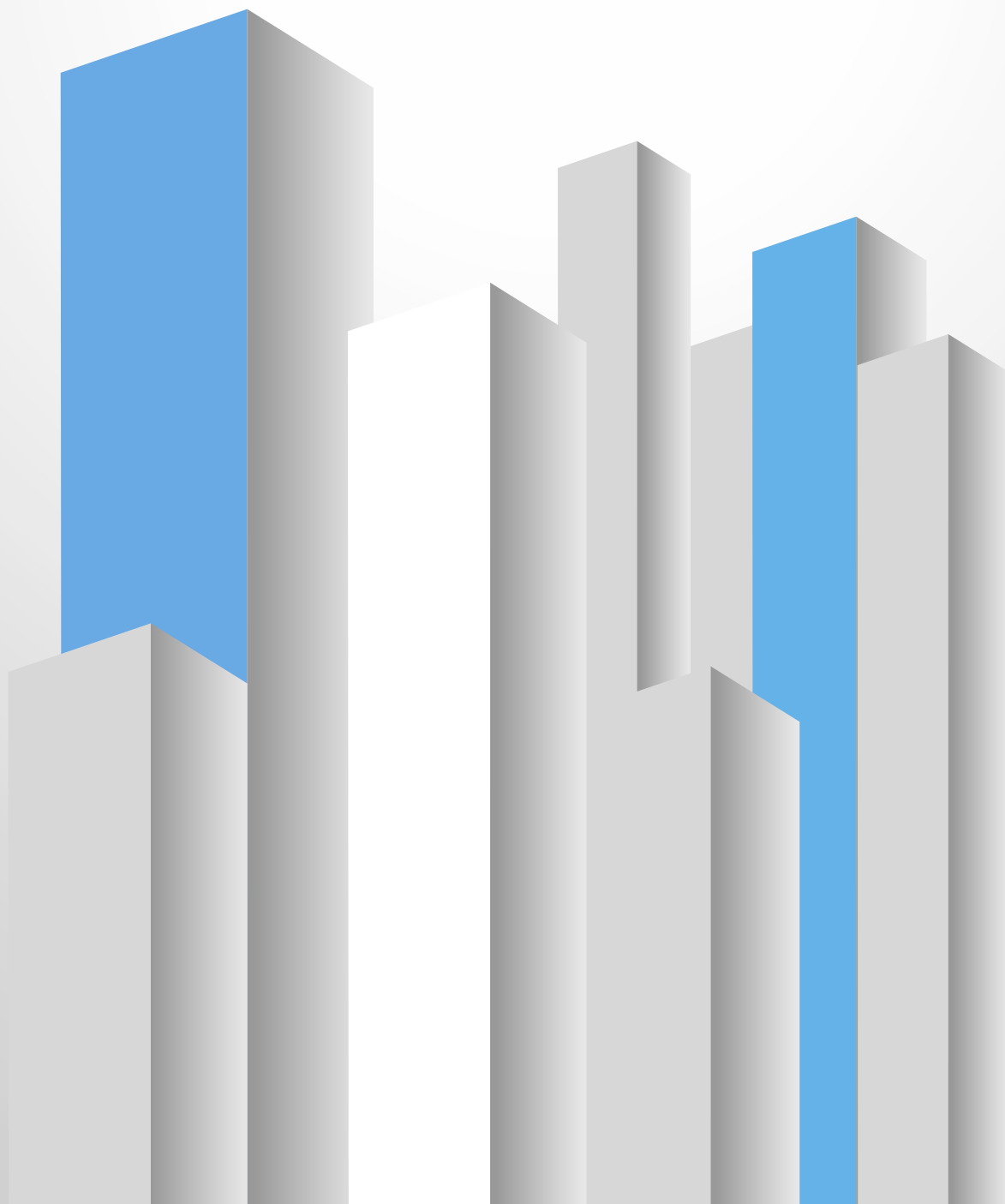


OECD REVIEW OF THE CORPORATE GOVERNANCE OF STATE-OWNED ENTERPRISES

ARGENTINA



OECD Review of the Corporate Governance of State-Owned Enterprises

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Foreword

This report evaluates the corporate governance framework for the Argentinian state-owned enterprise sector relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises (the “SOE Guidelines”). It was prepared at the request of the Republic of Argentina and is the fourth country review conducted by the OECD Working Party on State Ownership and Privatisation Practices (the “Working Party”), the body responsible for encouraging and overseeing the effective implementation of the SOE Guidelines. The review process is open to OECD as well as partner countries.

The report is based on information as of 31 December 2017 that was volunteered by the Argentinian authorities and independently researched by the OECD Secretariat. It was produced by Arijete Idrizi and Héctor Lehedé of the OECD Corporate Affairs Division that provides secretariat support to the Working Party. Guidance was provided by the Chair of the Working Party, Lars Erik Fredriksson of the Swedish Ministry of Enterprise and Innovation, and Hans Christiansen from the OECD Secretariat. The report was approved for publication by the Working Party in March 2018.

The report is structured as follows. Part A provides information about the context in which Argentinian SOEs operate. Part B refers successively to the different chapters of the SOE Guidelines, assessing Argentinian norms and practices in their light. The final section sets out the conclusions and recommendations for improving the corporate governance framework applicable to Argentinian SOEs. The recommendations are forward-looking, aiming to assist policymakers and government bodies exercising ownership functions in responding to remaining challenges and needed developments. Additional information is provided in the four annexes.

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List of Abbreviations

ACO	Anti-Corruption Office
ADR / GDR	American Depository Receipt / Global Depository Receipt
AFIP	Argentine' Tax Administration Agency
AGM	Annual General Meeting
AGN	National General Auditor
ANSES	Argentine Social Security Administration
BCBA	Buenos Aires Stock Exchange
BCRA	Central Bank of Argentina
BCYL	Belgrano Cargas y Logística
BNA	Banco de la Nación Argentina (SOE)
BYMA	Bolsas y Mercados Argentinos (stock exchange)
CCL	Commercial Company Law
CEO	Chief Executive Officer
CML	Capital Markets Law
CNRT	National Transport Regulation Agency
CNV	Argentine Securities Regulator
DGFM	Dirección General de Fabricaciones Militares (SOE)
FGS	Sustainability Guarantee Fund (managed by ANSES)
GAAP	Generally Accepted Accounting Principles
GDP	Gross Domestic Product
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
IGJ	General Justice Inspection
ILO	International Labour Organisation
INDEC	National Institute of Statistics and Census
IOSCO	International Organisation of Securities Commissions
IPO	Initial Public Offering
JGM	Chief of the Ministerial Cabinet
MERVAL	Buenos Aires Securities Market Index
MILA	Latin American Integrated Market

ONC	National Office of Procurement
ONP	National Office of Budget
ROE	Return on Equity
SIGEN	Federal Internal Audit Agency
SME	Small and Medium Size Enterprise
SOE	State-Owned Enterprise
SRO	Self-Regulatory Organisation
UAI	Internal Audit Unit
USD	United States of America Dollars

Introduction

The purpose of this report is to describe and evaluate the corporate governance framework for the Argentinian state-owned enterprise sector relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises (the “SOE Guidelines”), to which the governments of all OECD’s member countries adhere. It was prepared as part of the OECD Working Party on State Ownership and Privatisation Practices’ (the “Working Party”) procedures to respond to Argentina’s request for adherence to this OECD instrument. On the basis of the information contained herein, the Working Party recommended the OECD Council to accept Argentina’s request.

Since their inception in 2005, the SOE Guidelines have provided concrete advice to countries on how to manage more effectively their responsibilities as company owners, thus helping to make state-owned enterprises more competitive, efficient and transparent. The non-binding SOE Guidelines were developed by the Working Party. They complement and are compatible with the OECD Principles of Corporate Governance.

The SOE Guidelines, and therefore this report, are primarily oriented to SOEs using a distinct legal form (i.e., separate from the public administration) and engaging in economic activities (i.e. with the intention that the bulk of their income comes from sales and fees), whether or not they pursue a public policy objective as well. These SOEs may be in competitive or in non-competitive sectors of the economy. When necessary, the SOE Guidelines distinguish between listed and non-listed SOEs, or between wholly-owned, majority-owned, as well as in some cases also partly state-owned enterprises, since the corporate governance issues are somewhat different in each case. This report also applies the SOE Guidelines, where relevant, to the subsidiaries of these aforementioned entities.

The report was prepared by Arijete Idrizi and Héctor Lehuedé of the OECD Corporate Affairs Division that provides secretariat support to the Working Party. Information included in this report is based on a variety of primary and secondary sources as of 31 December 2017 (subsequent developments have been referenced in the text and in footnotes). These sources include the responses by the Argentinian authorities to a standard questionnaire on the SOE Guidelines; their responses to follow-up questions; one fact-finding visit to Buenos Aires including meetings with government officials, representatives of civil society, business organisations, and SOEs; additional desk research, and a final visit to Buenos Aires to discuss the findings.

Following this introduction, Part A of the report provides information about the context in which Argentinian SOEs operate. Part B refers successively to the different chapters of the SOE Guidelines, describing and evaluating Argentinian norms and practices in their light. The final section sets out the report’s conclusions and recommendations. Complementary information can be found in the four annexes.

Part A

Argentinian corporate governance landscape

Table 1. Basic Statistics of Argentina, 2016

(Numbers in parentheses refer to the OECD average)*				
LAND, PEOPLE AND ELECTORAL CYCLE				
Population (million)	43.8		Population density per km	15.8 (35.4)
Under 15 (%)	25.1	(18.0)	Life expectancy (years)	76.9 (81.0)
Over 65 (%)	11.1	(16.5)	Men	73.2 (78.4)
			Women	78.1 (80.6)
Latest 5-year average growth (%)	1.0	(0.6)	Latest general election	November 2015
ECONOMY				
Gross domestic product (GDP)			Value added shares (%)	
In current prices (billion USD)	545.7		Primary sector	12.6 (2.5)
In current prices (billion ARS)	8050.2		Industry including construction	25.6 (26.6)
Latest 5-year average real growth (%)	-0.2	(1.8)	Services	61.8 (70.9)
Per capita (000 USD PPP)	20.0	(42.1)		
GENERAL GOVERNMENT (Per cent of GDP)				
Expenditure ^a	39.5	(40.9)	Gross financial debt ^e	52.0 (112.1)
Revenue ^a	33.7	(38.0)	Net financial debt ^{a,b}	25.0 (72.8)
EXTERNAL ACCOUNTS				
Exchange rate (ARS per USD)	14.751		Main exports (% of total merchandise exports)	
PPP exchange rate (USA = 1)	9.194		Food and live animals	41.5
In per cent of GDP			Machinery and transport equipment	13.5
Exports of goods and services	12.7	(53.9)	Crude materials, inedible, except fuels	10.6
Imports of goods and services	13.4	(49.3)	Main imports (% of total merchandise imports)	
Current account balance	-2.8	(0.3)	Machinery and transport equipment	44.7
Net international investment position (2014)	8.3		Chemicals and related products, n.e.s.	18.9
			Manufactured goods	12.1
LABOUR MARKET, SKILLS AND INNOVATION				
Employment rate for 15-64 year-olds (%)	61.7	(67.0)	Unemployment rate, Labour Force Survey (age +14 and over) (%)	7.6 (6.3)
Men	72.8	(74.7)	Youth (age 15-24, %)	23.9 (13.0)
Women	51.4	(59.3)		
Participation rate for 15-64 year-olds (%) ^a	67.6	(71.3)	Tertiary educational attainment 25-34 year-olds (%; 2015)	18.2 40.7
			Gross domestic expenditure on R&D (% of GDP, 2014)	0.6 (2.4)
ENVIRONMENT				
Total primary energy supply per capita (toe, 2014) ^c	2.0	(4.1)	CO2 emissions from fuel combustion per capita (tonnes, 2014)	4.5 (9.3)
Renewables (%; 2014)	8.7	(9.6)		
Exposure to air pollution (more than 10 µg/m3 of PM2.5, % of population, 2015)	44.2	(75.2)		
SOCIETY				
Income inequality (Gini coefficient) ^{c,d}	0.36	(0.31)	Education outcomes (PISA score, 2012 ^e)	
Relative poverty rate (%) ^{b,c}	16.6	(11.1)	Reading	396 (496)
			Mathematics	388 (494)
Public and private spending (% of GDP)			Science	406 (501)
Health care (2014)	4.8	(9.0)	Share of women in parliament (%)	38.9 (28.7)
Pensions (Public ^c)	8.1	(9.1)		
Education (primary, secondary, post sec. non tertiary, 2013)	4.4	(3.7)		

Better life index: www.oecdbetterlifeindex.org. * Where the OECD aggregate is not provided in the source database, a simple OECD average of latest available data is calculated where data exist for at least 29 member countries. a. 2015 data for the OECD. b. Excludes public debt held by public sector entities including the Central Bank and the Social Security Administration ANSES. c. 2013 data for the OECD. d. For Argentina, based on household data for the third quarter of 2016, using the new OECD income definition. e. For PISA 2015, only results on capital city of Buenos Aires.

Source: OECD 2017 Multi-dimensional Economic Review of Argentina. Data as of 2016.

1. Economic and political context in Argentina

Economy. With a mainland area of 2.8 million km², the Argentine Republic (hereafter Argentina) is the 8th largest country in the world and second largest in Latin America. It is also the second largest economy in South America after Brazil and the third largest in Latin America. The country is coming out of a difficult economic period but, given its resources, there is potential to return to the prosperity it enjoyed in the past (Box 1).

After limited growth in 2015, the Argentine economy faced a recession in 2016 with GDP contracting by 2.3% compared to the previous year (INDEC, 2017^[1]). The country ended 2016 with a rate of inflation at around 40%, accompanied by falling consumption and rising levels of poverty (around 32.2% in 2016) and unemployment levels near 10% (Thomson Reuters, 2017^[2]). By the end of 2017 all these indicators had improved, including GDP growth at 4% and a drop of inflation to 24.6% for the year.

Government. Argentina is a representative, federal and democratic republic as established in its Constitution. The federation includes 23 provinces and one autonomous federal district (the capital city of Buenos Aires). Each of these constituencies has its own constitution and elects its own provincial legislators and governors.

Executive power is held by the President who is both Head of State and Head of Government. The President is elected by universal suffrage for four years and can be re-elected for one additional term. The legislative power is exercised by the bicameral National Congress (*Congreso Nacional*) which consists of the Senate (72 members) and the Chamber of Deputies (257 members). All members of Congress are elected by direct universal suffrage.

After 12 years of a government characterised as left-leaning, Argentina shifted in 2015 towards a government that has been described as centre-right. Mauricio Macri – who succeeded to Cristina Fernández de Kirchner – assumed office in December 2015 with a coalition (“Cambiamos”) composed by the parliamentary groups of *Propuesta Republicana* (PRO), *Unión Cívica Radical*, and *Coalición Cívica*. Mid-term elections in October 2017 strengthened the governing coalition’s position in Congress after obtaining 40% of the votes. With 24 senators (out of 72) and 107 members in the Chamber of Deputies (out of 257), the coalition still lacks a majority in Congress but the election results gave it over one-third of the seats, taking away from the opposition control of the two-thirds majority needed to block presidential vetoes (Thomson Reuters, 2017^[3]).

Box 1. A glance at Argentina's economic history

Argentina's per capita incomes were among the top ten in the world a century ago, when they were 92% of the average of the 16 richest economies (Bolt and van Zanden, 2014). Today, per capita incomes are 43% of those same 16 rich economies. Food exports were initially the basis for Argentina's high incomes, but foreign demand plummeted during the Great Depression and the associated fall in customs revenues was at the root of the first in a long row of fiscal crises. The economy became more inward-focused as a response to the Great Depression as of 1930.

This inward focus continued after World War II, as policies featured import substitution to develop industry at the expense of agriculture, nationalisations and large state enterprises, the rising power of unions and tight regulation of the economy. The combination of trade protection and a significant state-owned sector lessened somewhat in the mid-1950s, in a succession of brief military and civilian governments.

However, the weakness of both the external and fiscal balances continued into the 1960s and early 1970s, leading to an unstable growth performance and bouts of inflation, including a first hyperinflation in 1975. The military dictatorship of the 1970s and the democratic government of the 1980s continued to struggle with fiscal crises, resulting from spending ambitions exceeding revenues and exacerbated by the Latin American debt crisis starting in 1982, and the lack of a competitive export sector after decades of import-substituting industrialisation. The country fell into a fully-fledged hyperinflation in 1989-90. Between 1970 and 1990, real per capita incomes fell by over 20 percent.

While the economy returned to growth after 1990 in the context of lower import tariffs, foreign investment, a currency pegged to the US dollar and falling inflation, volatility did not recede. Export competitiveness faltered following the Asian crisis and the devaluation of the Brazilian Real and by the late 1990s the economy was facing a severe recession. Rising fiscal imbalances led to the 2001 debt default and the end of the currency peg. The impoverishing effect of the crisis was exacerbated by the subsequent devaluation which wiped out large amounts of household savings. Despite the recurrent crises, the growth performance of Argentina between 1990 and 2010 allowed it to begin a process of convergence with the developed world.

Source: (OECD, 2017^[4])

Despite its lack of parliamentary majority, the new government has developed a reform agenda aimed at overhauling the Argentine economic policy - including by putting an end to a dual exchange rate system,¹ eliminating export duties and quotas, and introducing a tax amnesty for undeclared assets (World Bank, 2016^[5]). These reforms have accompanied Argentina's return to international capital markets, after an agreement was reached with holdout creditors in April 2016. This put an end to a nearly 15-year legal battle with four hedge funds after Argentina defaulted on USD 100 billion of sovereign debt in 2001. The country was subsequently barred from issuing new bonds or servicing

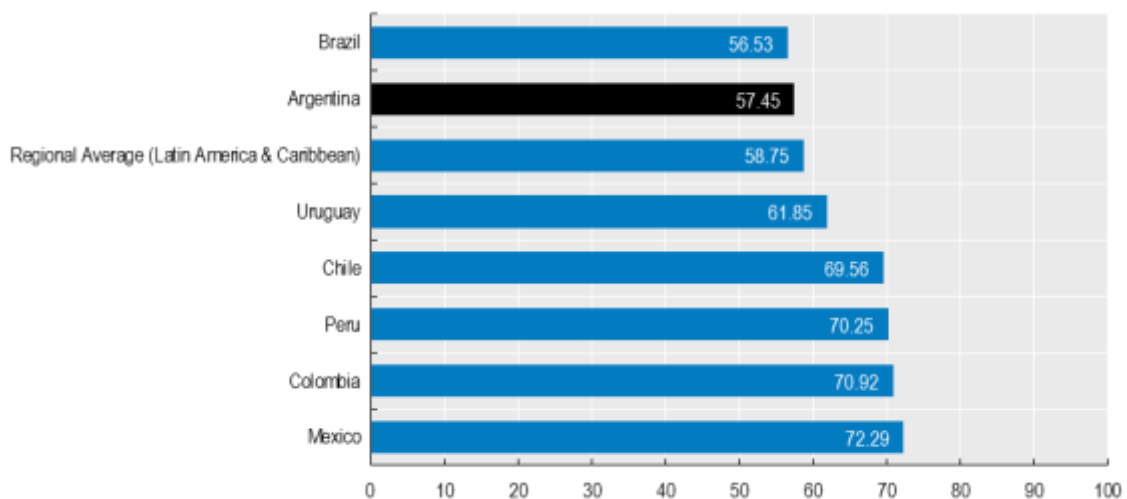
its restricted debt without paying the holdout creditors in full, leading Argentina to default on its debt again in 2014. Argentina's international integration under the current administration has been also marked by its participation as an official observer to the Pacific Alliance in June 2016, its presidency of the G20 in 2018, and the publicly recognised ambition to join the OECD in the near future.

Legal system. Argentina is a civil law country whose pillar is the Constitution of 1853. It recognises the division of powers between the federal government and the provinces (including the Autonomous City of Buenos Aires). Thus, under the federal system there are two types of judicial systems: 1) the national judiciary, with jurisdiction over the entire territory of Argentina, and 2) the judiciary of the provincial courts, with jurisdiction exclusively on their own territorial areas. Each province in Argentina autonomously organizes and administers ordinary justice within its territory (Centro de Información Judicial, 2008_[6]).

At both federal and provincial levels, there is a supreme court, appellate courts and district courts. The Supreme Court of Justice is the highest federal court in Argentina. It is comprised of five judges who are appointed by the President with the approval of the Senate. Since 2003, candidates to the Supreme Court ought to be publicly announced by the Ministry of Justice to allow for civil society participation in the President's decision.

Business climate. While the legal framework is sound and in line with those of most OECD countries, the situation in practice shows implementation and enforcement gaps that the new government is tackling in its reform plans.² Argentina ranks 116th out of 190 countries in the World Bank Doing Business ranking for 2017 (lower than the regional average) (Figure 1) and 104th out of 138 economies in the Global Competitiveness Index 2016-2017 with inflation, tax rates, access to financing, and corruption being the country's areas of main concern. It also ranks 95th out of 176 countries in Transparency International's Corruption Perception Index 2016, indicating a slight improvement since 2015 (down from 107th).

Figure 1. Ease of Doing Business



Note: Distance to frontier score: 0=lowest performance, 100=frontier. The distance to frontier score captures the gap between an economy's performance and a measure of best practices across the entire sample of 31 indicators for 10 Doing Business topics.

Source: World Bank 2017.

Argentina's recent efforts to enhance transparency have nevertheless led to improvements. The country scaled up 34 positions in the latest Open Data Index of the Open Knowledge Foundation (Open Knowledge Foundation, 2017). The country is also one of the nine G20 countries with an Open Government Strategy, along with Canada, France, Italy, Japan, Mexico, South Africa, the United Kingdom and the United States (OECD, 217^[7]).

Capital market. A new Argentinian stock exchange market known as *Bolsas y Mercados Argentinos* (BYMA) started trading in May 2017. Established by Law 26.831 (also called Capital Market Law - CML) with the idea of developing a single and integrated trading system, BYMA merges the operations of the Buenos Aires Stock Exchange (*Bolsa de Comercio de Buenos Aires - BCBA*), the Buenos Aires Securities Market (*Mercado de Valores de Buenos Aires - MERVAL*) and six regional stock exchanges (Córdoba, Mendoza, Rosario, La Plata, and Bahía Blanca) under a common market (El Cronista, 2017^[8]). Drawing from the Brazilian Novo Mercado experience – it will also feature a specific listing segment reserved for companies with high corporate governance standards (El Cronista, 2016^[9]).

In addition to BYMA, there are several other regional stock exchanges and securities markets in Argentina – each with their own regulations and requirements – as well as an OTC market for government papers, the *Mercado Abierto Electrónico*.

The regulatory body responsible for the securities market is the National Securities and Exchange Commission (*Comisión Nacional de Valores – CNV*), an independent national entity which has jurisdiction all over Argentina. Public offerings of securities are mainly regulated by the CML and CNV regulations, which together with other legal sources (including each market's own regulations) constitute the regulatory framework of capital markets in Argentina.³

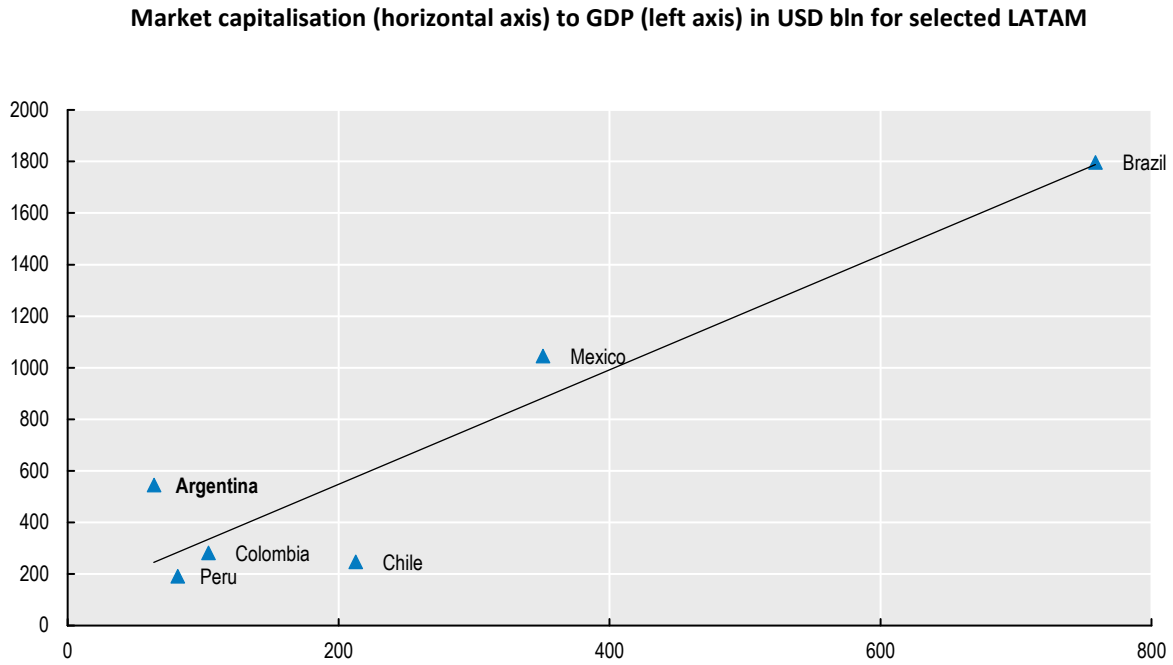
In terms of market value, Argentinian stocks showed impressive gains in recent years,⁴ but only a few IPOs have taken place and Argentina's stock market capitalisation is relatively small compared to other emerging and regional markets (Millan, 2017^[10]). Market capitalisation was 11.65% of GDP in 2016 – which is low, compared to Brazil's market cap of 42.23% and Colombia's 36.65%, for example (Figure 2).

There are 101 companies currently listed on the BYMA - out of which the five largest ones are foreign issuers: Banco Santander, Petrobras, Telefónica, Repsol, and Tenaris (Bolsar, 2017) (Figure 2). In addition, the capital market is dominated by public debt securities, which means that bond trading is significantly more important than equities trading in Argentina.

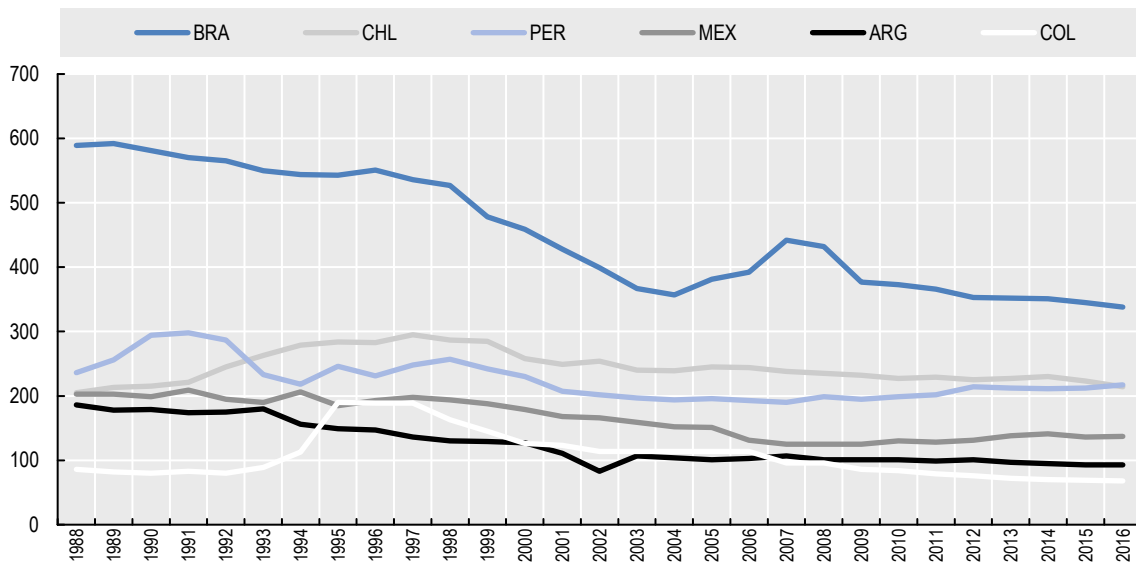
The main participants in securities market are banks, insurance companies and mutual funds (IMF, 2012^[11]) – with the Sustainability Guarantee Fund (*Fondo de Garantía de Sustentabilidad - FGS*), a public entity under the control of the National Social Security Administration (ANSES), being the main institutional investor (Box 2).

The most frequent types of corporate entities in Argentina are limited-liability companies (*sociedades de responsabilidad limitada*) and joint-stock companies (*sociedades anónimas*) which are often privately held. Concentration of capital structures is still very common and, as alluded to above, the number of corporations publicly offering their shares remains low (Huertas Buraglia et al., 2015^[12]).

Figure 2. Market capitalisation & number of listed companies for selected LATAM countries (2016)



Number of listed companies in selected LATAM countries (1996 - 2016)



Source: World Bank, 2016

Box 2. Nationalisation of the pension fund system

Like other countries in Latin America, in the early 1990s Argentina adopted a defined contribution system of private pensions to complement a 90-year old pay-as-you-go scheme. The new system was voluntary for workers, who were promised they would be able to double their pension by joining the new system (Rofman, 2015^[13]). Savings into the private pension funds were invested in the capital market and made pension funds important players in the domestic equity and debt markets.

In November 2008, amid a crisis of public finances and with the country banned from accessing international credit markets, the Argentinian government nationalised the private pension fund's assets - worth USD 30 billion (9% of GDP)^(*). The pension reform eliminated the private scheme and reassigned all workers to the existing public system, reinvesting the bulk of the resources that were not already invested into government debt into publicly issued instruments^(**).

The Argentine National Social Security Agency (ANSES) was charged with managing the equity stakes inherited from the private system which included large stakes in domestic and foreign firms (IBP, 2016^[14]). The pension fund nationalisation sent shockwaves to the equities market in Argentina and considerably reduced its liquidity and depth. It also raised concerns about the government's increasingly interventionist role in the private economy.

Initially, the government instructed ANSES not to disinvest any of the existing equity positions (ranging from a few shares to important blocks of up to 30% of voting shares), and several restrictions were imposed, including a cap limiting the exercise of its voting rights to 5% (regardless of its share participation in the company). In April 2011 this cap was removed by the government through Decree 441/2011. ANSES currently administers the investments received via a Sustainability Guarantee Fund (FGS), that has a portfolio of different assets, including government bonds, shares and trusts (The Economist, 2010^[15]). It is currently the largest investment fund in Argentina.

Notes:

(*) Rationales for nationalisation included suggestions that private accounts were not self-sustaining as *“the Government had to top up 77% of beneficiaries in the funded scheme”* – as well as the fact that *“the financial crisis resulted in negative 10% return in the half-year prior to the termination of the funded system”* (Rofman, 2015^[13]).

(**) The proportion of invested public debt grew from around 50% of pension assets in 1994-1998 to 75% by late 2002, following the severe fiscal and financial crisis of 2001 (Rofman, 2015^[13]).

2. Legal and regulatory environment in Argentina

2.1. Main laws and administrative regulations on corporate governance

The normative and legal corporate framework in Argentina is rooted in the Commercial Company Law - CCL (*Ley No. 19.550 de Sociedades Comerciales*) promulgated in 1972 and amended in 1983 by Law 22.903. It applies to all companies - whether public or private and regulates almost the totality of organisational aspects surrounding commercial companies. It sets forth provisions that involve corporate governance – such as frequency of board meetings, conflict of interest, and the operation of boards of directors – and grants a set of rights to company’s stakeholders, including minority shareholders. These provisions are generally in line with those applied by OECD member countries.

A new Civil and Commercial Code entered into force in August 2015 (*Código Civil y Comercial de la Nación*, Law No. 26.994) and introduced major modifications to the CCL, without significant modifications to the corporate governance regime itself (Kawamura and Mori, 2015^[16]).

