-General and Viet Nam's Foreign Minister. After a successful completion of the Review, Viet Nam could, at the discretion of the OECD Working Party on State Ownership and Privatisation Practices and if Viet Nam so wishes, become recognised as an Adherent to the OECD SOE Guidelines.

National legislation, policies and institutional measures in support of RBC and applicability to SOEs

While there is no comprehensive legal regulatory framework to enhance RBC of SOEs, social responsibility of SOEs is regulated by the state in a manner that is similar to the centralised planning period. The long-term SOEs reform and restructuring process has been integrated into Viet Nam's broader ambition to transition towards a more sustainable economy and balance economic prosperity and fast growth with environmental sustainability and social inclusion as underpinned in Viet Nam national Ten-Year Socio-Economic Development Strategy (SEDS) for 2021-2030. The strategy includes key considerations on how to strengthen SOEs governance practices, improve their operational efficiency, competitiveness and integration in GVCs while contributing to the 2030 Agenda for Sustainable Development (and associated 17 Sustainable Development Goals or SDGs).

Viet Nam has undertaken a number of reforms to increase the ability of SOEs to compete with private competitors, attract foreign investments and be better integrated into GVCs. In particular, Viet Nam has listed a number of SOEs on the two national stock markets, in continuation of the equitisation process. SOEs listed on the Ho Chi Minh Stock Exchange (HOSE), the Hanoi Stock Exchange (HNX) and the Unlisted Public Company Market (UPCoM), which is integrated to the Hanoi Stock Exchange, are required to disclose information with regard to "corporate environment, society and community sustainability", aligned with the Guidance on Environmental, Social and Governance (ESG) Disclosure published by the Hanoi Stock Exchange market authority.

In the wake of the COVID-19 crisis, other reforms have been initiated to improve governance and risk management practices of SOEs. The CMSC issued a resolution inviting individual SOEs to improve their governance and risk management system, in line with "modern governance standards and international practices [...] to better respond to risk and minimize negative impacts of COVID-19". Pursuant to Viet Nam new Labour Code, CMSC's Resolution No. 161/NQ-CP further invites SOEs to pay attention to impacts of the pandemic on employees, including through ensuring stable income (CMSC, 2020). The global health crisis has indeed caused major disruptions to GVCs and exposed significant vulnerabilities in company operations, including related to disaster preparedness and supply chain continuity and resilience.

As regards to transparency and business integrity in the SOE sector, Decree No. 47/2021/ND-CP dated 1 April 2021 of the Government provides details on a number of articles in the Law on Enterprises which specifies a list of information that should be disclosed as well as forms and means of disclosure. The Decree requires that reports on information disclosure be published on the website of the enterprise, the portal or website of the agency representing the owner and the Business Portal for at least five years. Enterprises disclosing information must conserve and archive reported and announced information according to the law provisions. Decree No.81/2015/NĐ-CP dated 18 September 2015 by the Government had previously stipulated requirements for information disclosure by SOEs but a number of SOEs do not publish any reports in public domain except listed SOEs (OECD 2022 forthcoming).

RBC and the exercise of ownership rights: performance management of SOEs

As the representative of the state owner, the CMSC is mainly responsible for monitoring the financial position of SOEs 100% owned by the state every six months. SOEs are required to submit to CMSC the aggregate reports every six months and also annually, according to the Decree No. 87/2015/ND-CP. According to the Decree, state ownership agencies are mandated to approve five-year and annual business plans of SOEs in co-ordination with state capital representatives (OECD 2022 forthcoming). Individuals and organisations are able to gain access to and publish information on the activities and performance of SOE sector on RBC related issues through ministerial websites and meetings. However, the information is often small and fragmented. Furthermore, burdensome administrative procedures often delay the process and hamper the effectiveness of the communication.

Supporting stakeholder engagement

In Viet Nam, SOE charters approved by the government or state capital agencies indicate the roles and responsibilities of stakeholders that are involved in business operations of SOEs. For instance, labour unions have rights to suggest board of directors of SOEs a protection mechanism for employees and the government and labour unions should organise a meeting on an annual basis. While consultations with stakeholders are not defined in an official regulatory framework, voluntary consultations with stakeholders take place based on requirements by board of directors of SOEs. The government does not provide any publically accessible legal processes for individuals and investors that are adversely impacted by the actions of an SOE. In fact, they can be directly negotiated with SOEs or government – authorised state ownership agencies.

Viet Nam has issued general laws and specialised laws to govern civil complaints about SOEs. The governmental detective agency is in charge of recording and dealing with feedback and petitions. “Whistle-blowers” - individuals or organisations who report legal misconduct of either the state or SOEs are protected by the law. The government also encourages SOEs to report (suspected) violations of international law regarding their business operations. While SOEs do report on violations, there is no legal mechanism yet in place to govern risk of violations. The government has issued a non-judicial administrative mechanism for conflict management involving investors and persons that are adversely impacted by the actions of SOEs.

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