Companies are also regulated by the rules of the Commercial Registry. For companies incorporated in the city of Buenos Aires, the Superintendence of Corporations (*Inspección General de Justicia – IGJ*) is the main supervisory authority, while the remainder submit to provincial commercial registries which often match principles established by the IGJ (Negri, 2006^[17]). Registration procedures (as per Resolution IGJ 7/15) include, amongst other aspects, the constitution, modification or closing of the company or its subsidiaries, the appointment and removal of directors of the board, changes in the capital or registered office of the company, the issuance (or modifications) of negotiable instruments, the dissolution or liquidation of the company, as well as the insolvency situation of the company and/or of its partners, managers, and representatives.

The Capital Markets Law (CML) is the main law regulating the activities of companies authorised to make public offering of their securities. It addresses several aspects related to transparency in the public offering regime and the protection of investors and minority shareholders. When adopted in 2012, it introduced tender offer regulations, gave new responsibilities to directors, fixed rules on the independence of directors and external auditors, and introduced arbitration procedures. The CML, has been particularly important for the Argentine capital markets as it replaced an existing regime of market self-regulation by giving authority to the Argentine Securities Commission – CNV to supervise and enforce securities laws across all markets. The law also facilitated the demutualisation of the stock market by allowing actors beyond brokers to own shares of the exchanges.

Some of the broad powers currently granted by the CML to the CNV have, however, been a source of concern among investors and scholars alike. For example, the CNV is authorised to “*declare null, void, irregular and with no effects*” the actions and acts of companies under its supervision, without prior summary or intervention of the court (Canosa Abogados, 2013^[18]). Furthermore, Section 20 of the CML states that minority shareholders (with at least 2% of total shares) may appoint “*inspectors with the power to veto any resolutions adopted by the entity’s management bodies [...]*” when they consider that their rights are being affected.⁵ As mentioned above, on November 2016 a Bill⁶ was sent to Congress proposing a large-scale reform to the CML and related

regulations which, among other dispositions, abrogates the powers granted by Section 20. This is partly based on the consideration that shareholders' rights are adequately and sufficiently protected by existing provisions on the CML and the CCL.

Box 3. CNV's Code of Corporate Governance

The Code (Código de Gobierno Societario) has nine principles and 22 recommendations on good corporate governance practices.

Principle I: Give transparency to the relationship between the issuing company, the economic group to which it belongs and its related parties. Contains recommendations on proper disclosure policy, existence of preventive mechanisms for conflict of interest and prevention of insider trading.

Principle II: Lay the foundation for a solid management and oversight of the issuing company. Recommendations include setting up performance assessment processes for board members, ensuring the existence of appropriate rules and procedures for the selection and nomination of board members and top executives, and assessing the board's number of members, which must include a "sufficient" number of independent directors.

Principle III: Endorse an effective policy of risk identification, measurement, management and disclosure. Recommends the board to adopt a comprehensive entrepreneurial risk management policy and monitor its implementation.

Principle IV: Ensure the integrity of financial information with independent auditors

Principle V: Respect shareholders' rights. Includes recommendations on guaranteeing shareholder's access to the company's information, promoting active participation of all shareholders and implementing mechanisms to protect shareholders against takeovers.

Principle VI: Maintain a direct and responsible link with the community

Principle VII: Remunerate fairly and responsibly

Principle VIII: Promote business ethics

Principle IX: Deepen the scope of the Code by promoting the inclusion of good governance practices in the bylaws.

Source: (Streb, 2012_[19])

Also relevant are CNV's resolutions; in particular General Resolution No. 516/07 of the CNV which introduced the requirement – applicable as of 2008 – for listed companies to adopt CNV's "Corporate Governance Code" (*Código de Gobierno Societario*) (IFLR, 2010_[20]) (Box 3). The Code, which follows a "comply-or-explain" approach, was reformed in 2012 (General Resolution of the CNV No. 606/12) to better align with the G20/OECD Principles of Corporate Governance. It provides broad recommendations on issues such as company ethics, integrity of financial information, independent external members of the board, and access to information by shareholders (Kawamura and Mori, 2015_[16]).

As per Title IV of the Informative Periodic Regime of CNV Rules (Ordered Text 2013 and modifications), listed company boards are required to issue an annual report disclosing whether or not they comply with the Code and, if not, must provide explanations. In practice, however, if the CNV monitors the obligation for companies to present their annual reports, it does not assess their quality and lacks enforcement capacity with very limited sanctions having been applied so far (World Bank Group, unpublished).

A *Voluntary Code of Best Practices for Corporate Governance* in Argentina - applicable to both public and non-public companies - was also issued in 2003 by the Argentinian Institute of Corporate Governance (IAGO), with the assistance of IDEA and FUNDECE, two Argentinian non-profits organisations. The Code establishes guidelines for an improved management control of companies' operations based on international standards and practices (GCGF & IGCLA, 2011^[21]).

Finally, the Central Bank of Argentina (BCRA) has also issued a certain number of rules on Corporate Governance, specifically for the banking industry. In particular, financial entities are required – through *Communication "A" 5201*, as amended – to implement an internal corporate governance code taking into consideration the guidelines set forth in the Communication. These guidelines are a mix of mandatory rules and soft-law recommendations that form good practice according to the BCRA (Magnasco and Levi, n.d.^[22]).

2.2. Legal and regulatory framework applicable to SOEs

In Argentina, the main legal forms under which SOEs may operate are: 1) State enterprises (*Empresas del Estado*); 2) State Corporations (*Sociedades del Estado*), and 3) Joint-stock companies with state majority shareholdings (*Sociedades Anónimas con Participación estatal mayoritaria*). The national SOE universe also includes statutory corporations as well as quasi-corporations which are public institutions administered as autonomous entities (*autarquías*).

All private sector laws generally apply to SOEs (with a few exceptions laid out in the CCL) in addition to public administration law which includes specific aspects on transparency, internal control, risk management, accounting and fight against corruption. There are however differences in their respective degree of application depending on the SOE legal form.

Empresas del Estado. Law No. 13.653 defines them as those enterprises created to develop commercial, industrial and utility services for public interest reasons. The law establishes that these enterprises “are subject to a) private law for everything that relates to their specific activities and b) public law for everything that relates to the provision of public services or their relationship with the administration”.

They are therefore subject to a double legal regime, with an increased focus on public administration law. In such companies, administrative acts and senior officials are governed by public law while commercial activities, staff and third-party relations are governed by private law (Negri, 2006^[17]). SOEs under this legal form are very rare in practice.

Sociedades del Estado. Regulated by Law 20.705, they have been conceived as a more “flexible” form of state-owned enterprises – allowing for greater autonomy and more transparency than *Empresas del Estado*. They are defined as “those [corporations] that, with the exclusion of all private capital [...] are constituted for developing industrial or commercial activities or for operating public services”. They are therefore set up as public

limited companies, explicitly forbidding any type of private capital participation, and are subject to the CCL with additional obligations and responsibilities under public law.

The main difference between *Empresas del Estado* and *Sociedades del Estado* is that the latter have a legal form similar to that of a private enterprise, while the first ones are conceived as commercially active institutions of the state. This difference also leads to different types of state control: state control in *Empresas del Estado* is exercised externally through government decisions such as decrees, for example, while in *Sociedades del Estado*, it is exercised internally through normal shareholders' rights and actions (Ministerio de Finanzas & Provincia de Córdoba, 2015^[23]).

Compared to private firms, both *Sociedades* and *Empresas del Estado* may benefit from tax relief and are legally protected against bankruptcy.⁷ However, they can be terminated and liquidated in case of sustained losses (Gordillo, 2006^[24]).

They are also subject to different accounting and work regulations: for example, SOE staff (workers and employees) is generally subject to private law except when performing managerial or executive functions, in which case, they are considered “public officials” and are therefore subject to additional public law requirements, including ethics and integrity laws.

Sociedades Anónimas con Participación estatal mayoritaria. These majority state-owned companies where the State holds at least 51% are regulated by the CCL (as per articles 308-312). All regulations of this law apply to majority state-owned companies with the exception of provisions on:

- Incompatibilities (article 264 par. 4): establishes the incompatibility for government civil servants to serve as directors or managers in companies with same statutory objectives as the government agency where they performed their duties.
- Remuneration (article 261): establishes that the maximal amount of remuneration for board members (including the supervisory board) cannot exceed 25% of total profits. This amount is limited to 5% when no dividends are distributed to shareholders, and is increased proportionally to the distribution.⁸
- Directors and “síndicos” for minority shareholders (article 263): recognises shareholder’s right to elect up to one third of the board through cumulative voting.

In addition, board members appointed by the state (or ANSES/FGS) in majority state-owned companies are exempted from providing a guarantee (in the form of bonds, public securities, or a certain amount of money in national or foreign currency) as established by Resolution 7/2015 of the Superintendence of Corporations (IGJ). The amount of this guarantee is the same for each director and may not be less than 60% of the share capital amount jointly held by all designated directors.

Unlike other types of SOEs, majority state-owned companies can be declared bankrupt as established by Law 24.522.

All SOEs, including minority state-owned companies are required to include a statutory auditor in the board. They are called “síndicos” when only one person is appointed and “Comisión Fiscalizadora” (supervisory committee) when comprised of several síndicos. They are nominated by Sindicatura General de la Nación (SIGEN), Argentina’s internal audit agency (Box 4) or by Ministries.⁹

Box 4. The role of *síndicos*

The CCL establishes the requirement to appoint a *síndico* (individual statutory auditor) or a *Comisión Fiscalizadora* (statutory audit committee) in joint-stock companies (*sociedades anónimas*) and limited-liability companies (*sociedades de responsabilidad limitada*), the most frequent types of corporate entities in Argentina. Smaller companies (not SOEs) can opt-out in their statutes if they comply with a series of requirements.

Síndicos are appointed at the shareholders' meeting and, in the specific case of SOEs, the state representative who exercises the political rights in the assembly or board, motions and votes the *síndicos* as proposed by SIGEN. They are public officials and personnel of the SIGEN. All SOEs have a *síndico* or a *comisión fiscalizadora* composed of certified public accountants or lawyers. Committees are required to have an odd number of members (O'Farrell and Sammartino, 2009^[25]).

Attributions of *síndicos* include (Alejandro Fabian Díaz, 2009, pp. 19-^[26]):

- Oversee the administration of the company;
- Verify liquid assets and securities titles, as well as obligations and their compliance;
- Attending shareholders', directors' and executive committee's meetings (with the right to be heard but not to vote);
- Present to the shareholders' meeting a written and well-founded report on the economic and financial situation of the company, ruling on the report and financial statements;
- Providing shareholders who represent not less than 2% of the capital, information on the matters that are within their competence;
- Calling extraordinary meetings when necessary, and a regular meeting or special assembly, when the board of directors omits to do so;
- Monitor that the company organs comply with the law, regulations, bylaws and shareholders' and directors' resolutions;
- Investigate complaints made in writing by shareholders representing not less than 2% of the capital.

In addition to the functions established by the law, *síndicos* of SOEs that are designated at the proposal of the state are also involved in the control of the business management of the company. They carry out an annual report on the business situation of the company that includes, among other aspects, accounting issues, internal control, performance of internal audit management and governance, and which is usually used to evaluate the performance of the boards of directors of SOEs. SIGEN also has influence on the definition of the profile of the internal audit managers of the SOEs, on the design of the internal audit plan, as well as on its approval and execution.

Finally, four enterprises within the Argentinian SOE universe are constituted as statutory corporations (incorporated pursuant to a specific legislation) or quasi-corporations (unincorporated but autonomous from the general government). They are autonomous entities with their own legal personality, resources and capacity to self-administer. They have, generally, less independence as other SOEs as it is constitutionally up to the executive power to appoint and remove public officials in these enterprises. Except for the Argentinian national bank, Banco de la Nación Argentina (BNA), which is an administrative autarchy subject to corporate law, they are subject to public law.

Statutory corporations/quasi-corporations in Argentina include: 1) BNA, 2) the arms manufacturer Dirección General de Fabricaciones Militares, which is an administrative autarchy within the Ministry of Defense, 3) Corporación del Mercado Central, which is an interjurisdictional entity managed by national and provincial governments, as well as by the City of Buenos Aires, and 4) the coal miner company Yacimientos Carboníferos de Río Turbio, which currently lacks a legal format, and is considered an “asset intervention” (*intervención de activos*). All of them hire employees under public law, but in the case of BNA they are also subject to private law.

2.3. Legislative and regulatory framework specific to corporate governance

On February 2018, the Chief of the Ministerial Cabinet (*Jefatura de Gabinete de Ministros* – JGM) issued guidelines (“*Lineamientos*”) on governance of SOEs, to be enforced on a comply-or-explain basis. The document – which establishes a list of recommended practices relating to transparency, integrity and procurement, amongst other aspects – was adopted through Administrative Decision 85/2018 and entered into force by 9 February.¹⁰

General Resolution No. 37/06

There are no specific SOE-related regulations on corporate governance beyond a 2006 ruling by SIGEN. SIGEN's General Resolution No. 37/06 (*Normas Mínimas de Control Interno para el Buen Gobierno Corporativo en Empresas y Sociedades del Estado*) establishes corporate governance good practices for SOEs covering a wide range of issues (Box 5).

The Resolution applies to all companies in which the state has a majority of capital stock or control over the enterprise with the exception of financial entities already under the BCRA’s supervision and publicly-listed companies already subject to CNV’s regulations and stock exchange’s requirements. It is very similar to the CML and regulates issues of loyalty and diligence of board members, independence and related party transactions.

The Resolution also includes the obligation for SOEs to set up an audit committee (except for those which qualify as SMEs) with a majority of independent members and with rights and duties similar to those provided by the CML (Kawamura and Mori, 2015_[16]).

The rules are formally of mandatory application, but there is no reporting or enforcement on their compliance, and therefore for the moment there are no consequences for SOEs not following them.¹¹

Box 5. Selected issues covered by Resolution No. 37/06

Audit committees (*Comités de Auditoría*) (article 2): state-owned companies should establish an audit committee including three or more board members and with a majority of independent members [...]. The Audit Committee shall elaborate an annual action plan to be submitted to the board and the fiscal body.

Criteria for independence of directors and managers (article 3): it shall be understood that a board member does not meet the conditions for independence under the following circumstances:

(a) He/she is also member of the board or affiliated to non-state shareholders with significant holdings in the SOE's share capital or exercise significant influence [...].

(b) He/she is linked (or was in the last three years) to the SOE by a relationship of dependence.

(c) He/she has professional relationships [...] or receives remunerations or fees (distinct from those attributed to its duties in the board of administration) from the SOE or any of its "significant" shareholders.

(d) He/she is a direct or indirect holder of a "significant participation" in the SOE or in one of its "significant" shareholders.

(e) He/she sells or provides, in a direct or indirect manner, goods and services to the SOE or its shareholders with significant shareholdings or influence [...].

(f) He/she is a spouse, or relative up to the fourth degree by blood or second degree by affinity, to individuals who, at the time of joining the board of administration, did not meet the conditions of independence established in this normative.

Duty of loyalty and care (articles 8-9): directors, managers and auditors of SOEs shall, amongst other things:

(8a) Ensure, without exception, that the social interest of the company and the common interest of all stakeholders prevail over any other interest, including that of the controlling private shareholder/s.

(8c) Organise and implement preventive systems and mechanisms for protecting the social interest and reducing the risk of conflict of interest [...].

Public Ethics Law No. 25.188

The Public Ethics Law of 1999, subsequently amended by Law 26.857 in 2013, establishes a set of duties, impediments and incompatibilities applicable to all public officials at all levels of the hierarchy and within all three branches of the government, including armed and security forces. These rules also apply to some of the top managers of SOEs, as they are regarded as public officials. The law sets forth the obligation for all public officials to submit an income and asset declaration upon assuming and leaving their positions, and to be updated on an annual basis.¹²

The Law also tackles issues of conflict of interest. Incompatibilities in the exercise of public functions include: 1) managing, representing, mentoring, advising, or otherwise, providing services to whom operates or holds a concession, or is a supplier of the state, or undertakes activities regulated by the state, provided that the public official performing its duties has functional competences with regard to contracting, procurement, management or control of such concessions, benefits, or activities, and 2) be a supplier itself or through third-parties to any agency/body of the state in which said public official performs its duties.

Law No. 26.857 of 2013 introduced some modifications to Law 25.188 by extending the obligation to submit asset declarations to “*candidates to national elected public offices*” (article 3), while also limiting the public availability and accessibility of such documents to public officials only, excluding their relatives. Such information is to be published on the website of the Anti-Corruption Office. The government is currently preparing a new public ethics law to expand legal requirements of the existing law that will also provide a more complete definition of conflict of interest (La Nación, 2018_[27]).

In addition to this, the government established the Anti-Corruption Office (ACO) in 1999 (Law No. 25.233) – as a replacement to the National Public Ethics Office which was mainly in charge of monitoring public officials’ personal assets since 1997. It is an independent body under the Ministry of Justice, Security and Human Rights. Its main objective is to elaborate and coordinate anti-corruption programmes, jointly with the National Prosecutor’s Office of Administrative Investigations (*Fiscalía de Investigaciones Administrativas*).

Decree 102/99 establishes that the Anti-Corruption Office is the agency responsible for preventing and investigating any misconduct covered by the Inter-American Convention against Corruption. Its scope covers centralised and decentralised public administration, SOEs and any other public or private entity with state participation or having state contributions as its main source of income.¹³ Several cases involving Argentinian SOEs are currently being investigated by the ACO. Most of these cases – involving public officials from ministries and SOEs – refer to acts of bribery, and irregularities in the procurement process including fraud and overpricing.

Law 27.275 on Freedom of Information

Argentina’s Congress passed the Freedom of Information Law (*Ley de Derecho de Acceso a la Información Pública*) in September 2016 as a replacement to Decree 1172/2003, an instrument that provided access to public information from the executive branch only. The law entered into force in September 2017 and obliges the public sector (including SOEs) to provide information to the public¹⁴ (disclosure requirements are displayed in Box 13). Under this law, any person or legal entity has the right to request and receive public information for free and within 15 days – with the exception of:¹⁵

- Information expressly classified as reserved, confidential or secret, for reasons of defence or foreign policy;
- Information that might constitute a threat to the functioning of the financial or banking system;
- Industrial, commercial, financial, scientific, technical or technological secrets whose disclosure might undermine the level of competitiveness or damage the interests of the obliged subject;
- Information that could compromise legitimate rights or interests of a third-party that were acquired in a confidential manner;
- Information within the power of the Financial Information Unit [...] related to the prevention and investigation of assets coming from illegal sources;
- Information prepared by obliged subjects dedicated to regulate or supervise financial institutions [...];
- Information prepared by legal advisors or lawyers of the national public administration whose disclosure could reveal defence strategies or the processing of a court case or disclose investigation techniques or procedures of a crime or other irregularities [...];
- Information covered by professional secrecy;
- Information referring to personal data that could not be provided upholding anonymity requirements [...];
- Information that could cause danger to a person's life or security;
- Information of a legal nature, whose disclosure is prohibited by other laws or international treaties the Republic of Argentina has committed to;
- Classified information obtained from investigations conducted by obliged subjects and whose disclosure could thwart the success of an investigation, and
- Information on limited companies subject to the public offering regime.

The Law also introduces an obligation to implement policies of active transparency. Each branch of the government is required to publish free of charge, accessible and up-to-date information about payroll, staff, affidavits of public officials, and budget allocations and procurement, amongst other things. It also provides for the open and public recruitment of public officials. An Agency for Access to Public Information (*Agencia de Acceso a la Información Pública*) was created in September of 2017 and is tasked with answering specific inquiries (each company has to resolve them with their own legal department, in line with the law).

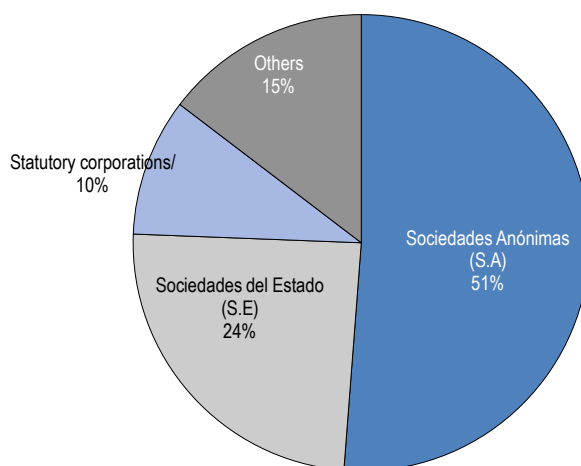
The Law foresees both administrative and judiciary complaint procedures in case of infringement and does not require the exhaustion of any of these remedies to use the other (articles 14 and 15). It also establishes a liability regime for public officials failing to comply with the legal obligation to provide public information.

3. Overview of the Argentinian state-owned sector

3.1. Legal forms of Argentinian SOEs

There is a range of heterogeneity in SOE legal frameworks, with most of Argentinian fully or majority owned SOEs structured as joint-stock companies (*sociedades anónimas*) and the remainder comprised of state corporations (*Sociedades del Estado*); statutory corporations/quasi-corporation and other legal forms such as *Empresas del Estado* or closed-stock companies (Figure 3). YPF is currently the only listed SOE.

Figure 3. **Principal legal forms of SOEs in Argentina**



Note: Share of the number of SOEs as listed in Table 2

Source: Questionnaire response submitted by the national Argentinian authorities.

3.2. Type of SOEs and sectoral distribution

According to Law No. 24.156 on Financial Administration and Control System of the National Public Sector (*Ley de Administración Financiera y de los Sistemas de Control del Sector Público Nacional*) companies and corporations of the national state include: “all state-owned companies, joint stock companies with state majority shareholdings, semi-public companies and other firms where the state has a majority shareholding in the capital or participation in corporate decisions”. Based on this definition, the Argentinian government has reported that there are currently 41 fully or majority owned SOEs in Argentina,¹⁶ working in different sectors and under different legal forms (Table 2 and Annex 1).

The number of companies with state participation surges to more than 100 if those in which the state is a minority shareholder are included (Diéguez and Valsangiacomo, 2016^[28]). Among them are the government-owned participations in 46 publicly-listed companies held through ANSES, the national pension system (See Box 2), where the state's shareholdings range from 1% to 31%. These government minority participations

were not included in this review as the Argentinian government considers that they are held as passive investments, even if they may include sizeable blocks of shares.

Additionally, there are a considerable number of provincial and municipal SOEs which are managed at a sub-national level by their respective governments. The SOE Guidelines would be applicable to these companies if their owners decided to implement them, but sub-national level SOEs have not been taken into account in the scope of this review, focused exclusively on the SOE sector at the national level.

Most Argentinian SOEs operate as monopolistic providers of public services and do not face competition from the private sector. They are important in key sectors of the economy such as energy, transport, finance and communication (Figure 4). A majority of SOEs established during the last two decades are concentrated in transport and storage, information and communication and energy sectors. The re-nationalisation of YPF and the creation of Energía Argentina (ENARSA) highlight the state's efforts to position itself strategically in the energy sector. YPF is currently the largest oil and gas producer in Argentina, producing around 43% of total oil and gas in the country, while ENARSA is specialised in energy generation.

Table 2. Number of SOEs by legal form and sector (December 2016)

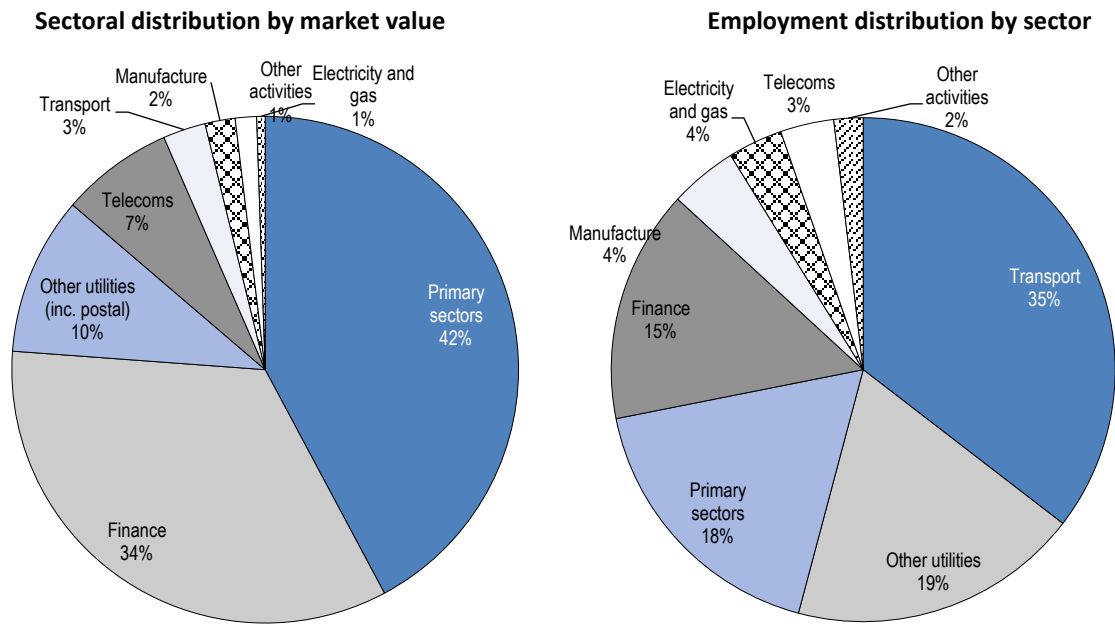
	Majority owned listed entities			Majority owned unlisted entities			Statutory corporation and quasi corporations		
	N° of SOEs	N° of employees	Value of SOEs *	N° of SOEs	N° of employees	Value of SOEs **	N° of SOEs	N° of employees	Value of SOEs **
Primary sectors	1	19,257	6,324	2			1	2,790	142
Manufacturing				3	3,330	81	1	2,080	213
Finance				1	275	242	1	18,300	4,963
Telecoms				6	4,267	1,102			
Electricity and gas				4	4,359	82			
Transportation				9	44,046	418			
Other utilities (inc. postal)				2	23,224	1,548			
Real estate				3	95	23			
Other activities				6	1,763	224	1	536	-15
Total	1	19,257	6,324	36	81,359	3,720	4	23,706	5,303

Note: Consistent with the SOE Guidelines, this table uses a definition of state-owned enterprises that is narrower than the one used in OECD (2017), The Size and Structural Distribution of State-Owned Enterprises. The reported numbers are therefore smaller. Notes: (*) Market value, USD million; (**) Book equity value, USD million.

Source: Questionnaire response submitted by the national Argentinian authorities.

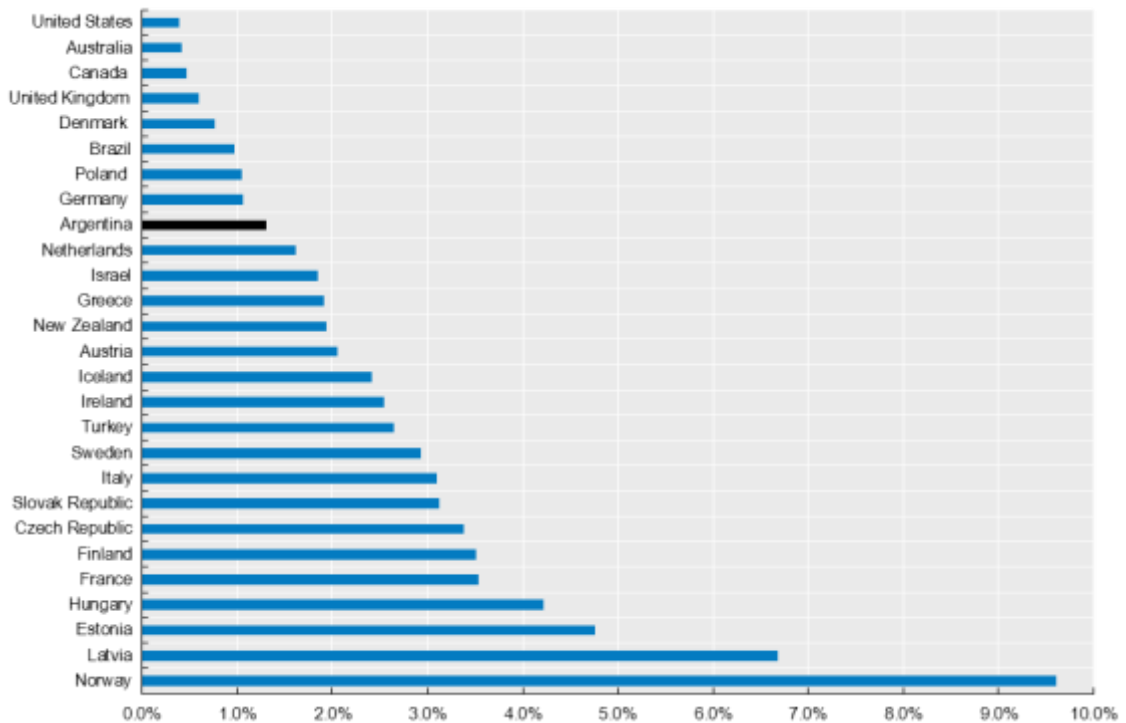
From 2003 to 2015, 290 000 additional employees joined the public sector,¹⁷ which represents a 60% increase. From these, 100 000 correspond to employees of new or renationalised SOEs. The number of total employees in the SOE sector increased from 27 000 to approximately 121 000 during this period. These numbers mostly reflect an employment transfer from private to public sector (resulting from the renationalisation of important private companies) rather than an increase in total jobs (Diéguez and Valsangiacomo, 2016_[28]).

Figure 4. Sectoral and employment distribution of SOEs (2016)



Source: Questionnaire response submitted by the national Argentinian authorities.

Figure 5. Share of SOE employment in total employment (2016)



Note: Measured as percentage of “dependent employment”, which excludes self-employed persons.

Source: OECD, 2016.

Seventy percent of SOE employment is concentrated in the energy, transport and communication sectors (Figure 4). Staff size varies greatly from one company to another, depending on the type of service provided and the scope of activities (Diéguez and Valsangiacomo, 2016^[28]). The largest SOE employers are the railway operator Sociedad Operadora Ferroviaria S.E (SOFSE) with 22 948 employees, the energy company YPF with 19 257 employees, BNA (18 300), the national postal service Correo Oficial de la República Argentina (16 689) and the national airline Aerolíneas Argentinas (12 196).

As shown in Figure 5, Argentina's share of SOE employment, which corresponds to 1.3% of total employment (excluding self-employed persons), is relatively low and stands close to levels found in countries such as Germany and the Netherlands.

The SOE sector book value is of approximately USD 15,3 billion according to the information provided by the Argentinian government. The largest asset is the state's share of YPF, which had a market value of USD 4,5 billion as of 31 December 2017. The majority of SOEs by (book) value are found in the primary and finance sectors, followed by other utilities and telecommunication.

According to JGM, for the 30 SOEs that appear on the consolidated budget (that is, companies receiving transfers from the government, which excludes BICE, BNA and YPF amongst others) total transfers in 2017 amounted to 0.83 of GDP.

3.3. Evolution of the SOEs sector: a historical perspective

State's involvement in the market has shifted significantly over time. Between 1943 and 1955 the Argentinian state increased considerably its corporate activities and became the owner of some of the most important companies, mainly in the context of import substitution policies (BID; CIPPEC, 2016^[29]).

By the 1970s, however, the shortcomings of this model became apparent and a large part of the SOE sector deteriorated, with large deficits and weak infrastructure negatively impacting Argentinian markets. The government initiated a vast privatisation process in the 1990s, aimed at restructuring the economy and improving the overall state of the SOE sector. Some 67 firms were privatised in less than six years, including some important companies such as YPF, Ferrocarriles Argentinos, Gas del Estado and Aerolíneas Argentinas (Diéguez and Valsangiacomo, 2016^[28]).

Argentina's sovereign exchange regime, pro-cyclical fiscal policies and large-scale foreign borrowing in those years precipitated the country into a severe currency, fiscal and banking crisis in 2001. The magnitude of this crisis and its social and economic repercussions led to the adoption of a series of measures aimed at reinforcing the role of the state in the economy – including the nationalisation of several companies to increase state's presence in selected sectors (Box 6).

This involved the re-nationalisation of companies such as Correo Argentino, in 2003, Aerolíneas Argentinas, in 2008, and YPF, in 2012. It also involved the creation of several others including the energy company ENARSA, in 2003, and AySA, a utility company that provides potable water and sanitation services, in 2006. In total, 10 new SOEs were added to the public sector between 2003 and 2015. Seven of those were renationalised and three created, some of which to assume functions which were previously under private sector control.

Box 6. Nationalisation process in Argentina

In the 1990s, most countries in Latin America tried to attract private firms and capital to manage infrastructure businesses through privatisations. In a similar way, Argentina proceeded to the privatisation of 90% of its state-owned enterprises with the objective of “increasing fiscal revenues to service foreign debt, to contribute to stabilization and to improve the quality and coverage of public services” (IBP, 2012_[30]). The main modalities used for privatisation were outright sale of assets, concessions and franchises.

After the 2001 crisis, a renegotiation of the privatised concessions began. In many cases, this process led to the cancellation of the existing concession contracts which resulted in either renationalisation or new private agreements. Expropriations of Aerolíneas Argentinas and YPF were carried out mainly on the basis of Law 21.499 which regulates the constitutional right of the state to expropriate property for public use and grants the right to temporary occupation of private assets in cases of urgent public need. The law defines “public use” as “all cases seeking to attain the material or spiritual welfare of the nation.” (Benitez, 1977). Prominent re-nationalisations include:

Correo Argentino (November 2003). In 2003, the state cancelled by Decree the concession of Correo Argentino and regained control of the official postal service in Argentina. The Decree terminated a 30-year concession contract which had been granted to Grupo Macri in 1997.

Thales Spectrum (January 2004). The government reversed the privatisation of Thales Spectrum, a subsidiary of a European defence contractor which was in charge of managing the radio, telephone and television airwaves, amid corruption allegations in relation to the awarding of the concession contract in 1997.

Agua y Saneamientos Argentinos – AySA (March 2006). The government nationalised water services by cancelling the concession contract of the water and sewerage operator Aguas Argentinas (a Buenos Aires flagship concession granted to French Suez group) due to a contractual breach. It was replaced with a new SOE – AySA - owned 90% by the federal government and 10% by employees.

Talleres Dársena Norte - Tandanor (April 2007). The Government nationalised the navy shipyard - which had been privatised in 1991 – formally motivated by irregularities that took place during the bidding process.

Aerolíneas Argentinas (December 2008). The government regained control of Aerolíneas Argentinas and its Austral subsidiary – the country’s flag carrier – after Congress approved the expropriation from Spanish group Marsans, which had been running the company since 1989.

YPF (April 2012). The bill for the partial renationalisation of YPF – the country’s biggest oil company - was overwhelmingly approved by both houses of Congress on April 2012. The enactment of the law expropriated 51% out of 57.43% outstanding shares owned by Repsol in the company, turning it into a minority shareholder. Although the Argentine Constitution requires the government to compensate investors prior to expropriation, Argentina agreed to compensate Repsol only two years later, by paying it 5 billion USD.

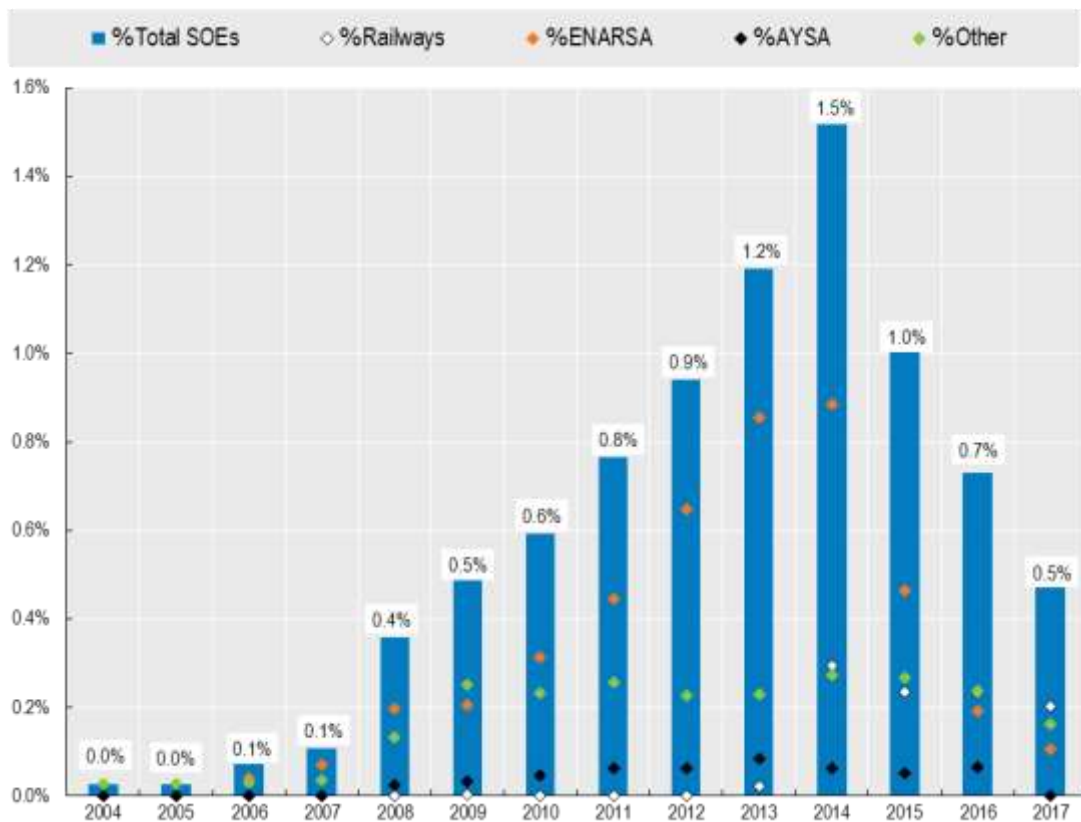
Sociedad Operadora Ferroviaria del Estado – SOFSE (2013). Argentina’s railways were nationalised by decree and brought back under the umbrella of SOFSE, an SOE created in 2008 to operate railway passengers. Although much of the network was already under various forms of government control, the government decided to revoke five concessions for the operation of suburban lines in the Buenos Aires area, after a train accident caused one of Argentina’s largest traffic tragedies in 2012, killing 51 people and injuring more than 700 (The New York Times, 2012^[30]).

3.4. Operational performance of SOEs

SOE performance has been heterogeneous, but most of them have, until recently, generated large operational deficits.¹⁸ 2015 data shows that out of 30 SOEs that appeared on the National Budget, 60% had fiscal deficits while 40% presented surpluses (CID; CIPPEC, 2016^[29]). When excluding financial enterprises such as BICE or BNA, fiscal deficits surges to 80% (JMG, 2017).¹⁹ The large deficits of SOEs have been compensated by transfers from the National Treasury, with a primary emphasis on strategic sectors such as transport or energy which both represent 70% of total transfers (Figures 6 and 7).

Figure 6. Transfers from the National Treasury

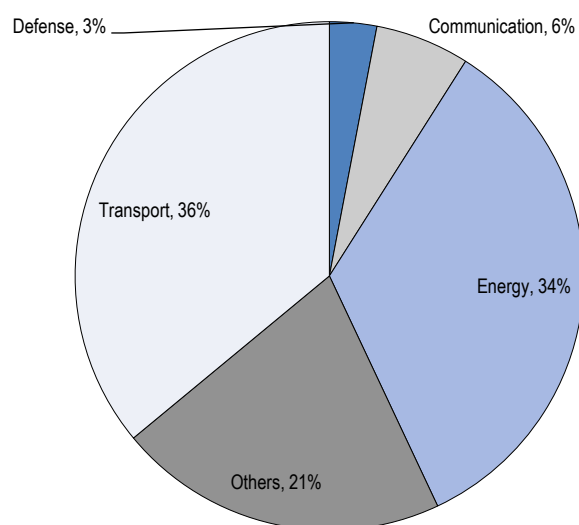
Current accrued transfers as % of GDP for SOEs (2004 – 2017)



Source: (Jefatura de Gabinete de Ministros, 2017^[31]).

In 2015, for every *peso* of sales revenue, SOEs spent two *pesos* on operating costs (JGM, 2017). The difference was financed by the Treasury, which generated an operation deficit of approx. USD 5.2 billion. In 2016, thanks to a result-focused management, operating incomes increased 10% in real terms and costs were reduced by 18%, which allowed reducing SOE deficits by 46%. This was obtained in large part thanks to a reduction in the price of oil imports that ENARSA requires to generate electricity and the withdrawal in tariff subsidies from certain utilities such as AySA (Jefatura de Gabinete de Ministros, 2017^[31]). This has come together with greater autonomy by SOEs to set the price of their goods and services.

Figure 7. Government transfers by sector in 2016



Source: (Jefatura de Gabinete de Ministros, 2017^[31]).

This decline in deficits also helped reduce SOEs' impact on the budget by 25%. In 2016, SOE operation deficits fell by 46% and their investments increased by 60%. Transfers from the Treasury for current expenditure (which had peaked at 1.5% of GDP in 2014) went down to 0.5% of GDP in 2017. Further decrease is expected for 2018, down to approximately 0.4% of GDP (Jefatura de Gabinete de Ministros, 2017^[31]).

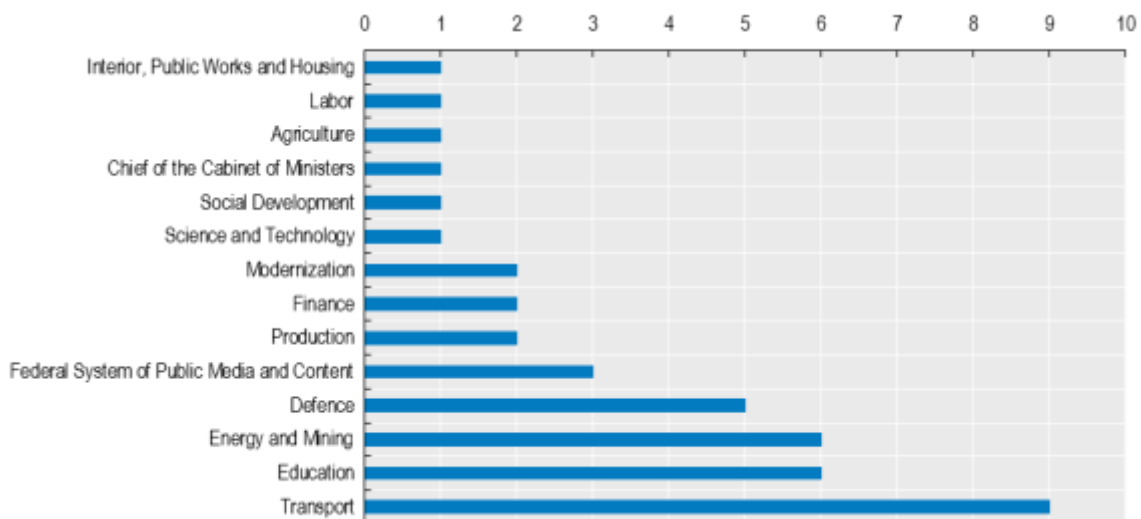
Furthermore, only two firms had operating surpluses in 2015. In 2016, they were seven and in 2017 a few more were due to add up to this group. Aerolíneas Argentinas is projected to remain in deficit until 2019 according to the Ministry of Transport, but in 2016 it received 38% less transfers from the Treasury than in 2015. SOFSE, the railways company, continues to receive significant transfers but that mostly reflects a government decision to invest in rebuilding its capacity. A similar story applies to the case of AySA, the water and sanitation company. Finally, only two SOEs made contributions to the National Treasury in 2015: YPF and Lotería Nacional (Jefatura de Gabinete de Ministros, 2017^[31]).

4. Ownership arrangements and responsibilities

Argentina has a decentralised model of ownership, with emerging coordination from the central administration. SOE ownership is generally exercised by the line Ministry in charge of the sectoral activity. The Law on Ministries (Decree 13/2015) states that each ministry should “*participate in the administration of state’s participation in companies within its area of responsibility.*” Government strategic and sectoral policies shape SOEs decisions, be it through the enactment of new laws and regulations or through dialogue.

More concretely, ministries usually exercise control over their respective SOEs based on a strategic plan (*Plan Estratégico*), established by the Ministry in charge and the Chief of the Ministerial Cabinet (JGM). Monthly meetings occur with individual SOEs during which compliance with annual financial and economic objectives are monitored. Ministries have also a clear budget formulation mandate, by which they usually communicate budget ceilings to SOEs which have to be applied in their respective draft budgets.

Figure 8. Distribution of SOEs by Ministries in 2017



Source: Questionnaire response submitted by the national Argentinian authorities.

The development of strategic plans for SOEs is an iterative process involving the line ministry, JGM and the SOE. The process is coordinated by the JGM to produce deliverables focusing on: i) The quality of information; ii) the alignment between the SOE strategic plan, the ministerial budget and current and capital transfers; iii) the reasonability of costs and revenues projections. During the follow-up meeting, the company, the line ministry/shareholder of the company and the JGM secretary discuss the evolution of the budget implementation, projected income statement and strategic execution points that require attention and coordination.

There are currently 22 ministries in Argentina, 13 of which have SOEs under their jurisdictions. The number of SOEs under their orbit varies greatly from one ministry to another. Some ministries have ownership rights over a large number of SOEs such as the Ministry of Energy and Mining, or the Ministry of Transport, which together have concentrated ownership of over 36% of total SOEs (Figure 8). Others have none.

4.1. Ownership coordination

Chief of the Ministerial Cabinet

The Chief of the Ministerial Cabinet (JGM), is the main entity responsible for the general administration of the country. Its attributions are established in article 100 of the Constitution and include coordinating the actions of the ministries and secretaries of the state and acting as a liaison between the executive and legislative powers.²⁰ The JGM is also in charge of appointing public sector employees, collecting national incomes, and preparing the National Administration's annual budget, which is subject to congressional approval.

According to Law 26.338 on Ministries (Ley de Ministerios), one of the functions of the JGM is to “*intervene in the action plans and annual budgets of state-owned companies, autarchic or decentralised entities [...] as well as in their decisions regarding interventions, liquidation, closure, privatisation, merger, dissolution or centralisation.*” It is within this function that the JGM decided to focus on the improvement of the management and economic performance of SOEs – in accordance with the government's 100 Policy Priority Initiatives launched in 2016.

On October 2016, a Supervisory Council of SOEs (Consejo de Supervisión de las Empresas Públicas) was created under the umbrella of the JGM to establish transparency standards, provide strategic advice to SOEs and monitor their performance. This new and non-institutionalised Council acts as a coordinating unit. It is comprised of sectoral ministers (Energy, Transport, Production, Finance, Modernisation, Communication and Defence), two independent members, and the heads of the JGM. JGM's staff acts as the Council's secretariat. The Council meets periodically at Casa Rosada (the seat of the Argentine national government) and follows closely the performance of 31 SOEs where the state is a majority shareholder, discussing strategic action plans to follow with each of them.²¹

The Council is currently assessing SOEs on corporate governance, inter alia against OECD criteria. The process aims to help identify policies aimed at improving SOE management. Corporate governance guidelines (“Lineamientos”) for SOEs have been developed in cooperation with the Anti-Corruption Office and SIGEN, while assistance is also being provided to SOEs to improve the efficiency and transparency of their procurement processes (see Annex 4).

4.2. Main ministries

Ministry of Energy and Mining

The Ministry of Energy and Mining is responsible for assisting the President and JGM on all matters related to the elaboration, proposal and execution of the national energy and mining policy. It has currently six SOEs under its supervision, including ENARSA and YPF (Table 3).

Table 3. SOEs under the Ministry of Energy and Mining

Name	Main sector of operation	Corporate form	No. Employees	Ownership
Energía Argentina S.A (ENARSA)	Extraction of oil and gas	Majority owned unlisted company	571	88% Ministry of Energy and Mining 12% Provinces
Yacimientos Carboníferos Río Turbio (YCRT)	Mining of coal	Quasi-corporation	2 790	100% Ministry of Energy and Mining
YPF S.A	Extraction of oil and gas	Majority owned listed company	19 257	51% Ministry of Energy and Mining 49% minority stakes
Dioxitek S.A	Manufacture of chemicals	Majority owned unlisted company	190	99% Ministry of Energy and Mining (through National Atomic Commission) 1% Province of Mendoza
Nucleoeléctrica Argentina S.A (NA-SA)	Electricity, gas, steam and air conditioning supply	Majority owned unlisted company	3 565	79% Ministry of Energy and Mining 20% National Atomic Energy Commission 1% EBISA
Emprendimientos Energéticos Binacionales	Electricity and gas	Majority owned unlisted company	33	99% Ministry of Energy and Mining 1% Nucleoeléctrica Argentina S.A

Source: Questionnaire response submitted by the national Argentinian authorities

Argentina is endowed with significant gas and oil resources and an important potential for wind and hydropower energy. The country is currently highly dependent on natural gas, which is mostly used for electricity generation. However, domestic production of fossil fuels has not kept up with demand, leading to a substantial increase in Argentina's electricity imports and severe energy shortages since 2011.

A state of emergency was declared for the national electric system, only days after President Macri's government took office, as a preventive measure to avoid a potential collapse of the system (El Cronista, 2015^[32]). This allowed the government, and hence the Ministry of Energy and Mining to design and implement a coordinated programme to guarantee the quality and security of the electricity system and to take actions against the continued freeze on electricity and natural gas tariffs in place since the 2001 crisis.

In 2016, the Ministry of Energy and Mining adopted two resolutions aimed at reducing energy subsidies and increasing electricity rates (between 61% and 148% in Buenos Aires) to reduce the impact of energy deficit on the public budget.²² In some cases, tariff increases have been subject to lower court injunctions and were temporarily suspended in certain provinces and cities until the courts ratified the Ministry's resolutions. Other policy priorities include the increase in both fossil fuels (with the exploration of *Vaca Muerta* shale fields) and renewable energy outputs.

Ministry of Transport

The Ministry of Transport was created in 2015 as a result of the split from then-Ministry of Interior and Transport. It is responsible for the planning, execution and management of transport development policies and works – as well as for the control of rules and concessions in the transport sector through its regulatory entity, the National Commission for Transport Regulation (*Comisión Nacional de Regulación del Transporte* – CNRT). The Ministry has currently nine SOEs under its supervision (Table 4).

Table 4. SOEs under the Ministry of Transport

Name	Main sector of operation	Corporate form	No. Employees	Ownership
Belgrano Cargas y Logística S.A	Land transport and pipelines	Majority owned unlisted company	4 553	100% Ministry of Transport via 25% Administración General de Puertos S.E - 40% Administración de Infraestructura Ferroviaria S.E - 35% SOFSE
Operadora Ferroviaria S.E. (SOFSE)	Land transport and pipelines	Majority owned unlisted company	22 948	100% Ministry of Transport
Administradora de Recursos Humanos Ferroviarios S.A.P.E.M	Land transport and pipelines	Majority owned unlisted company	..	99% Ministry of Transport 1% Administración de Infraestructura Ferroviaria S.E
Aerolíneas Argentinas S.A	Air Transport	Majority owned unlisted company	12 196	100% Ministry of Transport
Intercargo S.A.C	Warehousing and support activities	Majority owned unlisted company	1 919	80% Ministry of Transport 20% Ministry of Defence
Administración General de Puertos S.E	Water Transport	Majority owned unlisted company	488	100% Ministry of Transport
Empresa Argentina de Navegación Aérea S.E.	Warehousing and support activities	Majority owned unlisted company	1 942	100% Ministry of Transport
Administración de Infraestructuras Ferroviarias	Land transport and pipelines	Majority owned unlisted company	713	100% Ministry of Transport
Ferrocarril General Belgrano	Land transport	Majority owned unlisted company

Source: Questionnaire response submitted by the national Argentinian authorities

The Ministry is in charge of all main national railways, highways and airports of the country, as well as the line buses of the metropolitan area of the City of Buenos Aires. After years of underinvestment, the government's main objective is to expand and improve the country's transport sector. It involves large infrastructure projects to improve the competitiveness of national economy and generate growth and employment – such as the modernisation of airports and ports and the building and improvement of tens of thousands kilometres of highway.²³

Ministry of Defence

The Ministry of Defence was created in 1958. It is in charge of directing, organising and coordinating the activities that are proper to the national defence. Its mission is to advise the President and JGM within its sphere of action, on “*all national defence matters and relations with Armed Forces within the existing institutional framework*”. His specific responsibilities include the formulation of national policies regarding national defence, as well as “*participating in the planning, management and execution of productive activities where the state's participation is recommendable due to the fact that national defence is involved*” (Argentina.gob.ar,(n.d.)^[33]).

It has currently supervision over five SOEs, including the arms manufacturer Fabricaciones Militares, which was established by Law 12.709 as an autonomous entity (*entidad autárquica*) with capacity to make agreements of an industrial or commercial nature with private sector companies, and create joint ventures (Gordillo, 1975^[34]). Other companies include Tandanor (Talleres Navales Dársena Norte S.A), Fábrica Argentina de Aviones "Brigadier San Martín" S.A (FADEA), Construcción de viviendas para la Armada E.E (COVIARA), and Intercargo (Table 5).

SOEs under the supervision of the Ministry of Defence are managed by the Undersecretary of Research, Development and Production. Meetings occur regularly between the Undersecretary and SOEs, and are coordinated by the Ministry.

Table 5. SOEs under the Ministry of Defence

Name	Main sector of operation	Corporate form	No. Employees	Ownership
Dirección General de Fabricaciones Militares	Manufacturing	Quasi-corporation	291	100% Ministry of Defence
Talleres Navales Dársena Norte S.A (TANDANOR)	Manufacturing	Majority owned unlisted company	613	90% Ministry of Transport; 10% Union
Fábrica Argentina de Aviones S.A (FADEA)	Aerospatial manufacturing	Majority owned unlisted company	1 229	100% Ministry of Defence
Construcción de Viviendas para la Armada E.E (COVIARA)	Real estate	Majority owned unlisted company	64	100% Ministry of Defence
Intercargo S.A.C	Warehousing and support activities for transportation	Majority owned unlisted company	1 919	80% Ministry of Transport 20% Ministry of Defence

Source: Questionnaire response submitted by the national Argentinian authorities

Ministry of Finance

The Ministry of Finance was created through Presidential Decree 2/2017, as a separate entity from the Ministry of Treasury (former Ministry of Treasury and Public Finance). The responsibilities and objectives of the Ministry are to assist the President and JGM in all matters relating to the economic, budgetary and fiscal policy, and the economic and fiscal relations with the Argentinian provinces and the Autonomous City of Buenos Aires. It has currently supervision over two SOEs: BNA and Casa de Moneda S.E (national mint) (Table 6).

The Secretary of financial services, within the Ministry of Finance, is in charge of coordinating administrative relations between the Executive Branch and BNA and Banco Hipotécaro S.A. (a public-private bank, not included in this review),²⁴ which together represent a predominant part of the argentine financial system, concentrating more than 35% of private sector deposits (and almost 50% of total deposits), as well as approximately 40% of loans to the private sector.

The Secretary of financial services, within the Ministry of Finance, is in charge of coordinating administrative relations between the Executive Branch and BNA.²⁵ Since 2015, key objectives of the Ministry have been to establish macroeconomic policies aimed at reducing the deficit, and restore credibility and growth (El Cronista, 2017[34]).

Table 6. SOEs under the Ministry of Finance

Name	Main sector of operation	Corporate form	No. Employees	Ownership
Banco de la Nación Argentina (BNA)	Financial services	Statutory corporations	18 300	Independent – statutory company
Casa de Moneda S.E	Finance	Majority owned unlisted company	1 488	100% Ministry of Treasury

Source: Questionnaire response submitted by the national Argentinian authorities

4.3. Description of selected Argentinian SOEs

YPF

YPF S.A is the largest energy firm in Argentina and the only listed SOE held at the national level. It is engaged in the exploration and production of oil and gas, as well as in the transportation, refining, and marketing of chemical and petrochemical products. Established in 1922 by decree, Yacimientos Petrolíferos Fiscales (as YPF was formerly named) was the first oil company to become vertically integrated. It was privatised in 1992 and bought by the Spanish firm Repsol S.A in 1999, resulting in the merger “Repsol - YPF”. The renationalization of the 51% of the firm was decided in 2012 by President Cristina Fernández de Kirchner. YPF continues to be a publicly traded corporation whose main shareholder is the national state through the Ministry of Energy and Mining. The company's market capitalisation as of 31 December 2017 was USD 8,8 billion.

The company is the country's main investor and employer (with currently 19 257 employees) and second largest exporter (BNamericas,(n.d.)^[35]). As of December 31, 2016, “it had interest in approximately 110 oil and gas fields, proved reserves of approximately 592 million barrels of oil, and approximately 2 924 billion cubic feet of gas” (Bloomberg,(n.d.)^[36]). Attracting investment to develop the Vaca Muerta region - one of the world's largest shale formations – is one of President Macri's key priorities, as it would narrow Argentina's energy deficit and reduce costly gas imports.

The company has recently pledged to invest more than USD 30 billion over the next five years to attract investments and consolidate an economic rebound after six years of stagnation. The company is said to aim to increase unconventional production by 150% and increase oil and gas production by 5% per year to reach 700 000 barrels of oil equivalent a day by 2022 (Financial Times, 2017^[37]). In addition, YPF also plans to increase exploration efforts and boost electricity production, mainly through renewables as part of its efforts to become fully integrated.

Table 7. Indicators for YPF

	2013	2014	2015	2016
Revenues (in mln USD)	\$16 444	\$17 481	\$16 843	\$14 224
Operating Margin (Operating profit/Revenues)	12%	14%	11%	-12%
ROA (Return on Assets, Net Income/Total Assets)	4%	4%	1%	-7% ^(b)
Current subsidies ^(a) (in mln USD)	\$0	\$0	\$0	\$0
% of revenues (Subsidies/Revenues)	0%	0%	0%	0%
Debt ratio (Liabilities / Equity)	1,8	1,9	2,0	2,5

Notes: (a) Current subsidies are based on the National Budget information (www.presupuestoabierto.gob.ar)

(b) 2016 Financial Statement clarifies in note 2.c that the expected reduction in the price of oil, together with the evolution of macroeconomic variables and YPF's assets results in the deterioration of properties, plant and equipment for the Petroleum – YPF CGU Upstream segment.

Source: Jefatura de Gabinete de Ministros, Financial Statements

At a corporate governance level, YPF is listed both in Argentina and in the United States, where the bulk of its shares trading takes place at the NYSE via ADRs. YPF's management has indicated having made improvements and implemented transparency and anti-corruption practices based on in-force regulations and international standards, as well as a code of ethics and conduct that applies to managers, employees and the entire value chain. The company has also implemented an enterprise-wide risk management system to identify, evaluate and manage key risks related to its operations, and actively promotes gender balance within the company and the board, amongst other aspects (YPF, 2017).

AySA

Agua y Saneamientos Argentinos (AySA) is a concessionary utility company established in 2006 to provide drinking water and sewage collection services to more than three million users in the city of Buenos Aires, and in 24 other districts in the Greater Buenos Aires area. Before that, the company operated under several different names since 1912, before being privatised in 1993, and then renationalised in 2006.²⁶

AySA is 90% owned by the national state through the Ministry of Interior, Public Works and Housing and 10% owned by a trade union. The Water and Sewage Regulatory Entity (*Ente Regulador de Agua y Saneamiento* – ERAS) controls the fulfilment of AySA's obligations as established in the regulatory framework and the concession contract, however, despite the implementation of a procedure to apply penalties in 2013, ERAS does not have real *de facto* sanctioning powers according to a recent AGN report (Auditoría General de la Nación, 2015^[38]).

The current government has implemented a National Water Plan to increase water supply and access to sewage systems, and integrate water policy within national social, economic and environmental policies, amongst other aspects. Within this plan, AySA is committed to reach 100% coverage of water and 75% of sanitation by 2023.²⁷

In part due to the large investments needed to improve the quality and coverage of its services, AySA was until recently one of the most deficit-prone SOEs of the country and was highly dependent on the national government support. As of 2017 the government has committed to subsidise capital investments only and the company has managed to cover operational costs by increasing tariffs to users.²⁸

Table 8. Indicators for AySA

	2013	2014	2015	2016
Revenues (in mln USD)	\$174	\$245	\$304	\$532
Operating Margin (Operating profit/Revenues)	-277%	-173%	-168%	-47%
ROA (Return on Assets, Net Income/Total Assets)	-3%	-5%	-12%	1%
Current subsidies ^(a) (in mln USD)	\$511	\$359	\$325	\$346
% of revenues (Subsidies/Revenues)	293%	147%	107%	65%
Debt ratio (Liabilities / Equity)	0.4	0.3	0.5	0.3

Note: (a) Current subsidies are based on the National Budget information (www.presupuestoabierto.gob.ar)

Source: Jefatura de Gabinete de Ministros, Financial Statements.

In terms of corporate governance, AySA adheres to the guidelines established by the United Nations Global Compact, which calls companies to align strategies and operations with universal principles on human rights, labour, environment and anti-corruption. Since 2008, the company publishes an annual Sustainability Report, available online (AySA, 2017).

ENARSA

Energía Argentina S.A (ENARSA) is a power company, specialized in energy generation. It is engaged in the exploration and production of solid, liquid and gaseous hydrocarbons, both on-land and offshore, as well as the industrialization, transport, storage, distribution and trade of these products and derivatives. It also operates in the generation, transportation, distribution and sales of electricity from renewable and non-renewable sources, amongst other things (Enarsa,(n.d.)^[39]). The company is organized into four business segments: 1) electric power, 2) natural gas, 3) oil, and 4) renewable energy.

ENARSA was created in 2004, under the initiative of then-President Néstor Kirchner, with the goal of reinserting the state in the energy market that was largely privatised during the Menem administration in the 1990s, and as a response to the energy crisis endured by Argentina in 2004.

Table 9. **Indicators for ENARSA**

	2013	2014	2015	2016
Revenues (in mln USD)	\$2 673	\$2 194	\$2 084	\$1 936
Operating Margin (Operating profit/Revenues)	-184%	-222%	-134%(b)	-36%(b)
ROA (Return on Assets, Net Income/Total Assets)	-1%(c)	2%(c)	0%(b)(c)	2%(b)(c)
Current subsidies ^(a) (in mln USD)	\$5 227	\$ 4 984	\$2 928	\$1 015
% of revenues (Subsidies/Revenues)	196%	227%	141%	53%
Debt ratio (Liabilities / Equity)	46.9	25.2	37.1(b)	23.4(b)

Note: (a) Current subsidies are based on the National Budget information (www.presupuestoabierto.gob.ar)

(b) Preliminary information, not audited; (c) Net income includes subsidies.

Source: Jefatura de Gabinete de Ministros, Financial Statements.

ENARSA's main asset is the ownership of all rights of supervision and concessions of exploitation of offshore energy resources. It is 53% owned by the national state through the Ministry of Energy and Mining, 35% by the national pension fund FGS/ANSES and 12% by all the provinces of Argentina. So far, however, and due to tariff disincentives and disinvestments in gas exploration between 2003 and 2015, the company has been primarily acting as an intermediary – importing fossil fuels via arrangements with other companies – and not as an operator itself. This has resulted in large operational deficits and subsequent subsidies which the current government is trying to reduce.

Through Decree 882/2017, the Argentinian government recently announced that it will sell government-held stakes in several electricity generation and distribution companies and will merge ENARSA with EBISA (Empresa Binacional S.A.)²⁹ into a new entity called Integración Energética Argentina S.A (IEASA), in order to “leave ENARSA's past behind” according to the Minister of Energy and Mining.

Aerolíneas Argentinas

Aerolíneas Argentinas S.A is Argentina's largest airline and national flag carrier. It offers national and international travel services through a fleet of aircraft. The airline was created in 1949 from the merger of four companies and started operations in December 1950. The airline was subsequently taken over by a consortium led by Spanish airline Iberia in 1990, before Grupo Marsans – a Spanish tour operator - acquired the company and its subsidiaries in 2001, as they were on the brink of bankruptcy. In 2008, the Argentine state regained control of the airline after Argentina's lower house of Congress approved the expropriation of Aerolíneas Argentinas from its Spanish owners. In July 2017, the country was ordered to pay a USD 320 million fine by the International Centre for Settlement of Investment Disputes (ICSID), the World Bank's Arbitration Tribunal, as a result of the expropriation (Raszewski, 2017[42]).

Subsidiaries of Aerolíneas Argentinas include the cargo division Aerolíneas Argentinas Cargo, domestic airline Austral Líneas Aéreas, Aerohandling (provides ramp services to Aerolíneas Argentinas and Austral), domestic cargo division JetPaq S.A, and tourism operator Optar S.A. As of 2017, the company and its subsidiaries employed 12 196 people.

Table 10. Indicators for Aerolíneas Argentinas

	2013	2014	2015	2016
Revenues(in mln USD)	\$1 523	\$1 572	\$1 888	n/a ^(b)
Operating Margin (Operating profit/Revenues)	-21%	-24%	-30%	n/a
ROA (Return on Assets, Net Income/Total Assets)	-20%	-32%	-42%	n/a ^(b)
Current subsidies ^(a) (in mln USD)	\$516	\$532	\$435	n/a
% of revenues (Subsidies/Revenues)	34%	34%	23%	n/a
Debt ratio (Liabilities / Equity)	10.8	4.9	-153.7	n/a ^(b)

Note: (a) Current subsidies are based on the National Budget information (www.presupuestoabierto.gob.ar)
(b) Non-available. Pending board approval

Source: Jefatura de Gabinete de Ministros, Financial Statements.

Despite its size and strategic location, the company's financial performance has been disastrous. Decades of poor management have left the carrier still struggling.³⁰ While government transfers to Aerolíneas Argentinas have substantially decreased over the last few years,³¹ the company is expected to remain in deficit until 2019.

Correo Argentino

Correo Oficial de la República Argentina S.A (CORASA) known as “Correo Argentino” is in charge of delivering national and international postal and telegraph services in Argentina. The company, previously known as Empresa Nacional de Correos y Telégrafos S.A (ENCOTESA) was privatised in 1997, and a 30-year concession (in return of an annual fee) was granted to “Correo Argentino” a company part of Sociedad Macri (SOCMA) owned by Franco Macri, father of the current president Mauricio Macri. In 2001, the company initiated a reorganization proceeding after having contracted substantial debt, which eventually led the company to file for bankruptcy. The concession contract was subsequently rescinded in 2003 for mismanagement and failing to pay the concession fee, leading to the company's renationalisation under Néstor Kirchner's presidency.

Correo Argentino is one of the largest employers in the country. According to official statistics, staffing increased 38% between 2004 and 2015 – from 12 100 to approximately 17 000 employees. Currently Correo Argentino employs over 19 000 employees, which makes it the second largest SOE in terms of staff, after SOFSE (La Nación, 2017_[40]).

Table 11. Indicators for Correo Argentino

	2013	2014	2015	2016
Revenues(in mln USD)	\$772	\$634	\$918	\$569
Operating Margin (Operating profit/Revenues)	-15%	-19%	-10%	-27%
ROA (Return on Assets, Net Income/Total Assets)	-10%	-1%	-12%	-29%
Current subsidies ^(a) (in mln USD)	\$52	\$162	\$160	\$136
% of revenues (Subsidies/Revenues)	7%	25%	17%	24%
Debt ratio (Liabilities / Equity)	7.7	3.5	2.8	2.8

Note: (a) Current subsidies are based on the National Budget information (www.presupuestoabierto.gob.ar)

Source: Jefatura de Gabinete de Ministros, Financial Indicators.

The company has been loss-making for a number of consecutive years and has received substantial transfers from the state. In order to cut back expenditure, the government,

through the Ministry of Modernization, has developed a restructuring plan to reduce the company's deficit, which according to official estimates, reached USD 184.5 million in 2017. The plan foresees staff reduction based on voluntary departures and early retirements, as well as changes in the management of the company (La Nación, 2017^[41]).

Banco de la Nación Argentina

Banco de la Nación Argentina (BNA) is the national bank of Argentina and the largest banking institution of the country. It was established in 1891, and rapidly became the leading supplier of domestic lending in the country. It currently offers a range of banking products and services to people and enterprises. Its priority is focused on financial assistance to SMEs, as well as to regional economies (BNA,(n.d.)^[46]). It also promotes and support foreign trade, and in particular, stimulates the exportation of Argentinian goods and services.

BNA is a self-administered institution of the national state, with budgetary and administrative autonomy. As established in its Charter, the Executive Power appoints BNA's President, Vice-President and board members and establishes their remunerations. The bank coordinates its action with the economic and financial policies of the state.

BNA is supervised by the Ministry of Finance, and has to submit its Annual Budget and Action Plan to the Executive branch for approval. For that purpose and as part of the procedure, the Treasury asks the Secretary of Financial Services (from the Ministry of Finance) for formal opinion. BNA has currently more than 630 national branches and 13 international offices, that account for over 18 000 employees all over the country and close to 230 employees abroad (BNA,(n.d.)^[46]). It offers a range of banking products and services to individuals, SMEs and large enterprises such as export and import financing, foreign exchange and currency trading, investment and working capital loans, as well as personal and mortgage loans for housing. BNA also provides additional financial services (as part of the BNA Group) such as insurance, insurance and securities brokerage, trusts, leasing and factoring.

Table 12. Indicators for Banco de la Nación Argentina

	2013	2014	2015	2016	2017
Revenues(in mlns USD) ^(a)	\$5 358	\$5 790	\$6 083	\$6 206	\$6 052
Operating Margin ^(b)	34%	37%	40%	32%	25%
ROA (Return on Assets, Net Income/Total Assets)	3%	4%	5%	4%	3%
ROE (Return on Equity, Net Income/Equity)	35%	37%	44%	32%	20%
Current subsidies ^(c) (in mlns USD)	\$0	\$0	\$0	\$0	\$0
% of revenues (Subsidies/Revenues)	0%	0%	0%	0%	0%
Debt ratio (Liabilities / Equity)	9.2	8.7	7.0	8.2	6.3
Capital Adequacy ratio ^(d)	nd	nd	22%	27%	25%
Credit-loss Levels ^(e)	197%	201%	154%	159%	305%
Non-performing Loans ^(f)	0.8%	1.1%	1.5%	2.0%	1.1%

Note: (a) Includes Financial Income by Service, Other Utilities and by Foreign subsidiary, (b) Total does not include Income Taxes/Total Income, (c) Current subsidies are based on the National Budget Information (www.presupuestoabierto.gob.ar), (d) (Capital Level 1 + Capital Level 2)/risk-weighted assets, (e) Level of allowances/Amount of irregular portfolio, (f) Irregular portfolio/Total financing.)

Source: Jefatura de Gabinete de Ministros, Financial Statements.

4.4. Financial control over the SOE Sector

SOEs are subject to several separate systems of control:

- First, the National General Audit Office (Auditoría General de la Nación - AGN) is in charge of external control and reports to the Parliament;
- Second, the Federal Internal Audit Agency (Sindicatura General de la Nación - SIGEN) is in charge of SOEs' internal and performance control and reports to the President of the country;
- Third, pursuant to Law 24.156 on Financial Administration and Control System of the National Public Sector, SOEs must have their own internal auditing departments known as Unidades de Auditoría Interna (UAIs), which are coordinated by SIGEN and must report to it any failure they detect on issues governing financial administration and control systems;
- Fourth, pursuant to SIGEN's General Resolution 37/06, SOEs are also required to create Audit Committees, which must be comprised of three independent directors, a representative from the UAI and another from SIGEN (OECD, 2014_[42]). In practice, however, it was reported that many SOEs have failed to comply with this requirement (CIPPEC, forthcoming);³² and
- Fifth, large SOEs are also subject to external control from private audit companies in addition or as an alternative to AGN control (usually from “big four” companies).

In addition, the National Budget Office (*Oficina Nacional de Presupuesto* - ONP) is the controlling body with regard to budget implementation as per Law 24.156. It is in charge of analysing draft annual budgets of SOEs and to produce and present reports to the National Executive Power, establishing if they fall within the scope pre-established policies.

Sindicatura General de la Nación

Established in 1992 by Law 24 156, SIGEN is the governing body of the internal control system of the national public administration. It is an entity with legal personality and economic and administrative autonomy, reporting directly to the President of the Nation. As a one-member body, the Syndic General of the Nation (*Síndico General de la Nación*) is responsible for the agency's internal organisation and budget management. He/she is appointed by the Executive branch and is assisted by three deputy members, who are also nominated by the Executive branch upon the Syndic General's proposal.

SIGEN's activities focus on the management of the national public sector's resources, within the existing legal framework. This includes the establishment and enforcement of accounting, legal and operational rules to be followed by each jurisdiction's UAIs – and which are regulated, coordinated and monitored by SIGEN.

SIGEN exercises control by appointing *síndicos* in each SOEs. They are public officials with relevant professional capability and capacity to supervise and oversee these entities (Box 4). These officials participate in SOE board meetings (with a right to speak but not to vote), shareholders' meetings and meetings of the Audit Committee (OECD, 2016) They are generally separated from political cycles and the government and report on corporate management (legal compliance) but not on performance. They can however inform when significant losses occur and give their opinion on dissolutions.

Since 2010, access to SIGEN's reports were no longer public. They are now available again since 2018, and citizens can also write formal requests asking for specific reports and are required to give detailed personal information in doing so (Freedom House, 2012).

Auditoría General de la Nación

Article 85 of the National Constitution (as reformed in 1994) establishes the AGN as the external auditor of the national public administration, providing technical assistance to the National Congress. AGN is a collegial body consisting of seven board members – three of which are appointed by the Senate, three by the Chamber of Deputies and one by joint decision of Presidents of both parliamentary houses (upon proposal of the main opposition political party) for an eight-year term. As with SIGEN, it exercises ex-post control – analysing facts and documents at the end of the accounting year.

Its powers and duties are broadly defined by Law 24.156, encompassing budgetary, financial and legal management of the national public administration. It is also in charge of auditing the fulfilment of privatisation contracts and can legally require information from all public administration offices.

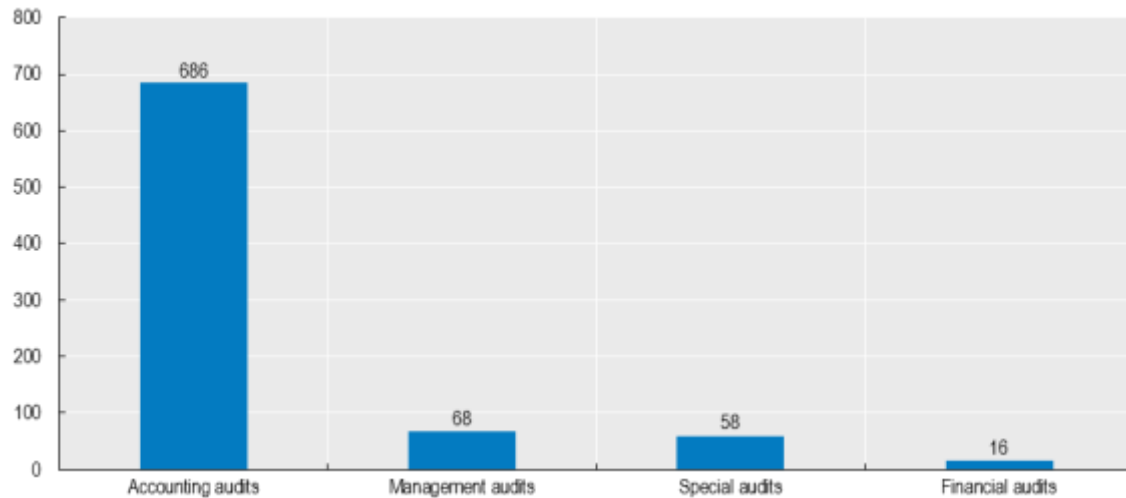
As a result of its investigation process, the AGN produces an audit report, which includes comments, conclusions and recommendations regarding the public administration's performance. It does not, however, possess enforcement powers and can only refer cases to competent authorities.

According to local experts, both SIGEN and AGN were weakened over the years due to political interferences and capture. In 2010, AGN pressed charges against SIGEN accusing it of withholding information necessary to investigate government's bodies. Prior to that, SIGEN had decided to withdraw all publicly available audit reports from its webpage, expressing concern over "data protection" (Dinatale, 2010^[43]). On the other hand, in the past AGN reports have been accused of being used as a bargaining tool (Scartascini & Stein, 2009). A recent decision to start publishing SIGEN reports again in 2018, among others, may hint that positive developments are taking place.

Additionally, SOEs are required to conduct an external audit when they have not been subject to a financial audit by the AGN. Since AGN's audits of SOEs have not been consistent in recent years it is common for at least large SOEs to have external auditors selected among the usual large international firms (Peláez, 2007^[44]). AGN reports having led a total of 828 audits of different types between 1996 and 2017, the majority of which were accounting audits (Figure 9).

According to AGN, 25 out of 41 SOEs have been audited between 1996 and 2017. The distribution of audits is significantly skewed towards financial institutions such as BNA and BICE which together account for 47.5% of total audits. Fourth in line, Aerolíneas Argentinas has been subject to 44 audits for the past 11 years, half of which have been management audits. The national energy company, ENARSA, underwent only one (management) audit during this timeframe.

Figure 9. AGN audits of SOEs (1996-2017)



Source: JGM based on AGN's website data.

SOE performance is generally monitored and assessed through the annual shareholders' meeting, although recently it has also been evaluated by the Supervisory Council of SOEs (Box 7). Financial performance is monitored during the process of budget preparation, as each SOE must submit its budget and implementation report to the Ministry of Treasury, who is responsible for the consolidation of the information in the shape of an annual report presented to the bicameral Congress.

Reporting on financial assistance or state guarantees provided to SOEs, where relevant, is generally undertaken either through the budget process or through information provided on websites or annual reports in Argentina. Quarterly and annually evaluations are conducted and any deviation from the approved objectives must be explained (OECD, 2014^[42]).

4.5. Boards of directors of SOEs

Most relevant SOEs are organised as joint-stock companies that are fully or majority-owned by the state. Formally, they have the structure and a charter for their boards that is generally in line with what can be found in OECD countries. The main differences arise in the process of appointing the board and what directors actually do once in office, where there is wide disparity among SOEs in Argentina.

In several large SOEs the board is entirely comprised of executives, without a single non-executive, not to mention independent directors. Those boards, which are more management boards than supervisory ones, are also rather small, with about four members on average and, in line with the common practice in the private sector, have joint CEO/Chairman positions. Aerolíneas Argentinas and SOFSE, two large transport companies, are generally in this situation, as their management teams are mainly focused on turning the companies around. This however puts a significant amount of responsibility in very few hands, with little governance oversight, which is always risky, particularly in cases where coordination from government is not strong.

Box 7. SOE monitoring framework

In 2016, the Argentinian government started updating the supervisory scheme of SOEs in order to reduce information asymmetries related to SOE performance. One of the main challenges in monitoring SOEs has been the lack of relevant and reliable data to measure the evolution of SOE performance.

The main source of information related to financial and economic performance of SOEs in Argentina is the National Budget Office (*Oficina Nacional de Presupuesto - ONP*), which depends on the Ministry of Treasury. Companies reporting to the ONP have to comply with a minimum set of requirements to allow for the monitoring of SOE operational and financial results on a monthly basis. However, compliance has always been low – with only a few SOEs sending the requested information, and no monitoring or verification of the information provided.

JGM and ONP decided to improve the information gathering process by restructuring the templates for reporting to include additional operational and strategic indicators, as well automatic validations to achieve consistency in the information provided. They also created a webpage aimed at facilitating the provision of information in digital form, and a database with up-to-date information on individual SOEs.

	Sep-16	Dec-17
SOEs submitting information	39%	93%
SOEs not submitting information	61%	7%
Total	23	27

The JGM has reported first encouraging results with a considerable increase in the number of SOEs presenting complete information within reasonable deadlines. These improvements are helping the government to provide effective follow-ups on SOE performance, to detect red flag and guide SOEs in the elaboration of medium-to-long term strategic plans.

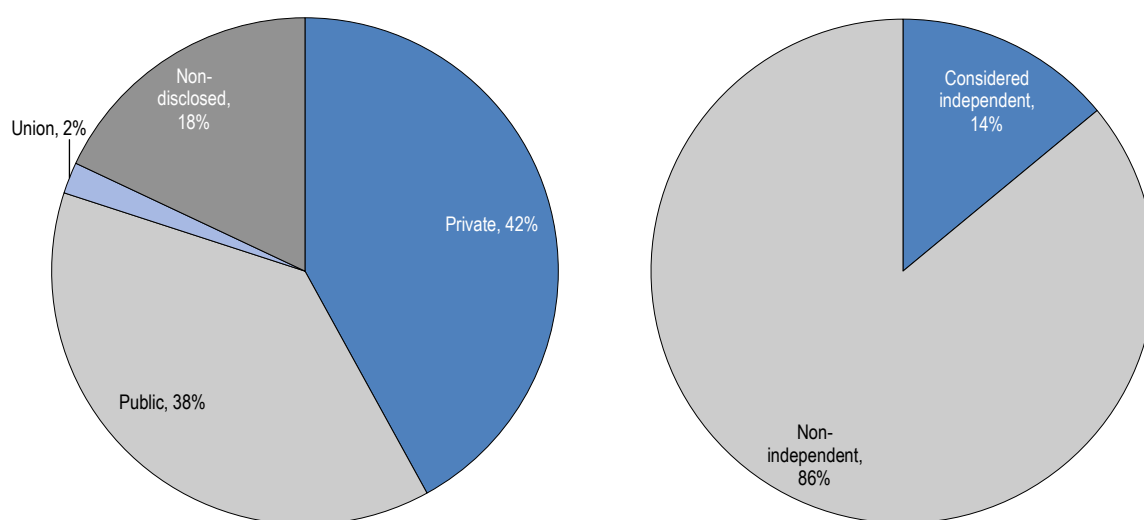
With the new framework, companies must provide (on a monthly basis) information on their economic and financial situation, and human resources. For 2018, new reports are being designed for companies to report monthly on the evolution of management indicators aligned with the strategic plans agreed upon with the JGM and the shareholder/Ministry.

Source: Questionnaire response submitted by the national Argentinian authorities.

There are prominent exceptions, like YPF, which as a listed company has higher standards and better practices than average, and AySA, which has improved its governance framework significantly, among other reasons to facilitate its access to financial markets. In both cases some of the improvements in the composition of the board and general governance framework were influenced by active Chairs or Vice-Chairs with a governance reform-driven agenda, and support from government.

Annexes 2 and 3 provide an overview of board composition in Argentinian SOEs, describing the origin (whether from the public or private sector), independence and gender ratio of board members (figure 10). Numbers show that about half of boards members come from the public sector and that employee representation is low. Only a few companies have independent directors and most of them have only one. Gender diversity is also described, and the average of 10% of women directors tied to the small size of boards results in very low levels of female participation.³³

Figure 10. Origin and independence of SOE board members



Note: Private: director worked in the private sector, right before appointment to the board. Public: director worked in the public sector, right before appointment to the board. Independent: based on definitions provided by each enterprise when responding to the OECD survey and desk reviews. N/D: no data available.
Source: Jefatura de Gabinete de Ministros, 2017.

Board nomination procedures are not formalised and differ significantly from Ministry to Ministry and from company to company. In some cases a Minister would lead the process, while in others it will be the Chairman of the company or even the top government levels that would be placing calls to candidates.

The pool of experienced candidates is also reduced as there is a restriction in the CCL that prevents the appointment of board members not residing in Argentina. Furthermore, training for board candidates and induction programmes are rare in the SOE sector.

Remuneration of the board is also an issue for SOEs. Under the law (article 261 of the CCL) it is limited to a maximum of 25% of total profits (or 5% when no dividends are distributed), which for most of the SOEs that have losses actually brings the limit to zero. The way to go around this limitation is included in the last section of the article, which establishes that board members can be remunerated for "special commissions or technical administrative functions" beyond the limitation just described, "if they were expressly agreed by the shareholders' meeting, to which effect the matter should be included as one of the items on the agenda."

These limitations determine that in many SOEs board members are remunerated independently of their attendance to board meetings and not compensated if they also join board committees, of which there are not many beyond audit. Some companies hire

independent consultants to assist such committees, as there are no independent or non-executives members in their - rather small - boards.

4.6. Roadmap of ongoing reform

As reported by the JGM, Argentina's government priorities will continue to be focused on the turnaround of non-performing SOEs and the development of strategic plans with the objective of reducing SOEs' impact on fiscal deficit. In addition, the Argentinian government has expressed its commitment to increased institutionalization of its SOE initiative through 2019 following OECD recommendations.

The Argentine government has reported they will also work towards ensuring the sustainability of SOEs governance promoting the implementation of their recent *Lineamientos* that will offer guidance for SOE on how to improve their governance covering seven main components: i) transparency; ii) integrity; iii) sustainability; iv) economic performance; v) board and senior management; vi) procurement policies, and vii) audit and control (see Annex 4). The *Lineamientos* follow a comply-or-explain system and the JGM describes that their plan is to convene regular meetings to review the implementation by SOEs.

Part B

Review against the OECD Guidelines

1. Rationales for state ownership

The state exercises the ownership of SOEs in the interest of the general public. It should carefully evaluate and disclose the objectives that justify state ownership and subject these to a recurrent review.

1.1. Articulating the rationales for state ownership

“The ultimate purpose of state ownership of enterprises should be to maximise value for society, through an efficient allocation of resources”

As mentioned, Argentina has held substantially different views on state ownership over time. Perhaps because of this, it currently has no articulated rationale for state ownership – whether at the national or ministerial level.

SOEs have traditionally been conceived as the sole providers of public and/or strategic services in a number of sectors. Both laws on “*Sociedades del Estado*” and “*Empresas del Estado*” recognise the ability of the Executive branch to establish SOEs for the development of commercial and industrial activities and/or the operation of public services – for “reasons of public interest.”

This logic survived the privatisation wave of the 1990’s which involved the dismantling of most of the SOE sector. Through Law 23.696 of 1989, also known as the “State Reform Law” – the government was legally authorised to privatise a large number of SOEs to allow for a more efficient allocation of resources. In some cases this was performed via concessions of the right to exploit assets to private firms.³⁴

From the 2000s onwards, several concession contracts were rescinded and a few new SOEs were established in strategic sectors such as transport, energy and communication. Law No. 21.499, which invoked reasons of “public utility”, served as a legal basis for re-nationalisation of Aerolíneas Argentinas and YPF. “Public utility” is described as “*all cases seeking to attain the material or spiritual welfare of the nation*” (Benitez, 1977^[45]). After re-nationalisation, however, most SOEs preserved the legal status they had within the private sector which is that of a stock company (*Sociedad del Estado*) to allow for more flexibility and perhaps to keep the door open to future re-privatisations.³⁵

The current Argentinian government has taken initiatives to improve the situation and increase SOEs potential for value creation. It is one of the government’s 100 priorities to “organise and improve the SOE portfolio”. Policy priority No. 82 on the “structuring of SOE management” states that: “[...] *in order to increase value creation, we are implementing a series of initiatives to improve the performance of SOEs – both in terms of quality of service and efficiency and transparency with which they operate. We are also implementing OECD best practices on corporate governance of SOEs.*”

This objective is also reflected in a policy document issued by JGM (*Carta de Jefatura de Gabinete*) of April 2017, which states that

(...) "there is room for the state to be the shareholder and operator of a group of companies that contribute to the development of the country: dedicated to fulfil a social role – such as railway operators and water providers – that invest in infrastructure, improve their markets and are managed professionally and transparently, in such a way as to avoid them becoming political and corporate spoils"

JGM has indicated expecting a discussion on restructuring the SOE portfolio within the government by the end of 2019. For now, however, the government has indicated having adopted a “step-by-step”, gradual approach to reform, focusing on normalization of the SOE sector before discussing any change to the portfolio.

1.2. Ownership policy

“The government should develop an ownership policy. The policy should inter alia define the overall rationales for state ownership, the state’s role in the governance of SOEs, how the state will implement its ownership policy, and the respective role and responsibilities of those government offices involved in its implementation”

The Argentine government does not currently have an ownership policy, as its priority is set in improving first the performance of (mostly loss-making) SOEs and in developing tools to monitor their operations. Because of this absence there are neither articulated mandates for line ministries – which are the direct shareholders of SOEs in Argentina – nor internal line ministries procedures or guides as to how to conduct SOE ownership for the companies under their respective supervision. This is partly due to the historical legacy of SOEs which have been subject to different legal and political regimes over time.

During 2017 the government developed *Lineamientos* on governance for SOEs prepared by the JGM in collaboration with other institutions, including the ACO and SIGEN, which feature some components of an ownership policy including the identification of expectations from the government on the organisation and functioning of SOEs (see Annex 4). Insofar as these *Lineamientos* are ultimately implemented widely within the SOE sector they may be said to represent an embryonic state ownership policy. However, at the time of the present review it is still too early to form an opinion on the extent to which this will be the case.

In the absence of an ownership policy, there are sectoral policies which are defined by line ministries, some of which appear in the list of 100 priorities such as the urban infrastructure plan or the development of renewable energy. SOEs have to take these policies into account when making strategic decisions.

Furthermore, the Argentinian SOE sector is currently undergoing some important changes and finds itself in a transition phase. As expressed in the “Carta de Jefatura de Gabinete”:

“When assuming office in December 2015, the government inherited a portfolio of SOEs marked by a lack of coordination at the decision-making level, the absence of administrative and transparency standards, and except a few cases, scarce professionalism in their management”

The government also inherited the previous system of national ownership through line ministries. The government has made some changes in Ministries (dissolving, merging and creating new ones) as well as within each line ministry’s SOE portfolio. YPF has for

example been transferred from the Ministry of Finance to the Ministry of Energy. The government has expressed its willingness to improve the SOEs' efficiency and transparency so as to be able to eventually develop, at a later stage, an ownership policy for the SOE sector and a first national SOE report.

1.3. Ownership policy accountability, disclosure and review

“The ownership policy should be subject to appropriate procedures of political accountability and disclosed to the general public. The government should review at regular intervals its ownership policy”

In the absence of an ownership policy, the government has communicated its objectives in the Government Plan and via the *Carta de Jefatura de Gabinete* (CJG), both of which are publicly available documents. The next CJG will be published in April 2018. Also, the JGM has been actively engaged in promoting civil society forums on corporate governance of SOEs by engaging and supporting workshops on integrity (Box 8).

Box 8. Government efforts in promoting integrity and transparency in SOEs

Integrity Roundtables: In 2016 an SOE Integrity Network was created by representatives of JGM, SIGEN, the ACO, and SOEs officials with responsibilities in the areas of auditing, ethics and compliance. Its main objectives are to: 1) Raise awareness on the relevance of transparency and integrity in SOEs; 2) Promote the design and implementation of integrity and compliance programmes; 3) Generate a community where practitioners can exchange views and best practices on integrity issues; 4) Conduct training with a “train the trainers” perspective.

Integrity Task Force: JGM, SIGEN and ACO formed a Task Force responsible for promoting good governance standards in SOEs. The Task Force was initially set up to support companies in the establishment of integrity programmes, and then moved to the development of the *Lineamientos* on governance for SOEs (Annex 4).

Technical Assistance: The Inter-American Development Bank (IADB) has provided assistance to Argentina in improving the efficiency and transparency of procurement processes in SOEs. Through two company pilot projects, it assessed management failures and identified policy recommendations. Also, it organised workshops with SOE procurement managers to exchange data on providers and generate efficiencies.

Promoting champions of reform: EANA has been recognized as a champion in transparency and integrity and the JGM included their case in its *Carta de Jefatura de Gabinete*. EANA announced in 2016 its Transparency and Integrity Programme.

Policy dialogue with civil society: Think-tanks and universities are encouraged to research, debate and mainstream the importance of good governance for SOEs.

Source: Jefatura de Gabinete de Ministros, 2017.

As with many developments listed in this review, these initiatives are fresh practices that, while going in the right direction, still lack institutionalisation and a defined framework of rules and procedures (see Box 12, for an example). They are ad-hoc interventions, essentially dealing with the contingency and some degree of planning on areas of major concern. Giving structure and a solid base to them will have to be a priority task in later stages of development of government's plans to continue improving the governance of the SOE sector in Argentina.

1.4. Defining SOE objectives

“The state should define the rationales for owning individual SOEs and subject these to recurrent review. Any public policy objectives that individual SOEs, or groups of SOEs, are required to achieve should be clearly mandated by the relevant authorities and disclosed”

While Argentina lacks an overall framework and/or procedures which define the rationale for state ownership generally, the objectives of most enterprises are nonetheless defined in their respective statutes or creation laws. The majority of SOEs in Argentina do not have formal specific public service objectives and operate subject to commercial law as private companies. This is particularly clear for nationalised companies that have generally maintained the same statutory objectives as under their previous private operator.

Some nationalisation laws, however, do contain dispositions establishing the necessity for these enterprises to fulfil public service requirements. For example, Law 26.466 on the expropriation of Aerolíneas Argentinas, states that the government decided to intervene in the market in order to “guarantee the continuity and safety of commercial air transport services [...]; the maintenance of employment; and the protection of companies’ assets [...]”. Similarly, Law 26.352 of 2008 on the reorganisation of the railway system in Argentina, establishes that the creation of the new Railway Infrastructure Administration (Administración de Infraestructuras Ferroviarias S.A): “[...] shall take into account the protection of the public interest, the fulfilment of social needs, users’ safety and the overall effectiveness of the railway system.” Similar dispositions can be found in the statutes of several other SOEs including AySA and Correo Argentino.

The current administration’s view on the role of SOEs diverges from that of the previous administration. This is visible in SOEs such as ENARSA, for example, which are seeing their role reviewed downwards. The government has not discussed total or partial privatisation of SOEs such as ENARSA, but given the current political strength of the government, with a minority in Congress, it may be difficult to consider such a possibility.

2. The state's role as an owner

The state should act as an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness

2.1. Simplification of operational practices and legal form

“Governments should simplify and standardise the legal forms under which SOEs operate. Their operational practices should follow commonly accepted corporate norms”

As mentioned in part A, section 3.1., there are four main forms under which SOEs may operate, namely 1) State enterprises (*Empresas del Estado*); 2) State corporations (*Sociedades del Estado*); 3) Joint-stock companies (*Sociedades Anónimas*) with state majority shareholdings, and 4) Statutory corporations/quasi-corporations.

As established by Law 13.653 of 1955, *Empresas del Estado* initially represented the main legal form of SOEs until the adoption of Law 20.705 on *Sociedades del Estado* in 1974 – which established a new and more flexible corporate form for public enterprises, primarily governed by private law. Following the adoption of this law, many SOEs were converted into *Sociedades del Estado* by taking the form of public limited companies, including YPF and Aerolíneas Argentinas. Nowadays, only one SOE held at the national level - Construcción de Viviendas para la Armada (COVIARA) – has the form of an *Empresa del Estado*.

Despite the adoption of a more corporate form, *Sociedades del Estado* differ from traditional public limited companies in that they can be single-member companies, they exclude all private participation in the capital and they can be organised around a single President with no need for a Board of Directors. Furthermore, they are according to the law, to be established solely for the development of industrial and commercial activities and the operation of public services.

Joint-stock companies currently constitute the main form of SOE in Argentina. They are exclusively subject to private law (with certain exceptions as mentioned in part A, section 2.2). Most SOEs with this legal form are majority-owned by the state, with minority participation from other public agencies and/or SOEs. Private capital participation can only be found in so-called “semi-public firms” or listed companies with minority state participation managed by ANSES, although they do not fall within the scope of this report.

In principle, these legal forms of SOEs do not provide for different treatment of employees as they usually hire employees under the Argentinian Labour Act 20.744 which applies to all private sector companies. Exceptions exist for statutory corporations such BNA and companies structured as public sector agencies such as Dirección de Fabricaciones Militares, Corporación del Mercado Central and Yacimientos Carboníferos de Río Turbio. However, in all SOEs a distinction is made between employees performing managerial functions and their subordinates. Unlike regular employees, higher-ranking employees are considered “public officials” and are therefore subject to additional public administration requirements.

2.2. Political intervention and operational autonomy

“The government should allow SOEs full operational autonomy to achieve their defined objectives and refrain from intervening in SOE management. The government as a shareholder should avoid redefining SOE objectives in a non-transparent manner”

As the main owners and shareholders of SOEs, line ministries are in charge of setting strategic goals through the budget execution process, and defining sectoral policies for SOEs. JGM requests SOEs to have well designed and consistent strategic plans – to be aligned with the national budget - in order to both operate as enterprises and to allow for their monitoring by the SOE Council.

Policy objectives are usually also integrated into SOEs’ strategic plans. However, the JGM as the supervisor of SOEs ensures that the implementation of policy goals is carried out with companies’ financial sustainability in mind. Apart from strategic guidance, SOEs usually do not receive directions on commercial policies or strategies from the government. Only a few exceptions were reported as part of this review.

However, the potential for political intervention in SOEs is not negligible. Line ministries are directly involved in the appointment of board members and high-ranking managers in *Empresas* and *Sociedades del Estado*. Furthermore, even if their role is one of control, the appointment of *síndicos* in *Empresas del Estado* directly by a Minister can also lead to some degree of intervention.³⁶ The law states that “the Executive power, through the Secretary of Treasury, will designate a permanent official as *síndico* whose rights and obligations will be to:

- Attend the meetings of the board or the body acting as its replacement, with consultative voting rights
- Advise the Secretary of Treasury on the financial situation of the company and its potential economic impact on the national Treasury
- Verify legal acts that could affect directly or indirectly the national Treasury or that could constitute a violation of the existing financial and legal framework.

Formalistic safeguards against unwanted interference exist in some SOE statutes consisting of provisions mentioning the autonomy of decision-making by the company.

2.3. Independence of boards

“The state should let SOE boards exercise their responsibilities and should respect their independence”

All SOEs have legal regimes that grant their board full responsibility and autonomy to determine company strategies – provided that they are aligned with the company's objectives defined in the law, their by-laws or government policies.

Until a recent reform, representatives of the state to the boards of listed companies held by the ANSES/FGS (minority stakes in listed companies) received instructions on how to vote from the Secretary of Economic Policy and Planning for Development “*with the aim of protecting the public interest*” (article 2f of Decree 1278/2012). Hence representatives and directors of the state were required to vote according to the instruction of the

Secretary. By means of Decrees 347/16 and 894/16, directors appointed by ANSES/FGS are now subject to the rights and duties established by the CCL.

State representatives in boards are generally subject to the same duties and responsibilities as board members appointed by other shareholders, but face additional public law requirements (such as the obligation to comply with the Public Ethics Law and submit asset declarations). Furthermore, as per Decree 196/2015, directors, *síndicos* and other officials appointed or nominated by the state or its entities, are regarded as public officials and benefit from legal assistance from the state, except in cases of gross negligence or intentional misconduct (article 5 of Decree 347/2016).

2.4. Centralisation of ownership function

“The exercise of ownership rights should be clearly identified within the state administration. The exercise of ownership rights should be centralised in a single ownership entity, or, if this is not possible, carried out by a co-ordinating body. This “ownership entity” should have the capacity and competencies to effectively carry out its duties”

There is no formal co-ordinating institution among the different ministries involved, besides the incipient activities of the JGM via its Supervisory Council of SOEs. The Council's first lines of action are however limited in scope, working primarily with SOEs on an individual basis to improve their management and performance. It has not yet envisaged work on harmonising or co-ordinating the actions and policies undertaken by the different line ministries, which in the spirit of the SOE Guidelines would be an obvious candidate for continuation.

2.5. Accountability of the ownership entity

“The ownership entity should be held accountable to the relevant representative bodies and have clearly defined relationships with relevant public bodies, including the state supreme audit institutions”

Ministries are accountable to the Parliament and the President according to the Law of Ministries. More specifically, Ministers are accountable for meeting the targets established in the Government Plan 2015-2019, and can be summoned to declare before one or both chambers of Congress. They are also accountable to SIGEN. In addition, SOE boards and CEOs are accountable to JGM in the case of not meeting the objectives of their strategic plans.³⁷

2.6. The state's exercise of ownership rights

“The state should act as an informed and active owner and should exercise its ownership rights according to the legal structure of each enterprise. Its prime responsibilities include:

1. Being represented at the general shareholders meetings and effectively exercising voting rights;”

There are no specific rules or procedures guiding state representation other than provisions appearing in the statute of each individual SOE and in the CCL. When the state is the majority owner, the representative of the Ministry provides the quorum to pass resolutions. It is however unclear how actively represented the state is at the general

shareholders' meeting of minority state-owned companies (not included in this review) and how frequently it exercises its voting rights.

"2. Establishing well-structured, merit-based and transparent board nomination processes in fully- or majority-owned SOEs, actively participating in the nomination of all SOEs' boards and contributing to board diversity;"

There are no standard procedures and criteria for appointing board members in Argentinian SOEs. Board members are generally appointed by line ministries (or any other decentralised institution or SOE who holds ownership) at shareholders' meetings. Decree 227/2016 sets out the Executive Power's competence for the appointment of positions corresponding to that of an Under Secretary - or of equal or higher ranking – (including that of a representative or member of governing bodies) in SOEs. There are no formal requirements for the development of the nomination process either, although some SOEs have basic rules set out in their statutes.

Board vacancies are not openly advertised and appointments are not based on any established procedures. There are no nomination criteria or requirements except that of having residency in Argentina and restrictions for ineligibility which are set out in article 264 of the CCL.³⁸ There are also no requirements in terms of skills and experience (except for ENARSA which requires at least one director to have knowledge of capital markets). Only listed companies require the presence of nomination committees.

In SOEs where the state is not the sole owner, the CCL provides minority shareholders with certain rights including a right to information and to call shareholders' meetings. However, article 263 which allows cumulative voting to be used by minority shareholders to fill up to 1/3 of board vacancies does not apply to joint stock companies with majority state shareholdings. Instead, the law leaves it to each SOE's statute to rule the designation of board members and *síndicos*. It also specifies that if shares of private capital stock reach 20%, minority shareholders will have proportional representation in the board and will have the right to elect at least one *síndico* (article 311).

Despite the promotion of gender equality by the Constitution and labour laws, women in Argentina hold only about 15% of senior management positions within listed companies, which is the second lowest result after Japan in a sample of countries surveyed by the Grant Thornton International Business report (Grant Thornton, 2017_[46]). Within SOEs, according to the information provided by the Argentinian government, they take around 16% of senior positions and 10% of board seats (see Annex 3).³⁹

"3. Setting and monitoring the implementation of broad mandates and objectives for SOEs, including financial targets, capital structure objectives and risk tolerance levels;"

The absence of ownership policy causes unclear mandates for line ministries and SOEs under their respective supervision. Broad mandates and objectives are mainly to be found in sectoral policies elaborated by the government. Despite this, ministries are usually involved in setting budgetary targets for companies – especially as they are legally in charge of providing them with financial transfers in case of losses.

The Executive branch develops an annual budget plan based on an “*evaluation of compliance with national plans and objectives and the general development of the country*” (Section II, article 24 of Law 24.156). The plan subsequently serves as a basis for a budget proposal which is presented to the Congress (in charge of exercising external control), as well as for the monitoring of SOEs according to the proposed financial

targets. Quarterly and annual evaluations are conducted and any deviation from the approved objectives must be explained (OECD, 2015^[47]). SOEs have also to present an annual report (*Cuenta de Ahorro, Inversión y Financiamiento*) to the Ministry of Treasury and to Congress to review the main financial developments of the year.

Capital structure objectives of SOEs are established in their laws of creation. Boards play their role in assessing whether each company's capital is sufficient for its activity or if it would be necessary to obtain new resources from the owners or third parties. This information is normally included in the annual report as well (OECD, 2016^[48]).

There are no specific risk-tolerance level objectives. However, SOE specific risk rules can be found in Resolution 37/2006 on "Minimum Standards for Internal Control and Corporate Governance in SOEs" issued by SIGEN. SOEs are required to establish audit committees whose responsibilities include monitoring the implementation of the company's risk management policy.

"4. Setting up reporting systems that allow the ownership entity to regularly monitor, audit and assess SOE performance, and oversee and monitor their compliance with applicable corporate governance standards;"

Generally, the state monitors SOE performance during the budgetary process and during shareholders' annual meetings. As mentioned above, SOEs are required to submit an annual budget and implementation report, which contains aspects of performance, to the Ministry of Treasury. This process takes place quarterly and annually to monitor SOE achievement of financial and non-financial targets. The Ministry is then responsible for the consolidation of the information into an annual report of the public sector that is presented to Congress. The budget report and its implementation are also published in the Official Gazette of the Republic of Argentina and in the Ministry's website.

Since 2016, the Argentinian government has made efforts to improve the quality and quantity of information provided by SOEs to the ONP by updating processes and methods used for data collection (Box 7). This in turn, has helped the JGM and the SOE Supervisory Council to provide more effective follow-ups on SOE performance.

The JGM has also improved other aspects of SOE monitoring – including 1) benchmarking of salary policies between SOEs and relative to private sector enterprises, 2) benchmarking of procurement policies between SOEs of air transport and post service sectors with equivalent SOEs of neighbouring countries and relative to private enterprises, 3) the establishment of strategic plans with the Supervisory Council of SOEs, 4) the assessment of gender composition and policies of SOE boards.

There are currently no formal expectations with regards to SOE standards of corporate governance, with the exception of SIGEN's Resolution 37/2006, which requires SOEs to follow minimal internal control requirements for good corporate governance (see part A, section 2.3).⁴⁰ The resolution applies to all SOEs except financial entities and publicly-listed companies which are subject to stricter corporate governance standards established by the Central Bank of Argentina (BCRA) and the National Stock Exchange Commission (CNV) respectively.

In addition, some SOEs have developed specific instruments such as Codes of Conduct, integrity policies and audit committees, and others such as AySA are currently developing a comprehensive Corporate Governance Programme. The JGM, jointly with the Anti-Corruption Agency and SIGEN have also led initiatives on corporate governance and integrity for SOEs. Some of these initiatives include the establishment of a Network

of Integrity Officers of SOEs⁴¹ and the preparation of *Lineamientos* on governance for SOEs (see Annex 4). These *Lineamientos* will be applied under a comply-or-explain approach. It is expected that an index of compliance and methodology will be adopted, whereby all SOEs will be ranked according to their compliance with these guidelines.

"5. Developing a disclosure policy for SOEs that identifies what information should be publicly disclosed, the appropriate channels for disclosure, and mechanisms for ensuring quality of information;"

The Argentinian state has not developed a disclosure policy aimed at SOEs. It has, nonetheless, adopted a new law on Freedom of Information (*Ley de Derecho de Acceso a la Información Pública*) that entered into force in September 2017 and introduced some disclosure obligations for the sector. The new law applies to all SOEs, as well as state minority shareholdings, but only on information related to state participation and will require SOEs to provide information to any person or legal entity for free and within 15 open days – with the exception of information classified as confidential or secret (see Part A, section 2.3).⁴²

It also requires active transparency from all relevant entities and the open publication on their official webpages of information related to their organic structures and functions, full list of authorities and staff, salary scales, budget assignments, transfer of funds, public procurements, audit reports, and affidavits, amongst other things.

"6. When appropriate and permitted by the legal system and the State's level of ownership, maintaining continuous dialogue with external auditors and specific state control organs;"

When external auditing is not performed by the AGN, SIGEN's Resolution 37/2006 states that the ownership entity is entitled, through the general shareholders' meeting to appoint external auditors provided that it follows certain criteria to guarantee its independence – and generally with the prior approval of the auditing committee if the proposal results from the management of the firm.

Continuous dialogue between external auditors and the state is legally permitted but this review has found no evidence of it.

"7. Establishing a clear remuneration policy for SOE boards that fosters the long- and medium-term interest of the enterprise and can attract and motivate qualified professionals"

There is no specific remuneration policy in the Argentinian SOEs framework, but article 261 of the CCL stipulates generally that executive remuneration, including salaries and any other payments, cannot exceed 25% of a firm's profit. In the absence of dividends, the maximum amount falls to 5% and increases at the same rate as the distribution until all net profits are distributed.⁴³ This disposition is however not applicable to joint-stock companies with state majority shareholdings as per article 311 of same law. As a result, joint-stock companies have the autonomy to determine their own salaries and fees, which are usually set out in their statutes. In *Sociedades del Estado*, however, board members cannot earn a higher salary than an Undersecretary of state.

Law 22.790 of 1983 empowers the Executive branch to decide the remuneration of board members, senior executives and *síndicos* of SOEs which act in representation of the state, regardless of their legal forms.

Information collected from individual SOEs for this review shows that remunerations are generally set during shareholders' annual meetings and consist mostly of fixed monthly or annual fees. However, as an exception, BNA reported that pursuant to the Bank's charter, remunerations are set by the executive power.

Perhaps reflecting differences in company performance, executive remuneration levels do not appear to be homogeneous: certain SOEs have reported remuneration levels corresponding to that of an Undersecretary of state or equivalent to that of a director in private sector enterprises. However, according to SIGEN, SOE board remunerations are generally lower than those perceived in private sector companies. Remuneration scales for board members have not been provided for comparison but anecdotal information collected from large SOEs seems to be in line with the practices of other OECD countries.

The new Freedom of Information Law (article 32/b) establishes that salary scales, including all components and subcomponents of total salary, corresponding to all categories of employees, public officials, consultants, interns and recruits are to be disclosed.

3. State-owned enterprises in the marketplace

Consistent with the rationale for state ownership, the legal and regulatory framework for SOEs should ensure a level playing field and fair competition in the marketplace when SOEs undertake economic activities

3.1. Separation of functions

“There should be a clear separation between the state's ownership function and other state functions that may influence the conditions for state-owned enterprises, particularly with regard to market regulation”

In Argentina, there is currently no formal separation between the state's ownership function and other functions such as public policy formulation.⁴⁴ Line ministries are legally required to both administer SOEs and formulate adequate public policy objectives.

According to JGM, mainly companies established before 2003 – that is, before the nationalisation wave of the 2000s – can be thought of as vehicles for public policy objectives. These include, amongst others, BNA, Banco de Inversión y Comercio Exterior (BICE) and defence industry companies. BNA's statutory objective, for example, includes the promotion of agriculture development and the support of development needs of trade, industry and service sectors. Similarly, BICE's mission is to provide short and long-term financial services and investment support with impact on the real economy and export. Finally, defence companies such as Dirección de Fabricaciones Militares and Fábrica Militar de Aviones were assigned the mission of promoting industrial development through military technology and manufacturing.

Companies established or renationalised after 2003, however, have generally been assigned commercial objectives or have kept the same statutory objectives they had under private ownership. These include AySA, Aerolíneas Argentinas, SOFSE and Belgrano Cargas y Logística. However, this does not mean that these companies do not have public policy objectives – Correo Argentino, for example, has as most firm in its business to comply with universal service obligations, while SOFSE has service commitments to improve the quality of interurban passengers transport.

Sectoral regulators and the anti-trust regulator are responsible for market regulation. They were first established in the 1990s with the aim of depoliticizing regulatory processes that were, at the time, exercised close to government. There are currently several sectoral regulators, including the National Regulator of Electricity (*Ente Regulador de Electricidad* – ENRE), of Gas (*Ente Regulador de Gas* – ENARGAS), of nuclear energy (*Entidad Regulatoria Nuclear* – ARN), of telecommunications (*Comisión Nacional de Telecomunicaciones* – CNC) and of transport (*Comisión Nacional de Regulación de Transporte*). They are responsible for monitoring and reviewing prices, ensuring competitiveness and ensuring quality of services provided by SOEs that are natural monopolies (e.g. AySA, SOFSE, BCYL) and/or that provide public services (e.g. Correo Argentino).

Laws and decrees establishing these bodies provide for the appointment of boards that could provide oversight, in some cases through an open and competitive selection, but in others simply by decision of the Minister. In these later cases, the Minister appoints both the board of the SOE and that of the so-called independent regulator, which is rather a contradiction. In the spirit of the SOE Guidelines, if such Ministers were required to stay with a single board nomination process, SOEs would likely have their boards appointed by another authority, ideally the ownership coordination unit.

This lack of separation of functions in some sectors is supported by a recent study by CIPPEC which finds that in most Argentinian decentralized bodies (including regulatory agencies), board of directors are directly appointed by the executive power or by the executive power on proposal of other actors. Furthermore, in most cases there are no pre-established requirements for board member selection and only a minority are appointed through an open selection process. This seems to show that separation of functions in Argentina may be limited by the low levels of autonomy and independence they have from the government (Rubio, 2017^[48]).

Argentinian law and Constitution both defend competition against any form of distortions in the market. The anti-trust regulator in Argentina is the National Anti-Trust Commission (*Comisión Nacional de Defensa de la Competencia*). It is responsible for the promotion of competition in the economy and the prevention and punishment of cartels and/or abuses of dominant positions. SOEs fall within the scope of the Commission, even if most of Argentina's SOEs operate as providers of public services and do not face competition in the private sector as such. Recently, a bill has been referred to the Parliament to reform the current anti-trust law. The bill has been partially approved by the Chamber of Deputies in November 2017 and will go to the Senate for its approval. It establishes a new structure for the national competition authority that will have competency over the National Tribunal for the Defence of Competition that was initially established by Law 25.156 in 1999, but has never entered into function.

3.2. Stakeholders' rights

“Stakeholders and other interested parties, including creditors and competitors, should have access to efficient redress through unbiased legal or arbitration processes when they consider that their rights have been violated”

In Argentina, the diversity of legal forms and the legal regime under which SOEs operate has direct influence on stakeholders' rights and the existing legal and arbitral mechanisms they can resort to. Incorporated companies (*Sociedades Anónimas*) are subject to private sector law, therefore legal remedies against decisions of private enterprises apply to SOEs.

Enterprises that are not incorporated, such as *Empresas del Estado* and *Sociedades del Estado*, are normally regulated by private law except for decisions issued by the board, which can be assimilated to administrative regulations.⁴⁵ In such cases, individuals and/or companies can use administrative remedies. These companies cannot be declared bankrupt.

In the event of a dispute between two SOEs or between an SOE and another public entity that involves pecuniary claims, Law 19983/72 allows these entities to solve their dispute under public law by resorting to the National Treasury Procurer (*Procurador del Tesoro de la Nación*) which has competence to settle administrative disputes.

3.3. Identifying the cost of public policy objectives

“Where SOEs combine economic activities and public policy objectives, high standards of transparency and disclosure regarding their cost and revenue structures must be maintained, allowing for an attribution to main activity areas”

JGM has reported that there is no structural separation between public policy objectives and (other) economic activities for SOEs. Commercial and non-commercial activities are combined into the same financial reporting, without differentiation in terms of activities. The separation of public policy objectives with other economic activities, is currently not seen as a priority, as the main goal is to reduce financial deficits of SOEs, and – according to JGM's argumentation – SOEs are not subject to significant public policy obligations.

3.4. Funding of public policy objectives

“Costs related to public policy objectives should be funded by the state and disclosed”

Only a few SOEs are engaged in competitive activities in Argentina. The most relevant cases include YPF, Aerolíneas Argentinas, Correo Argentino, Fabricaciones Militares and FADEA. The rest are either monopolies or are largely focused on the pursuit of public policy objectives (although without formal requirements in that sense). SOEs that are engaged in competitive activities do not face competitive disadvantages compared to private companies in terms of uncompensated financial or operational obligations. Companies that have deficits are compensated by state budget – either to cover operational expenses (such as Aerolíneas Argentinas) or to cover both operational expenses and public service obligations (such as the national postal service, Correo Argentino). They are generally subject to private law and hence, follow the same rules as

private enterprises, with a few exceptions such as the arms manufacturer, Dirección de Fabricaciones Militares which is not a corporation and is subject to public sector law.

SOEs' costs related to fulfilling public policy or public service objectives are difficult to identify in Argentina as there is no formal process of quantifying, disclosing and compensating non-commercial activities.⁴⁶ Hence, the state does not provide for direct compensation for public policy or public service objectives, but direct state contributions are provided to all SOEs that have deficits, whether caused by such objectives or for other reasons. For example, both Correo Argentino and SOFSE receive financial compensations for fulfilling universal service and affordable criteria, which have to be maintained for social reasons. However, SOEs cannot operate with permanent deficits as provided by private Company Law which demands capital adjustments in such cases (OECD, 2015^[47]).

The National Budget Office hosts monthly meetings to discuss resources to be transferred to alleviate SOE deficits. The evaluation method is usually based on a simple assessment of service coverage by the SOEs but does not consider cost reduction, efficiency or any other performance measure.⁴⁷

3.5. General application of laws and regulations

“As a guiding principle, SOEs undertaking economic activities should not be exempt from the application of general laws, tax codes, and regulations. Laws and regulations should not unduly discriminate between SOEs and their market competitors. SOEs' legal form should allow creditors to press their claims and to initiate insolvency procedures”

SOEs, especially when incorporated and undertaking economic activities are generally subject to the same laws and regulations than applied to private sector enterprises – including competition law which applies to all SOEs. Law 11.683 on fiscal procedures specifies that SOEs and other national entities are subject to the payment of taxes, tributes and contributions governed by this law and other national taxes including custom duties unless explicitly exempted.

There are however certain exceptions such as:

- Exemption from the bidding process for public procurement of SOEs and/or public entities in the field of security, logistics and health – for which direct contracting is allowed (Decree 204/2004).
- Exemptions from tax and import duties for several SOEs such as ENARSA, DG FM, AySA, FADEA, NA-SA, Lotería Nacional, and Casa de Moneda. For example, Belgrano Cargas y Logística is exempted from the tax on minimum presumed income tax and from import duties for brand new materials; DGFM is exempted from income tax; Correo Argentino is exempted from gross income tax and stamp duty in some jurisdictions, value added tax (VAT) for mailing and service tax; while FADEA is exempted from VAT, income tax, as well as from gross income tax (at the provincial level) and tax on immovable property (at the municipal level). Some SOEs, such as ARSAT, are exempted from payment of all national taxes while others, like Aerolíneas Argentinas, YPF, and financial institutions such as BICE and BNA, do not benefit from any exemptions.
- Possibility to resolve legal disputes within public administration law – with no right of redress to the courts.

- Exemptions for SOE board members to present guarantees as required by IGJ Resolution no.9, as modified.

Furthermore, SOEs that have adopted legal forms of *Empresas del Estado* and *Sociedades del Estado* cannot be declared bankrupt. However, most other SOEs are only subject to commercial law and therefore do not benefit from this exemption.

3.6. Market consistent financing conditions

“SOEs’ economic activities should face market consistent conditions regarding access to debt and equity finance. In particular:

1. SOEs relations with all financial institutions, as well as non-financial SOEs, should be based on purely commercial grounds”

In Argentina, only a few SOEs (such as YPF and BICE) finance their operations through private financial institutions and the capital market. The majority of SOEs receive fiscal transfers from treasury funds to cover either operational and/or capital costs. In cases where the state transfers resources to cover capital expenses, SOEs have established rate-of-return criteria per investment project. However, overall operations of SOEs are generally not subject to rate-of-return requirements.

In addition to financial transfers from the state, another source of financing for SOEs is development aid by development banks such as the World Bank or the Inter-American Development Bank. Access to financing under pure private commercial terms is thus quite limited in Argentina (Box 9), largely due to SOEs’ deficits - however when it occurs, it is said to take place without intervention of government officials.

Law 24.156 on the Financial Administration of Public Sector establishes that SOEs are allowed to perform public credit operations within the limits determined by their state liability and in accordance with the indicators defined by the competent authority. When such operations are subject to bail or other guarantees from the central administration, the authorisation for its granting should be provided by the budget law or any other specific law (except when such guarantees are granted by public financial entities).

Financial assistance or state guarantees provided to SOEs are generally reported either through the budget process or through the information provided on websites or annual reports (OECD, 2014_[42]).

“2. SOEs’ economic activities should not benefit from any indirect financial support that confers an advantage over private competitors, such as preferential financing, tax arrears or preferential trade credits from other SOEs. SOE’s economic activities should not receive inputs (such as energy, water or land) at prices or conditions more favourable than those available to private competitors”

SOEs are generally subject to the same tax rules as private companies. In some cases, however, they are exempted from specific taxes (see section 3.5. above). ENARSA for examples is exempted from paying import duties on liquefied natural gas, whereas Dirección de Fabricaciones Militares is exempted from income tax.

Trade credit from one SOE to another is not necessarily relevant as a source of finance in Argentina. Only a few of them such as Correo Argentino, AySA, AR-SAT, RTA, DGFM, YCRT and Tandanor are involved in such transactions.

“3. SOEs' economic activities should be required to earn rates of return that are, taking into account their operational conditions, consistent with those obtained by competing private enterprises”

SOEs in Argentina – whether engaged in competitive activities or not - are not required to earn specific rates of return. Since December 2015, SOEs financial objectives must be in line with the government objectives of operational efficiency and profit maximisation. In this regard, the JGM is involved in the development of consistent strategic plans for all SOEs.

Box 9. Central Bank's and BNA's requirements for SOEs to access market financing

Central Bank's requirements for *Sociedades del Estado*:

- They do not require resources from the state budget (national, provincial, municipal) for the development of their activities, with the exception of resources aimed at productive investments
- Technical and professional independence of the management
- They sell at market prices
- The use of their fixed assets is not subject to shareholder's conditionality.
- They do not distribute dividends
- All the conditions mentioned above have been verified for the last 10 years prior to the grant.

Central Bank's requirements for firms operating in the energy sector:

- They are established by Law or national Decree and/or their assets are subject to expropriation
- They are constituted as joint-stock companies (*sociedad anónima*)
- The National government owns a majority of their shares
- Their statutory activities focus on the commercialisation of oil and/or electricity (production/distribution/industrialisation)
- They are subject to public sector external and internal controls as established in Law 24.156

BNA can also finance SOEs without the need for state guarantees if they meet the following criteria:

- They are able to operate commercially as private enterprises
- They do not depend exclusively on government financial support
- They have sufficient resources to meet their obligations with BNA.

With regard to dividend distribution, the CCL establishes that dividends can only be distributed from the company's net profits and after the approval of the annual financial statements. Apart from this, there is no explicit dividend distribution policy for SOEs in Argentina. Most SOEs have their own dividend policies as a rule of procedure, especially fully incorporated ones. For instance, BNA established that its annual income, after

amortisation will be distributed as follows: a percentage defined by the authority will go to the Legal Reserve Fund (*Fondo de Reserva Legal*) and the rest will be allocated to increase capital or according to other Board's objectives. In practice, however, SOEs do not distribute dividends, with YPF being the only exception. Reinvestment is the general practice for the few SOEs that generate profits, which are more guided by the need to develop their activities than by profit expectations from the state (OECD, 2015^[47]).

SOEs' capital structures are generally established in their laws of creations and may only be changed through law. For example, the Statutory Law of BNA establishes that capital can only be increased through capitalisation of net income and reserves used for that purpose as well as through transfers from the government. Some of them, however, might lack provisions because of their lack of commercial orientation (ex. Dirección de Fabricaciones Militares). For fully incorporated SOEs, commercial law criteria apply.⁴⁸

3.7. Public procurement procedures

“When SOEs engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency”

SOEs that are fully incorporated and operating in a largely competitive sector abide by the same procurement rules and procedures as comparable privately-owned companies. The general principle is that procurement should be done by means of a competitive bidding process that must ensure equality between all bidders (International Bar Association, 2016^[49]).⁴⁹ Furthermore, the government reports that purchases from an SOE to another are exempted from public procurement requirements and can be awarded through agreements, which are considered inter-administrative contracts.

Indeed, the procurement regime in Argentina is specifically regulated by Federal Decree 1030/16 that abrogated the existing Decree 893/12. It is applicable to contracts entered by the central administration and its agencies, as well as contracts regarding public works, public service delegations, license and sovereign debt transactions. Public works and utilities contracts may be subject to federal, provincial or municipal regulations. The Decree provides for three different kinds of procurement procedures (public, private and direct award) and sets forth a series of transparency measures.⁵⁰

Direct awards occur when there are no competitive procurement procedures. Article 9 of the Decree states that “[...] the direct procurement procedure shall only be admissible in cases expressly contemplated in the subsections of article 25d of Decree 1.023/01, its amendments and complementary provisions. Direct procurement operations may use either fast-track bidding or simple contract award procedures”. In practice, according to information submitted by JGM based on a 2017 survey of 14 SOEs, direct contracting represented 10-20% of total procurement for approximately 50% of surveyed SOEs (mostly active in the transportation sector) and 5-10% for 28.5% of them. The rest spent less than 5% on direct contracting.

Additionally, SOEs in Argentina, regardless of whether they are engaged or not in competitive industries, are required by law (Law 25.551 - “*Compre Trabajo Argentino*”) to use national components in their procurement processes.⁵¹ Hence, government purchases have to give preference to products and services of national origin when their price is equal or less than that of foreign firms. A reform bill was presented to the Parliament in May 2017 and approved by the Chamber of Deputies in November 2017, proposing the integration of national products to 40% of purchases made by the state. The

bill also establishes that the state should give priority to local Small and Medium Enterprises (SMEs) when there are different offers.

All SOEs except Dirección General de Fabricaciones Militares, have the autonomy to establish their own procurement rules. In most cases, these rules are consistent with private sector practices. In fact, most of fully incorporated SOEs were previously managed by private operators and when nationalisation occurred the new management maintained the previous procurement practices.

When SOEs act as bidders in public procurement, public ethics regulations act as safeguards to ensure that they do not benefit from undue advantages. The most relevant of these regulations are Law 25.188 on “Ethics of the Public Function” (*Ética de la función Pública*, Code of Ethics for Public Functions (Decree 41/99), Corporate Liability Law (see part B, section 7.1), and Decree 202/2017 on conflict of interest.

Safeguards to avoid conflicts of interest can be found in the usual public ethics regulations such as Law 25.188, which is the main regulation on public ethics in the public sector. It establishes obligations, prohibitions and incompatibilities for everyone performing public duties, remunerated or not. Board members of SOEs are, according to this law, required to submit full sworn declarations of assets within 30 days of assuming their functions. Article 13 of this law also establishes the incompatibility of the exercise of public functions:

“When a) directing, administrating, representing, sponsoring, or in any form, providing services to whom manages or has a concession or is a provider of the state, or carries out activities regulated by the state, provided that the public position fulfilled has a direct functional competency, with respect to the procurement, management or control of those concessions, benefits or activities, b) being a provider for itself or third parties of any state entity when he/she exercises its functions”

Similar dispositions can be found in Decree 41/99 (Code of Ethics for Public Functions) and Corporate Liability Law.

Furthermore, Decree 202/2017 also stipulates that every company and/or individual (including SOEs) aiming to participate in a public procurement procedure must present a Sworn Declaration of Interest in which he/she will have to disclose potential conflicts of interest with the President and Vice-President, Chief of the Cabinet of Ministers, ministers and other authorities with equivalent legal status beyond their capacity to influence the contract’s final decision. Potential conflicts of interests include a) blood relationship up to the fourth degree b) shares in a company where public officials are also shareholders, c) pending lawsuit, d) debtor or creditor relationship, e) having benefitted from gifts/rewards of significant importance, f) publicly acknowledged friendship. Sanctions for failure to provide such document (or for the provision of inaccurate information) can be found in article 6 of the law.

Finally, several SOEs in Argentina such as ADIF, EANA, ARSAT, AySA, Aerolíneas Argentinas and SOFSE, are also developing special company procedures to promote overarching transparency and integrity policies within their respective companies (see Box 12). The national postal service, Correo Argentino, has also designed and implemented an “improvement plan” with regards to public procurement. Aerolíneas Argentinas as well has adopted a series of policies (with the support of the Inter-American Development Bank) to improve its procurement management, leading to important savings and reductions in backlogs and lead times of purchases (Box 10).

Box 10. Aerolíneas Argentina: Supply Chain and Procurement

The Supply Chain Department of Aerolíneas Argentinas started a transformation of its organizational structure, management and corporate culture, in 2016. Before that, procurement management was fragmented and defined by a lack of budgetary control and strategic vision. Furthermore, processes were weak and done manually for the most part. The new organizational change brought improvements on:

Structure and professionalization of the team: Procurement was centralized and established as an independent area. The team was restructured to become more horizontal with reduced hierarchy levels, Roles were redefined, with key positions being assigned based on specific professional criteria.

Processes and systems: Aerolíneas Argentinas observed that efficient and solid processes are key. For that purpose several changes were made including: a reconfiguration of the Enterprise Resource Planning (ERP) system implementing controls and Frame Agreements, the issuance of mandatory authorization memos explaining the contracting process and criteria used, and trackable and auditable tender offers, amongst other things.

Policies and methodology for contract award and negotiation: Procurement policies were unified for better control and coherence, while tender offers started being advertised on AR's website and Procurement Portal for to encourage greater competition.

Visibility of the procurement process: new indicators were implemented allowing for the periodical monitoring of the evolution of spending and transactions for the buyer, including on the amount spent, contract expirations, back orders, lead times and stock levels. Furthermore, an independent Internal Audit/Compliance unit was established, and clear boundaries were set between procurement, reception and payment functions to avoid overlapping.

This transformation already translated into a cost reduction of USD 81 million, an activity level increase of 20% on passenger transport and 12% more flights. The procurement execution lead time was reduced by 24% and the backlog was reduced by 77% issuing fewer purchasing documents. The implementation of Agreements eliminated the need to launch 7000 tenders, and the number of urgent requirements fell by 15%.

Source: Aerolíneas Argentinas, 2017.

4. Equitable treatment of shareholders and other investors

Where SOEs are listed or otherwise include non-state investors among their owners, the state and the enterprises should recognise the rights of all shareholders and ensure shareholder's equitable treatment and equal access to corporate information

4.1. Ensuring equitable treatment of shareholders

“The state should strive toward full implementation of the OECD Principles of Corporate Governance when it is not the sole owner of SOEs, and of all relevant sections when it is the sole owner of SOEs. Concerning shareholder protection this includes:

1. The state and SOEs should ensure that all shareholders are treated equitably”

In general, non-state and/or minority shareholders in SOEs enjoy the same legal rights as other shareholders in private companies. However, shareholders' equitable treatment is currently not an area of concern in Argentina as most SOEs are wholly owned by the state, and minority stakes, when they exist, are held by the country's provinces and/or other SOEs rather than by private minority owners. Only a few SOEs include non-government actors, such as Tandanor and AySA, which have 10% employee/unions participation. Companies with government minority stakes are mostly listed companies and abide by the same laws as any other joint-stock company.

YPF is the only majority-held SOE that includes private capital. The company has a golden share inherited from its former privatisation process. The company's bylaws provide the national state with special rights (via a separate class of shares), requiring its favourable vote in situations involving decisions to: 1) merge with another or several other companies, 2) accept a takeover attempt of the company –whether hostile or consented– representing 50% of the capital stock, 3) transfer to third parties of the exploitation rights granted under Laws 17.319 and 24.145, in such a way as to determine the complete cessation of operational and exploratory activities of the company.

In Aerolíneas Argentinas (where there is minority participation from employees/unions), the state has exceptionally kept veto powers on issues involving: 1) the reduction of post service transport, 2) the rejection of government to request on defence law, and 3) reforms that affect minority shareholdings.

According to general company law in Argentina, applicable to a majority of SOEs, any resolution adopted by SOEs in shareholders' meetings can be contested within three months by shareholders who did not vote in favour of the resolution or were absent from the meeting. Shareholders can also file claims, individually or in representation of the company, against board members for breach of duties or wilful misconduct (article 276 of CCL). Finally, if they consider their rights violated, minority shareholders have both administrative and judicial remedies at their disposal.

Box 11. Selected shareholders' rights in Argentinian Company Law (CCL)

The Law:

- Grants a set of protective measures to shareholders in case of company transformation, including a fundamental shift in its object, transfer of the legal domicile to a foreign country, capital increases decided by extraordinary shareholders' meetings or when delisting from a stock exchange. Under such circumstances, dissatisfied shareholders are allowed to withdraw from the company and receive the book value of their holdings (article 245).
- Sets general rules for avoiding conflicts of interest – more specifically for shareholders holding positions in the board or top management of the company. Hence, while article 240 establishes the obligation for directors, *síndicos* and top executives to attend shareholders' meetings, article 241 prohibits them from voting on matters related to their own administrative acts.
- Grants special rights to minority shareholders with more than 5% participation – including the right to request the summoning of shareholder's meetings and to suggest priority themes (article 236). Shareholders with more than 2% participation in the capital stock are granted the right to obtain information from the *síndico* (or *Comisión Fiscalizadora*) and to give notice on cases of breach of law - which the *síndico* is legally obliged to investigate.
- Finally, the law also grants common shareholders pre-emptive rights to subscribe to new shares of the same kind in proportion to of their shareholding in the company (article 194). Shareholders may exercise their pre-emptive rights within 30 days following the date of the company's last publication in the Official Gazette.

In general, ownership structure is highly concentrated in Argentina and the majority of listed companies have a controlling shareholder with only a limited percentage of free float. The use of pyramid ownership structures and, to a lesser extent multiple voting shares, introduces a risk of potential conflict between controlling and minority shareholders (CEF, 2005_[50]). Nevertheless, the Argentinian law provides certain safeguards aimed at protecting shareholders – notably through the CCL. It grants a set of balanced rights to different company stakeholders, including minority shareholders (Box 11).

For listed companies such as YPF and others where the state has minority participation through ANSES/FGS (not included in this report) – mechanisms to protect shareholders also exist in the Capital Market Law and related CNV and Stock Exchange regulations. More specifically:

CML and CNV regulations recognise the existence of a “*common interest of all shareholders*”. It includes provisions on mandatory auditing committees – which are to be comprised of a majority of independent members – and amends the legislation on tender offers which have to be performed by the acquirer previously to the takeover in order to allow shareholders to participate in the decision-making of the transaction (articles 86 and 87). They also include, amongst other things, protection mechanisms for minority shareholders in case of delisting of the company or unlawful related-party transactions and guarantees them a “fair price” if they want to sell their holdings (Estudio Beccar Varela, 2001_[51]).

The CML acknowledges shareholders' right to receive equal and fair treatment. In particular, minority shareholders of listed companies are granted certain rights - including exit rights if a single shareholder or group of shareholders take control of the company. The law also empowers any shareholder with no less than 2% of shares to inform about any infringement of their rights and confers the power to the CNV to appoint supervisors with powers to veto the resolutions adopted by the board of directors and suspend the board for a period of 180 days when the interests of minority shareholders have been infringed (The Law Reviews, 2006^[52]).

Furthermore, CML and related CNV regulations also include mechanisms for protection in case of takeovers. Section 87 of the CML introduces the requirement for anyone seeking to obtain direct or indirect control of a public company to file a mandatory public offering or a securities exchange addressed to the holders of these securities, and at a fair price as determined according to the guidelines established in Section 98 of said Law.

"2. SOEs should observe a high degree of transparency, including as a general rule equal and simultaneous disclosure of information, towards all shareholders"

Requirements with respect to shareholders' access to company information are mainly established in the CCL which stipulates that ordinary and extraordinary meetings can be called by the Board of Directors or *síndicos* (and shareholders with no less than 5% of the capital stock— and that their dates should be published between 10 and 30 days in advance.

The law also establishes that the relevant documents⁵² to be approved during shareholders' meetings have to be available to shareholders at least 15 days prior to the date of the meeting (article 67). Furthermore, article 294 sets out the fiscal commission's duties (*Comisión fiscalizadora*) to provide information on matters within its competence and to investigate complaints by shareholders with at least 2% of the share capital. The law also acknowledges shareholders' right to accept or refuse the provided annual accounting information (article 69).

For listed companies, CNV regulations and the CML establish that companies must inform the holding of general meetings as a significant event, through the financial information system (*Autopista de la Información Financiera*) which is an online disclosure system provided by CNV to disseminate information to the market in real time.

Additionally, CML and CNV regulations also include dispositions on the disclosure of occasional (or ad-hoc) relevant information on "*any event or situation that is likely due to its importance to materially affect the placement of securities or the course of trading (...)*". Through this disposition, officers of subjected entities (including issuing entities, members of supervisory bodies, market administrators etc.) are required to inform CNV in a direct, truthful and timely manner by means of the financial information system mentioned above.

"3. SOEs should develop an active policy of communication and consultation with all shareholders"

As mentioned previously, the role of non-state shareholders is rather reduced in Argentinian SOEs. It is only relevant for YPF as a listed company. As a result, some SOEs do not have an active policy of communication and consultation with shareholders.

"4. The participation of minority shareholders in shareholder meetings should be facilitated so they can take part in fundamental corporate decisions such as board election"

In general, all shareholders have the right to participate and call general shareholders' meetings. Shareholders with no less than 5% of the capital stock are also allowed to require an issue to be included and voted at the meeting. Board elections and voting rights in general may vary depending on the right attached to a particular type of share (Estudio Beccar Varela,(n.d.)^[53]) - however in Argentina, non-state shareholders are generally allowed to vote in general meetings. Certain SOEs such as AySA, Tandanor and Aerolíneas Argentinas have provisions regarding the appointment of directors by non-state shareholders such as employees/worker's unions. Although officially appointed at the shareholders' meeting, SOE board members are previously nominated by the relevant line ministry and minority shareholders (including employee representatives).

To ensure representation of minority shareholders, the CCL allows the use of cumulative voting rights for the appointment of board members. Hence, minority shareholders may accumulate their votes in order to elect up to a third of board members. However, this disposition is not applicable to joint-stock companies with state majority shareholdings. Minority shareholders can elect one or more board members when the statute of the company so provides, but without exceeding their percentage of the capital stock. Article 311 stipulates that only when private capital has reached 20% will minority shareholders have proportional representation in the board – and the right to elect at least one *síndico*.

In listed companies, shareholders can also attend shareholders' meetings personally or by proxy. CML and related CNV regulations established the right for minority shareholders with more than 2% of capital stock to publically request proxy voting powers from other shareholders in order to represent them at a specific shareholder meeting (Vatnick, Musalem and Souto,(n.d.)^[54]).

“5. Transactions between the state and SOEs, and between SOEs, should take place on market consistent terms”

There is no mechanism in place to ensure that transactions between the state and SOEs take place on market consistent terms, except those established by the public procurement regime (see Part B, section 3.7).

4.2. Adherence to corporate governance codes

“National corporate governance codes should be adhered to by all listed and, where practical, unlisted SOEs”

Since 2008, all listed companies are required to adopt the Corporate Governance Code (*Código de Gobierno Societario*) issued by CNV and implemented on a "comply-or-explain basis. The Code consists of nine principles and 22 recommendations on good corporate governance practices and applies exclusively to companies that issue shares and/or bonds (see Box 3).

The CNV Corporate Governance Code was reformed in 2012 to better align with the G20/OECD Principles of Corporate Governance, and is currently being reviewed in order to bring further improvements – especially regarding Environment, Social and Governance (ESG) matters, and gender diversity. According to CNV's plans, this reform will be finalized in October/November 2018.⁵³ Furthermore, the Central Bank of Argentina (BCRA) has also developed Guidelines on Corporate Governance of Financial Institutions, which requires from all financial institutions to create and present a corporate governance code taking into account the Guidelines as set forth in Communication “A” 5201 of the BCRA.

YPF and some of the banks within the SOE portfolio follow the CNV Code. Unlisted and non-financial SOEs are not required to comply with any national corporate governance code for the moment. Jointly with the Anti-Corruption Office and SIGEN, JGM - has developed "*Lineamientos*" on good corporate governance of SOEs (see Annex 4).

4.3. Disclosure of public policy objectives

“Where SOEs are required to pursue public policy objectives, adequate information about these should be available to non-state shareholders at all times”

As mentioned, the majority of SOEs is not formally required to pursue public policy objectives (although they do in practice). For those who do have to follow such requirements – material information about them is generally not communicated to non-state shareholders.

4.4. Joint ventures and public private partnerships

“When SOEs engage in co-operative projects such as joint ventures and public-private partnerships, the contracting party should ensure that contractual rights are upheld and that disputes are addressed in a timely and objective manner”

Only a few SOEs have engaged in public-private partnerships (PPPs). Argentina passed a new PPP law (Law No. 27.328) in 2016 that establishes rights and obligations for both public and private sector actors – including SOEs - when entering a contractual relationship. While the law is silent on shareholders’ contractual rights, it does provide for dispute resolution mechanisms such as the setting up of technical panels for controversies on technical or patrimonial issues, or arbitration (Castro Sammartino & Pierini, 2017^[55]).

5. Stakeholder relations and responsible business

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

5.1. Recognising and respecting stakeholders’ rights

“Governments, the state ownership entities and SOEs themselves should recognise and respect stakeholders’ rights established by law or through mutual agreements”

Argentina has not developed explicit policies governing SOEs’ stakeholder relationships. Every SOE has its own approach – AySA for example, operates according to specific corporate social responsibility (CSR) criteria and prepares an annual sustainability report to inform stakeholders about the company’s performance. BNA has also launched its first

Corporate Responsibility Report in 2016, in accordance with the Global Reporting Initiative (GRI) guidelines.

There are no mandatory consultations with stakeholder groups in Argentinian SOEs, however, for natural monopolies (e.g. AySA and ENARSA), regulatory agencies such as ENRE or ENARGAS do provide consumer protection mechanisms – in particular, through the use of public hearings during which complaints can be made and resolved against sectoral distributors including SOEs. More generally, law 24.240 on consumer protection also states that each service provider should establish customer consultation mechanisms, as well as complaints and claims systems, amongst other things (article 5).

This is not mandatory for stock corporations (*sociedades anónimas*) who can decide whether to conduct consultations or not. EANA, for example, has established a consultation mechanism for procurement documents/policies.

5.2. Reporting on stakeholder relations

“Listed or large SOEs should report on stakeholder relations, including where relevant and feasible with regard to labour, creditors and affected communities”

There have not hitherto been formal requirements for SOEs to publicly report on their relationship with stakeholders. This should however change with the new Freedom of Information Law, which entered into force in September 2017 and guarantees all citizens the right to request and receive timely and adequate information from any government body – including SOEs.

As a general rule, companies with over 300 employees are required to generate an annual report on their social impact (Law No. 25.877). The city of Buenos Aires has issued a similar law for companies with over 300 employees to submit annual sustainability reports in accordance with GRI guidelines. It is however unclear if this law also applies to SOEs.

Currently, less than half of SOEs publish information about CSR and sustainability projects/services as shown in a 2016 report by CIPPEC (Fundación Civix,(n.d.)^[56]).

5.3. Internal controls, ethics and compliance programmes

“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”

Most SOEs have developed internal codes of ethics or integrity policies – even if there is no formal requirement to do so. This is quite relevant as Argentina’s Parliament passed the Companies Liability Act (*Ley de Responsabilidad Penal de las Personas Jurídicas*) in November 2017. The Law establishes the relevance of integrity programmes for both public and private corporations as a way of avoiding potential economic sanctions in cases of international bribery. Companies will only be able to avoid sanctions established by the Law through the implementation of an adequate integrity programme (see part B, section 7.1). Cooperation in the investigation or self-reporting can also suspend prosecutions or mitigate responsibility.

Box 12. The Integrity Programme of ADIF

Following the establishment of the Supervisory Council of SOEs in 2016 and the submission to Congress of the Corporate Liability Law, many SOEs – including the national rail construction and maintenance company, Administración de Infraestructuras Ferroviarias Sociedad del Estado (ADIF S.E) – showed increased interest in developing corporate governance and compliance programmes within their own structures. With support from the Network of Integrity Officers, ADIF implemented a programme in June 2016, whose main features are:

Culture of Integrity: The company has identified its mission, vision and key values in order to reinforce a culture of integrity within the company. A Code of Conduct was established as the main policy tool of the company to set and communicate integrity values such as transparency, honesty, impartiality and professionalism. It contains rules of conduct for employees in situations where potential conflicts of interest could arise. It also requires conflict of interest statements from third parties willing to participate in bidding processes.

Reporting channels & whistle-blower protection: ADIF encourages an open organizational culture where issues and concerns regarding unethical or illegal activities or misconduct can be reported and investigated. For this purpose, and in order to ensure that the internal and external stakeholders can communicate these matters, safely and honestly, the company has contracted a third-party vendor to manage a safe and independent hotline - the "Transparency Line" – allowing for: i) confidential and/or anonymous reporting; ii) different reporting options: online form, e-mail, telephone, fax, answer machine, or P.O. Box; iii) 24-hour & 365-days access; iv) ability to file written reports in different languages; v) ability to follow up with cases, even when reported anonymously.

Under ADIF's integrity system, whistle-blowers are protected from potential reprisals such as intimidation, harassment or even dismissal by work colleagues or superiors. Additionally, all staff has been trained on the different alternatives available for reporting misconducts. The Board of Directors and the Integrity Committee were instructed on how to receive the reports or allegations, maintain their confidentiality and allocate them for subsequent investigation.

Ensure a solid system of internal control and risk management: ADIF has also established an environment of internal control and risk management as a new essential tool to preserve the company's integrity. Integrity risks such as fraud and corruption are targeted. More particularly, ADIF has begun to work on an Enterprise Risk Management - Integrated Framework which involves the execution of different methodological steps to generate: i) an annual Risk Assessment Matrix: detailed sheet of each risk; ii) a Risk Map: graphic illustration of the risk matrix, and iii) a Risk Management Work Programme: action plan's implementation.

Source: JGM and ADIF (2018).

With regard to the development of internal control mechanisms, SOEs usually follow SIGEN's Resolution 93/2013 on the establishment of internal audit units (*Unidades de Auditoría Interna*) – which together with SIGEN form the SOE internal control system in Argentina. SIGEN's exercises control in line with the COSO framework.

Furthermore, as mentioned previously, SOEs are subject to Law 25.188 on “Ethics of the Public Function” (*Ética de la función Pública*) which establishes certain standards of behaviour for public officials and executive-level staff in SOEs and requires them to provide disclosure affidavits.

In case of fraud or corruption, Argentinian law obliges public officials to inform authorities on corruption acts of which they are aware of (Law 23.984 and Public Ethics Law).⁵⁴ The Anti-Corruption Office is competent for receiving complaints from any legal entity or official in relation to the public administration sector – including SOEs, and for providing independent preliminary investigations on the accused official/s (Chevarría and Silvestre, 2013_[57]).⁵⁵

In addition, some SOEs have their own instruments and strategies to prevent fraud and corruption (see Box 12 for an example). Fabricaciones Militares, for example, has a Transparency Unit for investigating alleged corruption cases and has set up a phone line and an e-mail address to receive anonymous or protected identity complaints.

Integrity and compliance programmes in SOEs do not substantially differ from private sector ones – except for self-disclosure requirements. It is important to mention that there is no legal whistle-blower protection in Argentina (except for certain organised crimes).

5.4. Responsible business conduct

“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”

The government has not established nor communicated specific expectations concerning SOEs' respect for high standards of responsible business conduct. There is therefore no overall responsible business conduct framework, but there are individual efforts among some SOEs. Argentina adhered to the OECD Declaration on International Investment and Multinational Enterprises in 1997 and is thus a signatory to the OECD Guidelines for Multinational Enterprises.

As part of its commitment to improve SOEs' performance and corporate governance, the Argentinian government has publicly acknowledged the importance of integrity measures for SOEs and has promoted several laws in this direction – including the recent Executive Decree 202/2017 on conflicts of interest, which requires every individual participating in a public procurement procedure to manifest potential conflict of interests with the President, Vice-President, Chief of Cabinet, ministers and/or any other high-ranking official involved in the decision-making on procurement processes.

5.5. Financing political activities

“SOEs should not be used as vehicles for financing political activities. SOEs themselves should not make political campaign contributions”

According to Law 26.15 on the Financing of Political Parties, political parties may not receive donations from SOEs. The Constitution also establishes the obligation for

political parties to inform on the sources of their funding. The provisions of this law are not, however, applicable to individual candidates.

Despite a clear prohibition, SOEs have reportedly been used in the past as vehicles for financing political activities, as described in a 2016 declaration by the Director of the Argentinian Anti-Corruption Office: “*Many SOEs were used for financing political campaigns and the enrichment of its directors. This should not happen again.*” (ACO, October 2016).

The National Electoral Justice (NEJ) is the authority in charge of regulating political finance following Law 26.15. It is comprised of 24 federal electoral courts with jurisdiction over each province and a single court of appeals, the National Electoral Chamber (*Cámara Nacional Electoral - CNE*) (International IDEA,(n.d.)[48]). According to the Money, Politics and Transparency (MPT) project, designed to assess the state of transparency and effectiveness of political finance regimes across the world, it is “*widely recognized as [being] independent and active. The NEJ carries out investigations and punishes violators, but since the sanctions spelled out in law are weak, parties continue to engage in political finance violations.*”

In 2016, a cooperation agreement was signed between the Anti-Corruption Office and the CNE through which the ACO receives detailed information on campaign contributors. The information is then verified based on information provided by public officials in their sworn declarations of assets, and is used for criminal investigation of alleged cases of corruption. The CNE plays a key role in all matters relating to the organisation of electoral processes and financial control of political groupings.

6. Disclosure and transparency

State-owned enterprises should observe high standards of transparency and be subject to the same high quality accounting, disclosure, compliance and auditing standards as listed companies

6.1. Disclosure standards and practices

"SOEs should report material financial and non-financial information on the enterprise in line with high quality internationally recognised standards of corporate disclosure, and including areas of significant concern for the state as an owner and the general public. This includes in particular SOE activities that are carried out in the public interest"

There is no national SOE disclosure strategy in Argentina, apart from the recent Access of Information Law. Only few SOEs disclose information they consider relevant, on a discretionary basis. Most of them, however, provide incomplete or outdated information.

In the *Carta de Jefatura de Gabinete*, the government states that:

“As of December 2015, SOEs were showing very little transparency in their decision-making and a near total absence of good corporate governance practices. With the exception of YPF and public financial institutions such as Banco Nación and BICE, most SOEs lacked governance arrangement that would have allowed them to depoliticise the decision-making process and promote transparency in procurement processes for example (...) Furthermore, several firms such as Tandanor (since 2011) and Aerolíneas Argentina (since 2012) had years without presenting audited accounts”.

The field of disclosure standards and practices is thus currently “work in progress” in Argentina. There are general financial and non-financial disclosure obligations for all SOEs and/or for SOEs operating in particular segments of the economy. As mentioned, all SOEs are required to submit monthly budget execution reports to the National Budget Office (ONP). The methodology used for this purpose was updated in 2017 by JGM in order to capture strategic and operational indicators that would allow the monitoring of management and not only budget (see Box 7).

Through the CML and related CNV regulations, listed enterprises and other market participants such as financial institutions are required to submit financial and non-financial information to the CNV – this covers YPF, BICE and BNA. Through this law, they are obliged to submit information on: 1) facts and/or decisions which can impact the value of company’s shares, 2) accounting, corporate governance and financial information, 3) change of ownership of more than 5% in the company's shares, 4) related party transactions, and 5) appointments of board members. In addition, CNV’s Corporate Governance Code (*Código de Gobierno Societario*) which follows a comply-or-explain basis, also contains dispositions on transparency.

Finally, public financial institutions such as the BNA or BICE are also required to comply with corporate governance requirements issued by the Central Bank of Argentina (BCRA). They must adopt a Corporate Governance Code based on BCRA’s “Guidelines on Corporate Governance of Financial Institutions”. In particular, they are encouraged to disclose the following information on their websites: 1) board, senior management and Committee’s composition, 2) ownership structure, 3) organisational structure, 4) incentive-based remuneration policy, 5) business conduct and code of ethics, 6) mission, and 7) policies related to conflicts of interest.

In terms of accounting standards, only listed SOEs are obliged to apply International Financial Reporting Standards (IFRS). State-owned financial institutions are due to start applying IFRS in 2018. It is currently not being considered to switch to IFRS for other SOEs (including large ones). The Law on Financial Administration and Control System of the National Public Sector (Law No. 24.156) provides that SOEs' reporting to state's budget must be conducted subject to accounting rules developed by the National Accounting Office (*Contaduría General de la Nación*). In practice, every SOE has the autonomy to define its own accounting system, as long as they follow government accounting standards. Furthermore, the JGM has reported that accounting standards do not differentiate from the private sector.

As of September 2017 and the entry into force of the new Freedom of Information Law (Law No. 27275), SOEs are required to publish information on their websites, in a clear and structured way (Box 13). However, as the law is relatively recent, there is currently no indication regarding the level of compliance of SOEs with these requirements.

Box 13. Disclosure requirements under Freedom of Information Law

The information to be provided by non-listed SOEs under Law No. 27275 includes (but is not restricted to):

- 1) An index of the information available and instructions on how to make formal requests for information;
- 2) Organisational structure and functions;
- 3) List of employees, including senior management and board members;
- 4) Salary scales;
- 5) Disaggregated budget;
- 6) Transfers received and/or sent by or to public and /private entities and individuals;
- 7) List of procurement processes, provision contracts and providers;
- 8) Legal acts or decisions that may benefit consumers or a particular segment of the population;
- 9) Board meetings;
- 10) External or internal audit reports;
- 11) Permits, authorisations and concessions granted to their owners/shareholders;
- 12) Services provided to the public including rules applicable to customer service;
- 13) Participatory mechanisms for the public;
- 14) Mechanisms to address complaints, and
- 15) Sworn declarations of assets from employees and/or senior management.

"1. A clear statement to the public of enterprise objectives and their fulfilment (for fully-owned SOEs this would include any mandate elaborated by the state ownership entity);"

Disclosure of enterprise objectives is currently mandatory only for listed and financial SOEs. In some cases, the information is published on their websites, while in others; it is submitted to regulatory authorities (CNV or BCRA) for its publication. CNV is empowered by law to request disclosure of any relevant information that may have been omitted by companies.

Companies that are not regulated by the CNV or BCRA show different practices. With some exceptions, most of them publish financial statements which in their view inform the public on their objectives and how they are met. It is rare for SOEs to develop performance reports which are published and disclosed to the general public. As shown by a recent study, although most SOEs carry out strategic plans, only one in seven publishes their objectives (CIPPEC, 2017).

"2. Enterprise financial and operating results, including where relevant the costs and funding arrangements pertaining to public policy objectives;"

SOE budget execution reports are prepared, and mostly disclosed to the public via ONP's website (see Box 7). As mentioned these reports do contain information on financial and operating results, however they do not include explicit reference to costs and funding arrangements pertaining to public policy objectives.⁵⁶

“3. The governance, ownership and voting structure of the enterprise, including the content of any corporate governance code or policy and implementation processes;”

SOEs operating in the financial sector and/or listed on the stock exchange are required to disclose information about ownership and voting structure, as well as on the content and implementation of their corporate governance code or policy. This information is available to the public on the CNV website. Failure to disclose may lead to proceedings against the shareholders and eventually result in fines or listing suspensions, amongst other things (IMF & World Bank, 2006_[58]).

The rest of SOEs usually do provide information about their control structure in their financial statements. They are generally owned by a single shareholder, with – in some cases - 10% or less of the shares belonging to employee representations/unions.

“4. The remuneration of board members and key executives;”

Providing information on salary scales and incentive-based remuneration is an important component of the CNV's Corporate Governance Code. Currently, only listed SOEs and BNA are required to disclose information on the remuneration levels of board members. Information on aggregate remuneration of board members is published on CNV's website.

The rest of SOEs does not publish information on board salary levels and remuneration policies. However, since September 2017 with the new Freedom of Information Law, all SOEs are required to publish salary scales on their websites.⁵⁷ Furthermore, SOE directors and managers are required to disclose their exact gross salaries to the Anti-Corruption Office, which may or not publish them. Such information can also be obtained by individuals through written requests.

“5. Board member qualifications, selection process, including board diversity policies, roles on other company boards and whether they are considered as independent by the SOE board;”

Only listed SOEs and financial public entities are required to disclose information relating to the composition of their boards. The information usually appears on company websites; however the scope of the information differs from a company to another. BNA for example publishes the name and pictures of each board member on its official website, while BICE and YPF publish names, pictures and full biographies of each member of the board. The rest of SOEs is not required, nor does publish such information on their respective websites – with the exception of AySA.

There is also no requirement to disclose information regarding the selection process for board members. For listed companies, the selection process for independent directors is however disclosed to the CNV after the election, providing all relevant data concerning the director.

“6. Any material foreseeable risk factors and measures taken to manage such risks;”

Listed and financial SOEs have developed risk management systems and are required – through CNV Resolution 516 – to disclose existing risk management policies, including internal control and information system policies on their official websites. Financial institutions, in particular, publish risk assessment following disclosure policies of Argentina’s Central Bank.

Non-listed SOEs are not required to provide information on material risk factors *per se* – they do however submit to SIGEN an annual audit plan which can be used for risk assessment purposes. The JGM and SIGEN are currently working on developing a Risk Assessment System for SOEs. Furthermore, following SIGEN’s resolution 37/2006, SOEs are required to establish audit committees whose responsibilities include monitoring the implementation of the company’s risk policy.

Since September 2017, all SOEs with the exception of listed enterprises already subject to CNV regulations, are required to publish auditing information, which could include risk assessments, on their websites.

“7. Any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE, including contractual commitments and liabilities arising from public-private partnerships;”

Fiscal transfers for operational costs are to be found in the company’s financial report and Audit Committee’s shareholders’ reports. However, SOEs are not required to disclose them to the public. Companies that publish their financial statements provide information on subsidies to the public (although it is not explicitly stated on the company’s website).

It is however worth mentioning that the *Carta de Jefatura de Gabinete* provides an income statement for all SOEs (2015/2016) as an annex, identifying main reforms and related financial indicators. The government expects to communicate results on SOE reform through the same methodology on an annual basis.

SOEs are also not required to publish information on public-private partnerships. Although the Congress passed a new PPP Law in 2016 and is committed to promoting private investments in different structure, and infrastructure in particular, SOEs have not been significantly engaged in PPPs so far. BICE, which is one of the few SOEs having engaged in PPPs, published information on its website in that respect.

Finally, information on SOEs which are exempt from the application of general laws or regulations is not disclosed to the public.

“8. Any material transactions with the state and other related entities;”

SOEs generally report transactions with related parties – and over a certain monetary threshold - to the audit committee, from which they need a prior opinion, but not to the public. For this they use the definitions provided by SIGEN (Box 14). After having been approved by the board, related-party transactions have to be communicated to SIGEN, indicating the existence and content of a statement by the internal audit committee or any other independent audit committee.

Box 14. SIGEN Resolution No. 37/2006, definition of “related parties”

SIGEN defines “related parties” as being:

- Directors, members of the company’s audit agency or supervisory board, as well as general managers appointed in accordance with article 270 of the CCL.
- Natural or legal persons that exercise control or own a significant holding, in the company’s capital or that of its parent company.
- Any other company under the common control of the same parent company
- Relatives in the ascending or descending line, siblings or spouse of any individual person mentioned in paragraphs 1) and 2).
- Companies in which individuals mentioned in par. 1) to 4) own direct or indirect significant holdings.

For public listed companies, the CML requires “the disclosure of policies applicable to the relationship of the Issuer with the economic group it heads and/or integrates and with its related parties” when performing acts or executing contracts involving a significant amount.⁵⁸

“9. Any relevant issues relating to employees and other stakeholders”

Only listed and financial SOEs are required to disclose information on issues related to employees and other stakeholders. Since September 2017, all SOEs have to publish information on management/employee relations, relations with creditors, suppliers and local communities, as well as on their environmental impact.

Some companies such as AySA or YPF have also developed social responsibility reports. YPF has developed a regional development programme as part of its CSR strategy, while AySA reports on its relationship with non-institutional stakeholders, its corporate governance structure and norms and actions to protect the environment.

6.2. External audit of financial statements

“SOEs’ annual financial statements should be subject to an independent external audit based on high-quality standards. Specific state control procedures do not substitute for an independent external audit”

Listed and financial SOEs must be audited annually by an independent external auditor. External auditors are usually selected based on independence and expertise. The CNV can review financial statements of listed companies and conduct on-site inspections in case of concern. It has also established auditor rotation requirements for auditors of the same companies and entities – requiring auditing partners and associates to rotate every seven years (CNV Resolution 663/16). The independence of external auditors is generally established as a criterion in the terms of contract. Large SOEs usually hire 'Big Four' companies to audit their accounts.

Unlisted SOEs are not required to have an annual external audit. They can, however, be audited by either an external auditing firm and/or by the AGN, the body in charge of

external control in Argentina which reports to the Parliament. AGN audits have been marred by delays and/or refusal to audit certain SOEs, which as a consequence, led certain SOEs to hire private external auditors. Both generally apply the same professional standards as for private companies.

Despite this framework, in practice SOE financial statements might not be audited annually (OECD, 2014^[42]). As mentioned in the 2017 *Carta de Jefatura de Gabinete*, several firms such as Tandanor (since 2011) and Aerolíneas Argentina (since 2012) "*had years without presenting audited accounts*".

In an interview with representatives from the industry, local auditors indicated that in the case of some SOEs they have simply refused to issue their opinion attesting to the fairness of presentation of the financial statements and related disclosures. They simply did not trust the numbers. This situation has reportedly changed since December 2015, according to JGM latest audit reports. For example, Aerolíneas Argentinas is reported as having made progress in closing the accounts and auditing its balance sheets for the past several years.

In terms of auditing standards, listed SOEs are subject to IFRS and financial institutions are required to adopt IFRS starting 2018. Non-listed SOEs are subject to public sector auditing standards which are defined in SIGEN Resolution 93/2013. In practice, they reportedly do not differ from the private sector.

6.3. Aggregate annual reporting on SOEs

"The ownership entity should develop consistent reporting on SOEs and publish annually an aggregate report on SOEs. Good practice calls for the use of web-based communications to facilitate access by the general public"

The Argentinian state does not produce aggregate annual reports on SOEs. However, some form of SOE reporting can be found in the consolidated state budget report which is prepared by the Ministry of Treasury and submitted to the Legislature on an annual basis, as well as in the *Carta de Jefatura de Gabinete* which addresses the financial and staff evolution of each SOE, corporate governance policies of SOEs, as well as steps for the incoming year.

Overall, financial and non-financial information on SOEs is fragmented and spread out over different institutions. Individual budget execution reports are for example published on a monthly basis on the National Budget Office's website, while information on listed SOEs can be found on CNV's website.

SIGEN and AGN also publish specific reports providing financial and non-financial information on SOEs. This includes Company Progress Reports (*Informes de Situación Empresaria*) on individual SOEs issued by SIGEN as well as ad-hoc reports on audited companies (such as Aerolíneas Argentinas which was audited in 2014).

7. The responsibilities of the boards of state-owned enterprises

The boards of SOEs should have the necessary authority, competencies and objectivity to carry out their functions of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions

7.1. Board mandate and responsibility for enterprise performance

“The boards of SOEs should be assigned a clear mandate and ultimate responsibility for the enterprise’s performance. The role of SOE boards should be clearly defined in legislation, preferably according to company law. The board should be fully accountable to the owners, act in the best interest of the enterprise and treat all shareholders equitably”

As explained when presenting the legal forms of SOEs in Argentina, not all SOEs have boards of directors. *Sociedades del Estado* can choose to have a President as the highest authority instead of having a board (Law 20.705), while *Empresas del Estado* are not formally required to have either. SOEs constituted as joint-stock companies are however, required to constitute a board of directors with a minimum number of three directors (as per article 299 of the CCL). Beyond this minimum limit, SOEs determine the specific size of their boards during shareholders’ meetings, within the limits expressed in their bylaws. Most SOEs have five members on average.

Generally, there are no requirements for non-executive or independent members in boards of SOEs generally. Independent board members account for less than 18% of all SOE directors in Argentina (see Annex 2). Both listed and non-listed companies have expressed finding it difficult to find independent directors in an already limited pool of directors.

Most SOEs in Argentina have a unitary board structure – with a few exceptions, such as ADIF which has established an executive committee comprised of the company’s CEO and senior management. Article 269 of the CCL also allows joint-stock companies to constitute an executive committee, consisting of directors exclusively responsible for the company’s management issues, effectively providing for a two-tier board structure in these companies.

Listed companies must have an audit committee (*Comisión Fiscalizadora*), as established in articles 284, 290 and 299 of Law No. 19,550. Additionally, Article 79 of Law No. 26.831, provides that the *Comisión Fiscalizadora* must consist entirely of independent *síndicos*. SOEs with significant capital are required to have at least one *síndico* and one alternate *síndico* (O’Farrell & Sammartino, 2009). Specifically for SOEs, SIGEN’s Resolution No. 37/06 also requires the establishment of an audit committee (*Comité de auditoría*) – different from the one required by Law 19.550 - including three or more board members and with a majority of independent members. However, as mentioned earlier, most SOEs do not have committees, as there is no sanction for SOEs not following with these rules.

As a general rule, SOE board members operate in communication with line ministries, which are, in most cases, the only or main shareholders of SOEs in Argentina. All SOEs’ strategic decisions are to be aligned with line ministries’ orientations and expectations. If

legally, there is no recognition of the notion of “shadow director” in company law, Argentina’s courts have acknowledged and applied this notion to cases where a *de facto* administrator acts explicitly on behalf of the company, making themselves legally responsible and the company accountable.⁵⁹

In all cases, board members in Argentina have a duty of loyalty and care to the company and its shareholders pursuant to the CML and CCL (or Law 13.653/55 in the case of *Empresas del Estado*, whereby top authorities have responsibilities deriving from their status of public officials). Joint and personal liabilities are legally established to this effect. Specifically, directors can be held personally or collectively liable to the company and its shareholders if they breach the law or cause damage to the company (article 274 of the CCL).⁶⁰ Exemptions from joint and personal liabilities can be granted when the director did not have knowledge of the action, voted against it or made his opposition to the decision known.⁶¹ In some cases, SOEs might include a liability insurance policy for directors and officers as part of the remuneration package for directors (CAF, 2017_[59]).

In addition to civil liability, criminal law also applies to board members. A new law establishing the criminal liability of legal entities for corruption was approved in November 2017 (Law 27.401). The law applies to all private legal entities – whether of national or foreign capital – with or without state participation, committed by high-ranking officials, employees and/or third-parties, for the following offenses: 1) national and transnational bribery and influence peddling; 2) negotiations incompatible with the performance of public duties; 3) solicitation of bribes; 4) illicit enrichment of public officials and employees, and 5) false balance sheets and reports. The company is responsible for acts performed by its employees on behalf of the company, but an adequate preventive system (or compliance programme) can help mitigate or even avoid responsibility under certain conditions (self-report and loss of benefits obtained).⁶²

7.2. Setting strategy and supervising management

“SOE boards should effectively carry out their functions of setting strategy and supervising management, based on broad mandates and objectives set by the government. They should have the power to appoint and remove the CEO. They should set executive remuneration levels that are in the long term interest of the enterprise”

With the exception of provisions in the CCL, there is no law or regulation defining the functions and responsibilities of the board, except for listed companies. They are generally established in each SOE’s statute.

SOE boards generally have the authority to effectively monitor and review corporate strategy. There is, however, a requirement for SOE boards’ decisions to be aligned with shareholders’ strategic expectations and policies. In some cases, decisions such as the budget and action plan of the company have to be initially approved by the line ministry, as reported by ADIF for example. In principle, the board appoints the CEO, but in practice it is unclear if the board is free to do so without consultation with government officials, and subject to what degree of influence.

Government intervention is thus mainly exercised through strategic orientation for SOEs. There is, however, no legal definition of “undue influence” or “political interference” in SOE boards.

7.3. Board composition and exercise of objective and independent judgment

“SOE board composition should allow the exercise of objective and independent judgment. All board members, including any public officials, should be nominated based on qualifications and have equivalent legal responsibilities”

Procedures for board nominations and elections are not uniform among Argentinian SOEs. Elections of board members in joint-stock companies are usually carried out by shareholders during the annual general meeting, unless the company’s articles state otherwise – whereas in other types of SOEs (such as *Empresas* and *Sociedades del Estado*), board members are directly appointed by line ministries. Nomination committees exist only in listed companies, so line ministries, in most cases, nominate candidates directly.

In some cases, such as for BNA, the President of Argentina appoints all board members, without consultation. In other cases, the President might act based on a proposal from line ministries (which is the case for Casa de Moneda for example, where the Ministry of Economy and Ministry of Defence submit a list of candidates).

Composition and structure of corporate boards are also highly heterogeneous. Generally, board members are elected based on their knowledge of the business/sector to manage but there are no formal criteria regarding board members qualifications or profiles, which might potentially make boards more prone to political interference. Article 310 of the CCL specifically allows public officials to serve on SOE boards. However, directors elected by the state often do not originate from the public sector, at least not under the current government (see Annex 2).

Most SOE boards have substitute directors, which are officially appointed by the shareholder’s annual meeting in case of incapability, resignation or dismissal of current board members. Although they may serve to guarantee that a given quorum is met for board meetings, the SOE Guidelines do not recommend their use as it does not contribute to the development of stronger boards.

7.4. Independent board members

“Independent board members, where applicable, should be free of any interests or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardise their exercise of objective judgment”

Except for listed companies,⁶³ there is no requirement to nominate independent or non-executive directors in SOEs. CML and related CNV regulations provide a definition of independence which excludes in the broadest sense, being either the controlling shareholder, a member of the controlling group or having (or having had within the last three years) a significant influence or any relationship to the controlling shareholders. “Significant influence” is defined as “holding the equivalent of 15% of capital” according to CNV regulations, and 20% according to other legal documents.⁶⁴

7.5. Mechanisms to prevent conflicts of interest

“Mechanisms should be implemented to avoid conflicts of interest preventing board members from objectively carrying out their board duties and to limit political interference in board processes”

As mentioned, public sector ethics laws and regulations include:⁶⁵

Law 25.188 which establishes obligations, prohibitions and incompatibilities to those who perform public duties, whether remunerated or not. Board members of SOEs are required to present full sworn declarations of assets within 30 days of resuming office. The Law also prohibits the performance of public duties to those who a) manage or lead a concession of public services, or b) are providers of the government, as long as in both situations the public duty is related to those activities.

Decree 41/99 (Ethics Code for the public sector), also applies to SOEs. It establishes principles of good conduct and sanctions in case of breaching the law.

Decree 202/2017 which states that every company and/or person that participates in public bidding processes (including SOEs) must present a sworn declaration of interests, in which he/she will have to declare potential conflicts of interests with the President and Vice-president, JGM, ministers and authorities with equivalent legal authority. Hypothesis of conflict of interests include: a) consanguinity relationship until the fourth grade, b) being shareholder of a company where public officials are also shareholders, c) existing legal process, d) debtor or creditor, e) having benefited from gifts/rewards of significant importance, f) well known (public) friendship.

In addition, most SOEs have developed specific codes of conduct as mechanisms to address potential conflict of interests within SOE boards and management.

7.6. Role and responsibilities of the Chair

“The Chair should assume responsibility for boardroom efficiency, and when necessary in co-ordination with other board members, act as the liaison for communications with the state ownership entity. Good practice calls for the Chair to be separate from the CEO”

The separation of the CEO and Chair positions is currently not addressed by law in Argentina, except for financial institutions of Group A (BCRA Communication A 5106).⁶⁶ The Argentinian CCL does define the different roles, responsibilities and authority of the board’s Chair and the general manager of the company, but it does not explicitly require a separation of the two positions. The CNV’s Code of Corporate Governance does however recommend the separation of functions between CEO and Chair.

It is a common practice for the CEO of an SOE to serve as Chair of the board at the same time. The two positions are often concentrated into the same person with a few exceptions such as in the case of BNA, AySA, FADEA, BICE, NASA, and Casa de Moneda. The appointment and removal of the CEO is generally made upon deliberation and vote within the board of directors.

7.7. Employee representation

“If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence”

Employee representation is mandated in some SOE boards such as that of Aerolíneas Argentinas and AySA. Both enterprises had schemes allowing for employee participation

to the share capital (usually around 10%) during their former privatisation, which were maintained after the state took these companies over. Through this scheme, employees have the power to appoint one director to the board (See Annex 2).

According to the JGM, employee representatives have the same rights and responsibilities as all other board members. These enterprises have also indicated that no training was provided to employee representatives to prepare them for their board duties.

7.8. Board committees

“SOE boards should consider setting up specialised committees, composed of independent and qualified members, to support the full board in performing its functions, particularly in respect to audit, risk management and remuneration. The establishment of specialised committees should improve boardroom efficiency and should not detract from the responsibility of the full board”

There are no legal requirements for the establishment of board committees, with the exception of audit committees, which under Argentinian law are mandatory for listed companies, banks, stock exchanges and certain SOEs.⁶⁷ SIGEN's Resolution 37/06 recommends SOEs the setting of an audit committee and CNV's Code recommends setting up compensation, nomination, corporate governance, and finance committees for listed companies.

Where SOE board committees exist, their mandates, compositions and working procedures are usually defined. Following the adoption of SIGEN's Resolution 37/2006, several Argentinian SOEs – but not all - have in practice set up Audit Committees whose functions include the supervision of internal and external audits and risk management policies amongst other things. SIGEN's Resolution 37/2006 also provides a definition of independence and determines the duties and responsibilities of the Audit Committee which, in the absence of a nomination or risk committee might also exercise their attributions. Furthermore, members of audit committees are also required to receive training in order to guarantee the governance of the company.

The absence of non-executives and independent members is an inevitable obstacle for many SOEs to comply with SIGEN's Resolution 37/2006 to the extent that it expects audit committees to be composed of at least two out of three members that should be independent. Moreover, as mentioned in section 4.5 of part A, board members are often not compensated separately for the work required by their membership to Committees.

Listed SOEs and those operating in the financial sector have the largest number of committees, with for example BICE presenting seven committees, namely: 1) Audit, 2) Credit and Operations, 3) Management, 4) Prevention of Money Laundering, 5) Risk Management, 6) Trust Funds and Infrastructure Projects, 7) Debt recovery.

7.9. Annual performance evaluation

“SOE boards should, under the Chair's oversight, carry out an annual, well-structured evaluation to appraise their performance and efficiency”

Only YPF (as a listed SOE) and financial SOEs are required to carry out board self-evaluations. In particular, CNV's consolidated regulations require boards to evaluate their own functioning on an annual basis and produce a written document to serve as a benchmark for the evaluation.

CNV's regulations also recommend the board to establish a training programme for its members in order to maintain and improve its efficiency. In practice however, compliance seems to be very low (as evidenced by information from the “comply or explain” approach). The board of BICE has for example stated that self-evaluations are based in a survey, which is shared with all board members with the purpose of assessing board members' performance on an individual basis.

There are currently no requirements to conduct annual performance evaluations for the board of other types of SOEs.⁶⁸ In the absence of formal requirements, very few SOEs have reported carrying out self-evaluations and it is not common that they engage in externally facilitated evaluations beyond the reports that SIGEN prepares for the state.

The only form of direct accountability to the owners is usually the risk of removal through the voting at the annual shareholders' meeting. Line ministries do not conduct evaluations of board performance in SOEs; however SOE board performance is generally subject to the shareholder's annual meeting's approval at the end of fiscal year. As the government's external auditor, the AGN can also conduct comprehensive assessments of SOE board members' performance.

7.10. Internal audit

“SOEs should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee or the equivalent corporate organ”

Pursuant to Decrees 971/93 and 2799/93, Argentinian SOEs are required to have their own internal auditing department known as *Unidades de Auditoria Interna* (UAIs), who report to the Chair of the board but are technically coordinated by SIGEN – the internal control body of the Executive Power, in charge of regulating and monitoring the activities of UAIs, amongst other things.

Within their competence, they ensure compliance with policies, plans and procedures in force, review and assess the application of operational, accounting, legal and financial controls, and produce reports on their activities, providing recommendations and/or observations. UAI members are required to have a degree in economics, law or any other field related to the task of their entities, as well as at least five years of professional experience or three years' experience in the auditing field. They conduct ex-post control over financial and administrative activities of the SOE, although they are allowed to act ex-ante as advisors.

Concretely, UAIs develop an annual audit plan which has to be approved by SIGEN. Consequently, SOEs have to report on the implementation of the plan. Furthermore, as mentioned, some SOEs are required to establish Audit committees which have to be comprised of three independent directors, a representative from the UAI and another from SIGEN. Audit Committees have a consultancy role and given the important number of actors audit committees act as important liaison with the different bodies and transmit information to shareholders.⁶⁹

Part C

Conclusions and recommendations

1. Overview

As a G20 member and second largest country in Latin America, Argentina is a major regional and global player. As the country comes out of a difficult economic period there is considerable growth potential that could see the country regain the prosperity it enjoyed once and become an engine of development in the region. The Argentinian SOE sector will not be centrally placed in this as it is not, by OECD standards, particularly large in size. It includes, nonetheless, some strategic assets and provides certain key public services that could play an important role.

Most of the findings of this report indicate that the Argentinian corporate framework is generally sound and in line with those of many OECD countries. Even though there are several legal forms under which SOEs could in principle be organised, some of which would bestow privileges that are not consistent with recommended practices, most of the 41 fully or majority owned SOEs covered in this report are organised as joint stock corporations. They are subject to an equivalent regime as privately-held companies and only one of them is listed. In consequence, streamlining the structure and legal framework of the SOE sector, which is an unresolved challenge in many jurisdictions, is a secondary concern in Argentina.

Level playing field issues, which are another prominent feature of reviews such as this one, also do not demand particular scrutiny in the case of Argentina as most state-owned enterprises operate as monopolistic providers of public services and do not face competition from the private sector. They may be important in key sectors of the economy such as energy, transport, finance and communication, which concentrate 70% of SOE employment, but even here they tend to be niche operators rather than broad-based service providers. At the same time, the legal and ownership structures put in place should obviously not prejudice any later decision to open some of these economic activities to competition.

Historically, the Argentinian state's involvement in the market has alternated between nationalisation and privatisation. The current government took office in 2015 and received a portfolio of SOEs that includes 10 SOEs that were added to the public sector between 2003 and 2015. Seven of these had been renationalised and three created, some to assume functions which were previously under private sector control. The poor performance of most of these companies at the time resulted in large operational deficits which had to be covered by the taxpayers.

The new administration has focused on putting an end to the fiscal haemorrhaging through a result-focused public and corporate management. Operating incomes have increased and costs reduced, in part thanks to the commodities cycle, but also reflecting efficiency gains and more market-consistent pricing of SOE services. Transfers from the Treasury that peaked at 1.5% of GDP in 2014, were halved in 2016 and reduced even further in 2017. These performance improvements have been steered by new SOE management teams, often hand-picked by the highest levels of government to turnaround the companies. Many of them are experienced executives coming from blue chip firms in

the private sector, which have accepted the challenge as a way to support the new administration.

These efforts have been orchestrated from the incipient coordination currently conducted from the central government administration, the Office of the Chief of the Ministerial Cabinet (JGM), amid a decentralised model of ownership where line ministries act as SOE shareholders. In this context, JGM has assumed a role as champion of SOE sector reform and created a Supervisory Council of SOEs, which is monitoring performance, refining strategy and lifting integrity of the largest companies via regular meetings with their top executives.

As mentioned, the new management teams and the support from JGM are already reaping benefits in the form of operational improvements. However, they are mostly the consequence of direct action by the state and individuals, whereas the focus of the SOE Guidelines is the creation of institutional frameworks for ownership and governance that can ensure that gains in performance are durable. In this light, the efforts already deployed by the Argentinian authorities should be seen as a the first step on a road that needs to be complemented with three additional pillars: 1) a well-established ownership model at the government level; 2) a robust board structure at the firm level, and 3) enhanced disclosure and transparency. These are all areas where the SOE Guidelines can help steer the Argentinian authorities' energies in order to ensure that the momentum of the rescue effort is extended towards the building of a new and more resilient ownership setting.

2. State ownership practices

Because Argentina's governments have held substantially different views on State ownership over time, it currently has no articulated rationale for state ownership – whether at the national or ministerial level – nor an ownership policy, and the government has not committed to develop one in the near future. Ongoing efforts to develop and subsequently deploy a comply-or-explain guide for good governance of SOEs (JGM's *Lineamientos* included in Annex 4) may be a step in the right direction, but in the absence of measures ensuring its continued and consistent implementation on a whole-of-government basis, it is unlikely to suffice.

JGM, via its "letters" and through its Council, is filling the void with ad-hoc operational guidance, but it has not yet articulated a strategy or institutions that could normally be expected to persist over the longer term. It is not the aim of this review to criticize the initiatives currently conducted by JGM, which are understandably driven by a need to balance the budget during a transitional phase, as well as to reinforce integrity and to fend-off bad practices within the sector. However, going forward, OECD recommendations and country experiences would strongly argue for institutionalisation and a defined framework of rules and procedures, rather than placing large amounts of trust in few people performing key roles.

In particular, Argentina would benefit from closer implementation of chapters I and II of the SOE Guidelines. The separation of roles, for example, may be an area where good practices witnessed in some Ministries could be extended to others. The coordination, policy choices and rules-setting recommended therein could ensure that the government's actions as owner are predictable and clearly articulated along national strategies, while also facilitating that the SOE sector can add value to society and can be held accountable before citizens. The risk of delaying decision-making over key definitions is that in the future there will be new challenges and probably increased expectations for the SOE sector, which may further complicate a later adoption. Gradual construction with solid bases and a clear blueprint for the final result, may be one way to move forward in parallel to the turnaround efforts.

3. Boards of directors

At the firm level, government ownership policies would also help build the second necessary pillar of more autonomous supervisory boards. Since a majority of relevant SOEs are joint-stock companies that are fully or majority-owned by the state, with minority participation mostly from other public agencies and/or SOEs, it is well within the powers of the government to improve board composition and board nominations rules. This would help broaden the current structures, dominated by executive managers and focused on operations, into a more strategic and value creating role to the boards of directors, as recommended by the SOE Guidelines. Separating the roles of CEO and Chairperson could facilitate this transformation. Where the recruitment of directors with strong track records from comparable companies is not feasible, board trainings and induction programmes may help to accelerate the process of forming stronger boards.

The autonomy and effectiveness of a board is essential to ensure good SOE governance, and good practices call for the state to ensure competency, enhance independence and improve functioning practices of boards. Board nomination criteria are an obvious choice to start, as having the right people is a critical component.

In some cases this would require increasing the size of the board and incorporating non-executives and independent directors, and to open the pool of candidates by increasing publicity and accountability of the nominations process. Addressing the limitations in board remuneration for loss making companies would also be the right direction to attract experienced candidates. Board diversity can contribute to independent thinking, autonomy from management as well as to ensure a greater attendance to sustainability issues and stakeholders' interests.

The use of committees, beyond audit, would also allow for the improvement of board performance. This has already been the experience of some of the most successful SOEs in the country.

Coordination of a whole of government nominations process or formal qualification criteria aligning line ministries around common practices could kick-start this transformation, but it would need to be supplemented by sound board evaluation

procedures to ensure real and durable progress. Shielding these strong and professional boards from the political cycle, to the extent deemed feasible in Argentina today, would also foster professionalism and a longer term view of the board.

4. Disclosure and transparency

To be successful, the introduction of the first two pillars should be accompanied by transparency and disclosure both at the state and the SOE level. The government should take advantage of all the information it is now obtaining through its enhanced monitoring of SOEs to develop and publish annual aggregated reports on the sector, taking transparency beyond mere budgeting issues. Making this information available through the website of JGM, where currently there is no reference to SOEs, would also be a step in the right direction.

At the firm level, there is no national disclosure strategy for Argentinian SOEs apart from the recent Access of Information Law. A few SOEs voluntarily disclose what they consider relevant, but this information is at times incomplete or outdated. Transition to IFRS for all relevant SOEs, currently envisaged but not decided, would be an important step towards increased transparency. So would annual reviews by independent external auditors, which not all economically important SOEs are currently expected to conduct. The SOE Guidelines recommend that this should be a standard practice, even if the SOEs are also audited by the AGN.

These three-pillar recommendations are obviously not easy to implement, but in the experience of the reviews previously conducted by the Working Party, Argentina is well placed to accomplish them, provided the necessary political will as well as adequate resourcing for the extensive technical work it will involve are available. Considering the ambitious reform agenda of the government more generally and its voiced commitment to adhering to the SOE Guidelines, there is scope for optimism.

Notes

1. Foreign exchange controls were in place since 2011.
2. These reforms include two recent decrees (no. 891/2017 and no. 27/2018) aimed at cutting red tape and review the current record of regulations in order to simplify the functioning of the public administration and eliminate bureaucratic obstacles considered to reduce the country's competitiveness to attract private investment.
3. In an attempt to bolster foreign investor's confidence, a bill to reform the existing Capital Market Law was introduced in 2016 which includes provisions on limiting government intervention in capital markets and reforming taxes. A new version of the bill (submitted in November 2017 and renamed "Productive Financing Law") was recently approved by the Chamber of Deputies and is expected to be voted beginning of 2018.
4. Argentina's principal share price index is Merval. Other indexes include Burcap, which is weighted by stock market capitalisation, and Merval 25 which reflects the price of the 25 most liquid shares. The Merval has outperformed most emerging market indexes in recent times, rising about 44% in 2016 and nearly 24% in 1Q17 (Sadler, 2017_[61]), but Argentinian stock valuations continue trading at relatively low levels compared to their MSCI emerging markets peers (Millan, 2017_[10]). Furthermore, despite the government recent market-friendly reforms, the influential MSCI equity index announced in June 2017 that Argentina will not ascend to an emerging market status for at least one more year. The country was downgraded to a frontier market status in February 2009 because of the capital flow restrictions in the Argentinian equity market.
5. This rule has raised concern for the avenues it opens for abuse by minority shareholders and also for government intervention considering that the Argentinian state is a minority shareholder in over 40 companies through its pension fund system. Section 20, which originally intended to protect minority shareholders by means of granting CNV broad sanctioning powers, has been questioned by many observers and has been deemed unconstitutional in two recent judicial precedents ("Ruling of the Chamber A, National Commercial Chamber of Appeals, August 12, 2013" and "Ruling of Chamber IV, National Administrative Chamber of Appeals, November 17, 2015").
6. It was subsequently re-submitted in revised form in 2017.
7. In practice, however, since the state covers the deficits of SOEs it is unlikely they could go bankrupt.
8. Although according to the Argentinian government actual remuneration levels are significantly lower than this threshold in practice. Information about actual remuneration levels for SOE directors was not made available for this review.
9. Decree 72 of January 2018, put an end to the involvement of Ministries in the appointment of *sindicos* at *Empresas* and *Sociedades del Estado*, which are to be appointed only by SIGEN. It also establishes that the designation and removal of the head or manager of internal audit is to be carried out by the head of SIGEN, rather than by the respective line Ministry.

10. Due to its very recent nature, *Lineamientos* are not discussed in this report beyond references made in footnotes where possible and a transcription of an English language translation that is included in Annex 4.
11. The *Lineamientos* are expected to support stronger enforcement by SIGEN and others on the compliance with Resolution 37/06. See Annex 4.
12. The Public Ethics Law was further complemented by Decree 1179 of 2016 which regulates the regime regarding the granting of gifts to public officials (article 18). They are forbidden from receiving gifts, donations or any other gratifications by reason of, or in the performance of their duties. The only exceptions being when such gifts are granted as a matter of courtesy or diplomatic custom, in which case they must be registered in the Registry of Gifts to Public Officials. All non-permissible gifts shall be incorporated to the state's assets (Marval, O'Farrell, & Mairal, Public Ethics Law, 2016). In addition, the Decree also regulates trips and travel expenses of public officials who are financed by third parties – the financing of which has to be registered in the Registry of Trips Financed by Third Parties, created by the Decree.
13. The Office is competent to receive and investigate complaints from individuals, which – if they result in alleged transgressions to administrative acts – can be transferred to the Ministry of Justice, Security and Human Rights for prosecution. In some cases, the Office can also act as the claimant and is authorized to provide evidence (López, 2002_[75]).
14. Defined in article 1 of the the Law as "all types of data contained in documents of any format" that the entities covered by the law "generate, obtain, transform, control or have in their custody".
15. The Law regulates these exceptions with the purpose of limiting their scope, requiring explanations from the state. In case of regulatory conflict or lack of regulation, the right of access to information should prevail. In some cases, if the document to be published contains information that has been classified as sensitive or secret previous to the request for public information, it is possible to strike it out.
16. Previous information presented to the Working Party cites data from SIGEN – which represented the Argentine government to the OECD until December 2015 - which lists 59 fully or majority owned SOEs. The main difference between the datasets relates to the treatment of companies under liquidation and statutory corporations mostly charged with public policy objectives.
17. The public sector currently employs around 771 000 people (La Nación, 2017). Not all of them are public officials. Historically, employment levels in the public sector were considerably higher before the privatisation process, with approximately 1 000 000 employees in the 1980s. Public employment in Argentina represents 18% of total employment, which is the third largest share in Latin America where the average is 12%.
18. "The fiscal balance deteriorated from almost zero in 2007 to a deficit of approximately 6% of GDP in 2015. Over that period, public expenditures rose from 28% of GDP to 40.5%, which is significantly above the average of Latin American economies and almost at the OECD average of 42.4%. This was largely accounted for by rising public wages, subsidies and social benefits." (OECD, 2017_[4]).
19. This data is calculated considering 26 of the most relevant economic groups (excluding financial enterprises such as BICE and Banco Nación, YPF and EANA). It is worth mentioning that Aerolíneas Argentinas – which was one of the most deficit-prone Argentinian SOE until recently – did not appear on the National Budget as it received its transfers directly from the budget of the Ministry of Transport. It will start appearing on the budget in 2018.

20. See JGM's website at <https://www.argentina.gob.ar/jefatura>.
21. The 31 SOEs correspond to those with the highest burden on the budget and economic relevance.
22. Total electricity subsidies have been reduced from 1.7% of GDP in 2016 to 0.8% in 2017. They are expected to further decrease down to 0.6% in 2018.
23. The government also plans to improve and speed up the passenger transport service, including by building a new mass transit system in Buenos Aires ("*Red de Expresos Regionales*") which would link all the main rail terminals of the city through 16 kilometres of tunnels with a central terminal (Ministerio de Hacienda y Finanzas Públicas,(n.d.)^[76]).
24. Banco Hipotecario S.A is a private-public bank and one of Argentina's premier mortgage lenders. Its equity consists of four classes of shares (class A, B, C and D) of which A, B, and C are state-owned and represent 64% of economic ownership and 46% of voting rights.
25. More concretely, the Ministry of Finance and Secretary of Financial Services adopt ad-hoc coordination mechanisms: i) monthly meetings with the President of BNA; ii) contribution to the design of the annual strategy of the BNA; iii) monthly meeting with the Finance team of BNA to assess performance and liquidity ratios; iv) monthly coordination meetings to address policy issues with main official banks: the Buenos Aires City Bank (*Banco de la Ciudad de Buenos Aires*), Buenos Aires Provincial Bank (*Banco de la Provincia de Buenos Aires*), and the BNA.
26. The concession contract, which was initially awarded to a consortium including French group Suez, was rescinded through Decree 303/2006 over claims that "*there were breaches relating to investments in expansion of services and problems with water quality, especially nitrate and water pressure levels.*" (Tortajada et al., 2016^[92])
27. Currently 84.4% of the population has access to water, and 58.4% to sewage systems (La Nación, 2017^[93]).
28. The company issued a 5-year bond in the international markets in January 2018 for USD 500 million.
29. EBISA is the SOE that markets the energy produced by the hydroelectric power station Yaciretá, built between the Province of Corrientes (Argentina) and the City of Ayolas (Paraguay).
30. Part of this is related to severe problems in the company's generation of financial reports and their audit going several years back, which the current management tries to fix.
31. Total transfers (current and capital) have decreased from USD 560 million in 2015 to USD 180 million in 2017.
32. CIPPEC's study is based on 17 SOEs exclusively active in the infrastructure sector.
33. The *Lineamientos* address diversity in boards announcing that as a shareholder the Argentinian government expect to see a greater participation of women in both hierarchical and non-hierarchical positions.
34. According to standard Working Party language, concessions and PPPs are normally not considered as "privatisation".
35. Some SOEs such as AySA, the national water company, even maintained their concession contract.

36. In January 2018 a government decree put an end to this practice and established that *síndicos* are to be appointed by SIGEN in both *Empresas* and *Sociedades del Estado*.
37. Since February 2018, SOEs are also accountable to the JGM on the implementation of the *Lineamientos* on good governance of SOEs.
38. Prohibitions and incompatibilities include having been sentenced for fraudulent bankruptcy, theft or any other similar offence.
39. The "*Lineamientos*" for SOEs recommend the establishment of committees, mainly of audit, and to improve diversity within SOEs. See Annex 4.
40. The *Lineamientos* adopted in February of 2018 introduced such expectations (see Annex 4).
41. Consists of regular meetings involving SIGEN, JGM and SOEs directors and managers – with the objective of raising awareness among key players and decision-makers on transparency and integrity issues.
42. The *Lineamientos* include a section dedicated to transparency in SOEs. The most relevant provisions recommend SOEs to develop and publish information related to: 1) their performance through an annual performance report, 2) their corporate governance structure, including profiles of board members and statements on potential conflicts of interests, 3) the organization of the institutional structure, 4) full bidding and procurement processes, 5) vacancies, including job descriptions.
43. Similar dispositions exist for listed companies according to CNV regulations.
44. The *Lineamientos* for SOEs mention the importance of the different roles of the state, as a policy formulator, regulator and service provider (see Annex 4).
Sociedades del Estado may also issue administrative acts and regulations despite the apparent explicit prohibition made by Law 20.705, as expressed by Decree 3700/77 (Gordillo, 2011[73]).
46. JGM's *Lineamientos* address these issues asking for separate accounting and disclosure (see Annex 4).
47. The evaluation method specifies the cost of service delivery (and the subsidy necessary to cover for that gap) in companies with public service obligations.
48. TANDANOR and FADEA have reported having received instructions from their line ministry on capital structure.
49. SIGEN's role includes controlling the prices in purchases and contracts negotiated by ministries, secretariats and decentralised agencies, but not by SOEs. If SOEs want to use SIGEN's services they have to pay and can have access to a "benchmark price" (*precio testigo*) system maintained by SIGEN to ensure efficient use of allocated resources.
50. The new regulation also includes some relevant modification to its predecessor – such as the requirement for the Federal Administration of Public Revenue (*Administración Federal de Ingresos Públicos* - AFIP) to provide information on tax breaches to the National Procurement Office (which is the governing entity for the General Regime for Public Procurement and its regulation) and establishes this latter as the body responsible of putting the electronic procurement into practice. The decree also "provides that legal persons that have received a final sentence from a foreign court for committing foreign bribery under the Convention would be debarred for "twice the conviction. Article 68(i) provides that natural and legal persons who are debarred by the World Bank or Inter-

- American Development Bank for engaging in foreign bribery would also be debarred in Argentina simultaneously” (OECD(c), 2017).
51. Since 2005, Argentina provides online access to free information on procurement opportunities through the National Office of Procurement (*Oficina Nacional de Contrataciones – ONC*) portal – *Compra Argentina* (www.argentinacompra.gov.ar). The website “publishes the regulatory framework, institutional information about the ONC, relevant statistics and allows the search by type of requirements procured, by procurement unit, by goods and services needed and publishes supplier information.” (OECD, 2015^[78]) The portal can be used by all government entities including state-owned companies and other authorities such as provinces and cities.
 52. Those include copies of the company’s balance sheet, income statement, statement of changes in shareholder’s equity, and any other complementary information and/or annexed tables. Where applicable, the information to be provided will also include copies of reports from the board of directors, management and/or *síndicos*.
 53. Additionally, there is also a Voluntary Code of Best Practices for Corporate Governance (issued by IAGO in 2003) which is applicable to both public and non-public companies.
 54. Argentina is a signatory to the Inter-American Convention Against Corruption since 1997, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions since 2000, and the UN Convention Against Corruption since 2006.
 55. The ACO can also refer a case before a competent court, and has different channels for reporting including a web channel (web27), special phone lines, e-mail, mailbox and personal assistance by specialists. Despite the lack of recent data on the number of corruption complaints – the ACO remains an important actor in this field. It is through this institution that important corruption cases such as the Skanska scandal in 2005, involving alleged bribes in public work contracts for the expansion of gas pipelines, were discovered (Chevarría and Silvestre, 2013^[57]).
 56. JGM’s “*Lineamientos*” address these issues recommending to separate accounting and reporting, which could lead to an improvement of practices (see Annex 4).
 57. This obligation only concerns top executives from 100% state-owned companies. Senior officials from companies that are only partly financed by the state are required to disclose their salaries only if they are paid by the state.
 58. As per Section 72 of the CML: “A significant amount shall be deemed involved in an act or contract when such amount exceeds 1% of the company’s shareholder’s equity as shown in the most recently approved balance sheet.”
 59. Argentinian jurisprudence and doctrine have recognised the non-contractual liability of shadow directors (*administradores de hecho*) in two cases: 1) “Frigorífico Setti S.A.C.I.A” of 1968, which adopted the “theory of appearance” with regard to corporate representation, and 2) “Riment S.A” of 2010, in which the Court of Appeals on Economic Criminal Matters established that “directors’ capacity mentioned in the [Criminal Tax] Law is not limited to those who have been formally invested with such capacity, but is also applicable to those who administrate third-party businesses” (CNV, 2018^[100]).
 60. Shareholders’ general meetings are entitled to bring action for civil liability against any officer for the losses caused to the company. If the shareholders’ general meeting fails to institute proceedings, shareholders with at least 5% of the capital are entitled to do so.

61. Furthermore, pursuant to Decree 677/2011, companies authorized to make a public offering of their shares may purchase civil liability insurance for their directors, for risks corresponding to the exercise of their functions, unless otherwise provided by the company bylaws.
62. The new legislation will bring major changes to the way businesses operate and combat corruption in the country. Argentina was one of the few parties to the OECD's Anti-Bribery Convention that did not sanction firms for corruption, as only individuals could be held accountable for such crimes. It is expected that this new system will improve corporate governance and general business environment in Argentina by creating a more transparent and ethic corporate culture (Basch & Jorge, 2016).
63. CNV requires a "sufficient" number of independent directors on the board (Decree 677, Section 15) as well as the establishment of an audit committee to provide independent assistance to the board of directors for companies making public offerings of their shares (CML, Section 109).
64. The *Lineamientos* recommend SOEs to include independent members in their boards, and to establish qualification criteria for board members and senior managers.
65. The *Lineamientos* include a section on integrity policies, which recommends SOEs to establish effective mechanisms to prevent the occurrence of conflicts of interest involving top management of SOEs.
66. Financial institutions with deposits higher or equal to 1% of total deposits of the financial system.
67. Pursuant to Section 109 of CML, audit committees must be composed of a majority of independent directors.
68. Beyond the company's choice for its institutional design, the *Lineamientos* recommend that it implements a performance evaluation assessment that is "unbiased, based on measurable goals, and linked to the company's strategic plan" (Annex 4).
69. The *Lineamientos* recommend SOEs to hire external auditors following an open and competitive process, in order to audit both the financial accounts and performance of the company.

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Annex 1: List of all state-owned enterprises within the scope of this review

#	Enterprise	Category of enterprise	Ministry	Sector	Supervision
1	Emprendimientos Energéticos Binacionales S.A. (EBISA)	Majority own unlisted	Energy and Mining	Electricity and gas	Out of scope
2	Nucleoeléctrica Argentina S.A.	Majority own unlisted	Energy and Mining	Electricity and gas	JGM
3	Yacimiento Carbonífero Río Turbio (YCRT)	Statutory corporation/quasi-corporation	Energy and Mining	Primary sectors	JGM
4	Dioxitek S.A.	Majority own unlisted	Energy and Mining	Electricity and gas	JGM
5	Energía Argentina S.A (ENARSA)	Majority own unlisted	Energy and Mining	Electricity and gas	JGM
6	YPF S.A.	Majority own listed	Energy and Mining	Primary sectors	Out of scope
7	Aerolíneas Argentinas S.A.	Majority own unlisted	Transport	Transportation	JGM
8	Intercargo S.A.C.	Majority own unlisted	Transport	Transportation	JGM
9	Administración General de Puertos S.E. - AGP S.E.	Majority own unlisted	Transport	Transportation	JGM
10	Empresa Argentina de Navegación Aérea S.E. (EANA)	Majority own unlisted	Transport	Transportation	JGM
11	Operadora Ferroviaria S.E	Majority own unlisted	Transport	Transportation	JGM
12	Administradora de Recursos Humanos Ferroviarios S.A.P.E.M.	Majority own unlisted	Transport	Transportation	JGM
13	Administración de Infraestructuras Ferroviarias S.E.	Majority own unlisted	Transport	Transportation	JGM
14	Belgrano Cargas y Logística S.A.	Majority own unlisted	Transport	Transportation	JGM
15	Ferrocarril General Belgrano S.A.	Majority own unlisted	Transport	Transportation	Out of scope
16	Dirección General de Fabricaciones Militares	Statutory corporation/quasi-corporation	Defence	Manufacturing	JGM
17	Fábrica Argentina de Aviones "Brig. San Martín" S.A. (FADEA)	Majority own unlisted	Defence	Manufacturing	JGM
18	Const.Viviendas para la Armada (COVIARA E.E.)	Majority own unlisted	Defence	Real estate	JGM

19	Talleres Navales Darsena Norte S.A.C.I y N. (TANDANOR)	Majority own unlisted	Defence	Manufacturing	JGM
20	Corp. Interestadual Pulmarí	Majority own unlisted	Defence	Other activities	Out of scope
21	Radio y TV Argentina SE	Majority own unlisted	Federal System of Public Media and Content	Telecoms	JGM
22	TELAM SE	Majority own unlisted	Federal System of Public Media and Content	Telecoms	JGM
23	Vehículo Espacial Nueva Generación S.A. (VENG SA)	Majority own unlisted	Science and Technology	Other activities	JGM
24	Correo Oficial de la República Argentina S.A.	Majority own unlisted	Modernization	Other utilities	JGM
25	Empresa Argentina de Soluciones Satelitales S.A. (AR-SAT SA)	Majority own unlisted	Modernization	Telecoms	JGM
26	LT10 Radio Universidad Nacional del Litoral S.A.	Majority own unlisted	Education	Telecoms	JGM
27	Servicio de Radio y Televisión de la Universidad Nacional de Córdoba S.A.	Majority own unlisted	Education	Telecoms	JGM
28	EDUCAR S.E.	Majority own unlisted	Education	Other activities	JGM
29	Polo Tecnológico Constituyentes S.A.	Majority own unlisted	Education	Primary sectors	Out of scope
30	Editorial Universitaria de Buenos Aires Soc.Economía Mixta - EUDEBA	Majority own unlisted	Education	Other activities	Out of scope
31	Emprendimiento Productivo y Educativo La Gleba SA - LA GLEBA	Majority own unlisted	Education	Other activities	Out of scope
32	Agua y Saneamientos Argentinos S.A. (AYSA)	Majority own unlisted	Interior, Public Works and Housing	Other utilities	JGM
33	Corporación Antiguo Puerto Madero S.A.	Majority own unlisted	Chief of the Cabinet of Ministers	Real estate	JGM
34	Banco de Inversión y Comercio Exterior S.A. - BICE	Majority own unlisted	Production	Finance	JGM
35	Mercado Central	Statutory corporation/quasi-corporation	Production	Other activities	JGM
36	Lotería Nacional S.E	Majority own unlisted	Social Development	Other activities	JGM
37	Innovaciones Tecnológicas Agropecuarias S.A. (INTeA SA)	Majority own unlisted	Agriculture	Primary sectors	Out of scope
38	Banco de la Nación Argentina	Statutory corporation/quasi-corporation	Finance	Finance	JGM
39	Playas Ferroviarias de Buenos Aires S.A.	Majority own unlisted	Management Agency for State Assets	Real estate	Out of scope
40	Casa de la Moneda S.E	Majority own unlisted	Finance	Manufacturing	JGM
41	Contenidos Públicos S.E.	Majority own unlisted	Federal System of Public Media and Content	Telecoms	JGM

Source: Questionnaire response submitted by the national Argentinian authorities.

Annex 2: Origin and composition of SOE boards

Enterprise						Total
	Private origin	Public origin	Union representation	Considered independent	N/D	
Administración General de Puertos S.E - AGP S.E		No board of directors		n/a		0
Aerolíneas Argentinas S.A	4			1		4
Agua y Saneamiento S.A (AySA)	3	1	1	4		5
Banco de Inversión y Comercio Exterior S.A (BICE)	4	2				6
Banco de la Nación Argentina	6	2				8
Belgrano Cargas y Logística S.A	1				5	6
Casa de la Moneda S.E	3			1		3
Const. Viviendas para la Armada (COVIARA E.E)		2		1	3	5
Contenidos Públicos S.E	1	2				3
Corporación Interestadual Pulmari		3		1	3	6
Corporación Antiguo Puerto Madero S.A	3	2			1	6
Dioxitek S.A		2			3	5
Dirección General de Fabricaciones Militares		No board of directors		n/a		0
EDUCAR S.E	3	7		1		11
Emprendimientos Energéticos Binacionales S.A (EBISA)	2	1				3
Empresa Argentina de Navegación Aérea S.E (EANA)	1	2				3
Empresa Argentina de Soluciones Satelitales S.A (AR-SAT)	2	3				5
Energía Argentina S.A (ENARSA)	4	1		3	1	6
Fábrica Argentina de Aviones "Brig. San Martín" S.A (FADEA)	2	1		5	2	5
Operadora Ferroviaria S.E	3					3
Innovaciones Tecnológicas Agropecuarias S.A (INTeA)	6	1		1		7
Intercargo S.A.C	1	1		3	1	3

Lotería Nacional S.E		3				3
Mercado Central	2	1				3
Nucleoeléctrica Argentina S.A	2	2			1	5
Playas Ferroviarias de Buenos Aires		3				3
Polo Tecnológico Constituyentes S.A		9				9
Radio y TV Argentina S.E	1	3	1	1	2	7
Servicio de Radio y Tele. de la Univ. Nacional de Córdoba S.A	2		1	1		3
Talleres Navales Dársena Norte S.A.C.y.N (TANDANOR)	2			1	2	4
Telam S.E	2	1		1		3
Vehículo Espacial Nueva Generación S.A (VENG)				1	1	1
Yacimientos Carboníferos Río Turbio (YCRT)		No board of directors		n/a		0
YPF S.A.	8	6			1	15
Administración de Infraestructuras Ferroviarias S.E	1				2	3
Administradora de Recursos Humanos Ferroviarias S.A.P.E.M		2			2	4
Correo Argentino S.A	3	1				4
Total	72	64	3	26	31	170

Note: Private: director worked in the private sector, right before appointment to the board. Public: director worked for the public sector, right before appointment to the board.

Independent: based on definitions provided by each enterprise when responding to the OECD survey and desk reviews. n/a: not applicable. N/D: no data available.

Source: JGM, 2017.

Annex 3: Gender diversity in SOE boards

Enterprise	Men	Women	Total	% of Women
Administración General de Puertos S.E - AGP S.E	No board of directors			
Aerolíneas Argentinas S.A	4		4	0
Agua y Saneamiento S.A (AySA)	4	1	5	20
Banco de Inversión y Comercio Exterior S.A (BICE)	6		6	0
Banco de la Nación Argentina	6	2	8	25
Belgrano Cargas y Logística S.A	6		6	0
Casa de la Moneda S.E	3		3	0
Const. Viviendas para la Armada (COVIARA E.E)	3	2	5	40
Contenidos Públicos S.E	2	1	3	33.3
Corporación Interestadual Pulmari	5	1	6	16.7
Corporación Antiguo Puerto Madero S.A	5	1	6	16.7
Dioxitek S.A	5		5	0
Dirección General de Fabricaciones Militares	No board of directors			
EDUCAR S.E	9	2	11	18.2
Emprendimientos Energéticos Binacionales S.A (EBISA)	2	1	3	33.3
Empresa Argentina de Navegación Aérea S.E (EANA)	3		3	0
Empresa Argentina de Soluciones Satelitales S.A (AR-SAT)	5		5	0
Energía Argentina S.A (ENARSA)	5	1	6	16.7
Fábrica Argentina de Aviones "Brig. San Martín" S.A (FADEA)	5		5	0
Operadora Ferroviaria S.E	3		3	0
Innovaciones Tecnológicas Agropecuarias S.A. (INTeA)	7		7	0
Intercargo S.A.C	3		3	0
Lotería Nacional S.E	2	1	3	33.3
Mercado Central	3		3	0
Nucleoeléctrica Argentina S.A.	5		5	0
Playas Ferroviarias de Buenos Aires	3		3	0
Polo Tecnológico Constituyentes S.A	9		9	0
Radio y TV Argentina S.E	6	1	7	14.3
Servicio de Radio y Tele. de la Univ. Nacional de Córdoba S.A.	2	1	3	33.3
Talleres Navales Dársena Norte S.A.C.y.N (TANDANOR)	3	1	4	25
Telam S.E	3		3	0
Vehículo Espacial Nueva Generación S.A (VENG)	1		1	0
Yacimientos Carboníferos Río Turbio (YCRT)	No board of directors			
YPF S.A.	14	1	15	6.7
Administración de Infraestructuras Ferroviarias S.E	3		3	0
Administradora de Recursos Humanos Ferroviarios S.A.P.E.M	4		4	0
Correo Argentino S.A	4		4	0
Total	153	17	170	10.00%

Source: JGM, 2017.

Annex 4: Guidelines ("Lineamientos") on the Good Governance of SOEs

Note: This document was adopted by the the Office of the Chief of Cabinet of Ministers (JGM) through an administrative decision (a decree applied to the competences of the JGM) on 9 February 2018 and entered into force that same day.

Introduction

What are the Guidelines and why are they relevant?

The Guidelines on the Good Governance of State-Owned Enterprises (SOEs) constitute a set of good practices and recommendations directed at those enterprises where the State is a majority shareholder. Its objective is to communicate SOEs the State's expectations regarding how they should organize and function.

The good management and governance of SOEs is a priority for the national government. In effect, the President Macri included the good management of government corporations among his policy priorities. Initiative 82 of the Government Program establishes: *"82. Improving the Management of SOEs. The Argentine government controls 41 companies, with variable levels of professionalism and governance standards. In order to help them generate value, we are implementing a set of initiatives to improve their performance, both in terms of the quality of the services they provide and in terms of the effectiveness and transparency with which they operate. In addition, we are implementing best international practices according to OECD standards"*.

Since December 2015, we have carried out an ambitious program to improve the performance of state-owned companies. The program, led by the Cabinet of Minister's Office, and jointly with the Anticorruption Office and the Internal Control Agency, has advanced in different lines of action. For example, we have improved significantly the performance monitoring of SOEs, progress has been made in the preparation of strategic plans, and good practices of transparency, management, and corporate governance have been mainstreamed across companies.

Argentina has been admitted as a member to the Corporate Governance Committee of the Organization for Economic Cooperation and Development (OECD), an organization that today leads the conceptualization of best corporate governance practices in government corporations. The corporate governance of SOEs of Argentina is being currently assessed by the OECD.

We are convinced that these Guidelines are the right path for companies towards better management and governance standards, which will ultimately result in better services for citizens and a more efficient use of public resources.

What is the legal nature of the Guidelines?

The State through the Guidelines communicates SOEs what he expects as a shareholder from them in terms of governance and management practices. In order to implement the Guidelines, SOEs have freedom to choose the institutional design that they consider most appropriate to their needs and contexts.

The Guidelines do not replace legal competences established in legal instruments applicable to SOEs. Accordingly, government agencies with competencies over state majority companies maintain their existing responsibilities and functions. We expect government agencies to consider them as the main conceptual framework on the governance of state enterprises.

What are the Guidelines' Components?

The first section of this document describes six (6) Principles of Good Governance. The Principles are the foundations under which the Guidelines are structured. In the event of a conflict of interpretation between the Guidelines' components themselves and between them and the principles, the latter will prevail. Principles include Efficiency, Transparency, Integrity, Value Generation, Listed Company Standard and Differentiated Roles of the State.

The second section establishes seven (7) Good Governance Components. The Guidelines contain different aspects that the national State as a shareholder understands are linked to the good governance and management of companies. On the one hand, they establish good practices for the organization and functioning of the Boards and senior managers of the companies, including performance evaluation practices, transparency and integrity. On the other, they contain components related to specific policies of audit and control, economic performance, procurement and supply and sustainability.

Each component contains five (5) main applications. These applications allow the reader to visualize the practical implementation of the Guidelines, which will facilitate the design of specific policies by companies. For example, the Transparency component highlights the relevance of developing and publishing information related to the performance of companies. It recommends that companies publish an annual report by the end of the fiscal year, informing on how they fulfilled the objectives and actions of the strategic plan. It also recommends the publication, on the website of companies, of information related to the conformation, responsibilities and professional background of the members of the Board of Directors and lead managers.

How will we Evaluate Compliance with the Guidelines by SOEs?

We will develop different tools aimed at overseeing the implementation of the Guidelines by SOEs. In particular, we will ask companies about their governance and how they follow the recommendations defined in the Guidelines. In the event that the company does not comply with any of the components, we will invite the Board to justify why it is not doing so and to state what alternative measures are in place to meet the Guidelines' recommendations.

We hope that, through dialogue, teamwork, and the articulation of efforts among the different actors, companies will reach governance standards identified with international best practices.

Principles of Good Governance

The following principles of good governance constitute the conceptual basis of the guidelines and the main criteria for implementation. They are values referred to the governance and management of government enterprises. The Guidelines are implemented taking into consideration their consistency and harmony with the principles defined in this page.

Efficiency: The State as a shareholder promotes the efficient use of its own resources and of those it receives from the Treasury and / or the line Ministry. Efficiency means maximizing every peso used for current expenses with the objective of producing better goods and services at a cost consistent with market values. In cases the company is subject to social obligations or aligned with public policies, the origin and amount of the financing of such obligations needs to be quantified and reported explicitly by the company.

Transparency: The State promotes the active role of companies in the publication of financial and non-financial information linked to their performance. Transparency has positive direct effects both on improving management, for example, by opening procurement processes to more suppliers, and on accountability of public resources. We expect our companies to adhere to best international transparency practices.

Integrity: The State as a shareholder promotes the adoption and compliance by companies of policies aimed at preventing and punishing fraud. It is our desire as a shareholder that SOEs become an example of integrity in the use of their resources. For such purposes, it is not only important to comply

with national regulations and directives on anticorruption but also to develop processes and policies aimed at guaranteeing the transparent and integral management of resources.

Generation of Value: The State as a shareholder promotes the maximization of the impact that SOEs have on the economy. Companies must promote the generation of value (social and economic) throughout the entire business chain, always considering the principles of transparency and efficiency of resources. We encourage companies to develop value proposals for clients and stakeholders.

Standard of a listed company: The State expects companies to adopt corporate governance standards aligned with those of companies listed in the stock exchange market. The adoption of these standards should be a constant concern for companies and require sustained efforts over time.

Differentiated roles: The State not only fulfills the role of shareholder or owner of the companies, but can also develop activities as a formulator of public policies and as a regulator of the quality of the services provided by his companies. We expect line ministers to perform these different roles, maintaining their independence.

Component 1: Transparency

State-Owned Enterprises must maintain high standards of transparency and access to their information, according to good practices and requirements established in the legislation. We recommend the publication on the website of the company of financial and non-financial information linked to the performance of its activity. Companies should be especially diligent in the publication and provision of information, indicators of execution of their resources, impact on the provision of their services, financial performance, and organization of their governance.

1. Relevance of Developing and Publishing Information linked to the Performance of Companies:

It is extremely important for companies to publish information on how they manage their resources and meet the objectives established in their strategic plans. For this purpose, it would be desirable that companies publish their strategic objectives at the beginning of the fiscal year and an annual report during the first quarter of the next year. The annual report should allow the company to report on how achieved its established annual targets.

The annual report should not exceed 20 main pages and contain information that is measurable and that allows to evaluate the fulfillment of objectives and goals. It should also have a writing that is clear and understandable by society.

Performance information of companies varies by sector and, therefore, we expect companies to comply with quality, strategic and operational indicators of the sector of the economy in which they operate. In no case should the publication of performance information affect the situation of companies in relation to their competitors.

2. Relevance of Publishing the Organization of the Governance of the company and its Policies:

We recommend companies to share their organizational and decision-making structure with society and relevant stakeholders. This practice should be translated into the publication on the company's website of the composition, responsibilities and background of the Board members as well as managers and / or directors with executive responsibilities. This obligation is also reflected in the publication of policies such as transparency, integrity, procurement and supply. It would be equally desirable for the company to publish on its web page the organizational chart of the company, with definition of functions, hierarchies and names of directors, managers and / or heads of each area.

The publication of such information should be provided in a clear and complete way and be useful for society in general and the actors linked to the operation of the company in particular. For example, the description of the background of the members of the Board should be brief and describe those functions

and / or specialties that motivated their hiring. Policies should be easily downloaded from the website by citizens and / or specific actors.

3. Relevance of Complying with the Access to Information Law:

SOEs are subject to Law 27.275 on Access to Information, which obliges them to establish the necessary infrastructure to comply with active and passive obligations of transparency. We expect companies to meet transparency criteria established in the law and to work closely with the Agency to Information Agency to advance the transparency agenda.

4. Relevance of publishing the processes and results of procurement practices

The Argentine State promotes transparency in the acquisition of good and services. We recommend the implementation of procurement web portals that allow the open and effective participation of suppliers and the information by society of suppliers' participants, their antecedents, and procurement decisions.

5. Relevance of publishing the call for human resources vacancies

We want companies to have the best human resources. We recommend that in the event of a vacancy companies publish the desired candidate profile as well as their responsibilities and activities. SOEs should use their websites to publish vacancies and the announcement should be advertised in a visible and clear manner.

Component 2: Integrity

Integrity in state owned or majority owned companies demands that the interest of the organization prevail over sectoral or private interests. Corporate integrity improves the financial and non-financial performance of companies, in addition to providing transparency to the use of public resources. To achieve a complete business ecosystem, the adoption of specific mechanisms and policies that promote high standards of ethical conduct and prevent corruption is recommended. These should be articulated in an integrity program within the organizational structure of each company, which has the full commitment and support of top management. It is equally important that companies coordinate their integrity efforts with the control and anticorruption agencies of the national public sector.

1. Relevance of developing a cross-sector integrity program applicable to all the activities and members of the company

We expect SOEs to implement an integrity program that articulates actions aimed at identifying, preventing, and correcting corruptive practices. It is suggested that the Board approves the program, including, among others, the following components: a) identification of an internal compliance officer b) strategic implementation c) prevention of conflicts of interest d) transparency in procurement practices e) risk analysis f) training g) hot lines h) whistleblower protection systems and i) monitoring and evaluation procedures.

SOEs are explicitly included in the recently enacted Corporate Liability Act 27.401, which requires the implementation of integrity programs.

2. Relevance of specific compliance areas within the company:

We recommend the establishment of specific instances of compliance within the company. It is highly advisable to appoint an internal compliance official of equivalent hierarchy to manager and with expertise and professional experience in the matter. In addition, the unit in charge of the implementation and evaluation of the Integrity Program must have sufficient budgetary resources and an adequate level of autonomy and independence with respect to management. It is also relevant that the internal manager is the repository of the confidence and support of the Board.

3. Relevance of promoting a culture of integrity within the company

It is key for the success of integrity programs to promote a culture of ethics and transparency from the top management of the company. It contributes to the effective implementation and credibility of the program. Both the Board and senior management must comply with the ethical conduct expected for all members of the company, as well as express their explicit and unequivocal commitment to the program.

Communication campaigns and continuous employee training are fundamental in order to promote awareness and commitment to the program. It is desirable that such activities place special emphasis on areas that are more sensitive to fraud and corruption, that raise ethical dilemmas and that extend to suppliers, investors and other related third parties.

4. Relevance of having a complaint system

Complaint systems, in particular when they allow anonymous reporting, are the most reliable mechanisms to detect irregular behavior patterns as a first step for their determination and subsequent remediation. It is recommended that companies have multiple independent and effective channels (via web, email, telephone line) and that they are accessible to all employees, as well as to third parties and related parties. When the complaint is directed against the Board or senior management, it is recommendable the intervention of a third party such as the Anticorruption Agency. The OA has developed a Whistleblower Guide available on its institutional website (<https://www.argentina.gob.ar/anticorrupcion>) and receives complaints from citizens in person, by phone 0800-444-4462, or from of the web complaint form available at <http://denuncias.anticorrupcion.gob.ar/>.

5. Relevance of coordination with control authorities

Continuous coordination and the establishment of dialogue channels with government agencies specialized in transparency are an effective way of preventing the occurrence of corruption. Such agencies include the Anticorruption Office, the SIGEN, and the Access to Information Law Agency.

Among them, the Anticorruption Office is the competent body for the promotion of integrity policies within government. The AO can be reached by phone at 5167-6400 or by email at anticorrupcion@jus.gob.ar.

Component 3: Sustainability

Sustainability initiatives and policies are of significant importance in social and institutional terms for both private sector companies and companies with majority state participation. These have evolved, among other aspects, in terms of inclusive policies, greater transparency, protection of the environment and promotion of diversity. The State as a shareholder of its companies expects them to adhere to internationally recognized sustainable practices that at the same time reflect their particular circumstances, both sectoral and state-owned companies.

1. Relevance of integrating sustainability to companies' businesses

A sustainability policy approved by the Board of Directors of the company is the document by means of which the company will be assessed in terms of her compliance with social, governance and environmental standards. Even though the Guidelines give companies the freedom to choose the institutional design that best suits their needs, we expect company's sustainability policies to define at least a) the corporate profile of the company (mission, vision, values), b) its focus on diversity of its human resources, c) the distribution of its resources among the different actors (for example, workers, payment of taxes, dividends), d) environmental efforts, e) his performance as an employer, f) his contribution to the development of the sector and the country in general, g) the comparison of his performance in all these variables with similar companies in Argentina and other countries.

2. Relevance of promoting diversity in human resources policies

The Argentine government openly promotes diversity in the integration of its human resources. This policy includes both the public administration and those companies where it is a majority shareholder. We understand diversity as the profiles that differentiate people and that have an impact on group behavior.

There are visible and non-visible diversities which must be managed to enhance their contribution to the management of the company (European Institute for the Management of Diversity.). As a shareholder we expect to see a greater participation of women in both hierarchical and non-hierarchical positions.

3. Relevance that the definition of sustainability reflects the characteristics of the context in which SOEs operate

It is important that SOEs define sustainability according to the context, obligations, and circumstances in which they operate. Considering that many of them are obliged to meet public policy activities, it would be convenient for these activities to be quantified, allowing the assessment of the company's impact on the community and on the development of the country's infrastructure. We also recommend its publication on the SOEs' website.

Sustainability policies should not entail more costs for the company.

4. Relevance that companies make public their incomes and expenses

It is important for companies to publish the composition of their income and expenses generated by their activity. We recommend, among others, the inclusion of the following items: a) income per business unit b) transfers received from the Treasury, ministry and other state agencies c) financial income d) loans and / or technical assistance received from development agencies e) other non-operating income f) remuneration for different categories g) Board fees h) expenses on goods and / or services, including advertising, per diem and communications services i) expenses on investment works j) acquisition of capital assets k) cancellation of debts.

5. Relevance that SOEs promote the engagement with institutional and non-institutional actors

A critical aspect of sustainability policies is the link between the company, the community and relevant actors in the sector. This aspect is even more relevant in the case of SOEs, since the consumer has the double character of citizen and consumer user and the State is precisely the shareholder.

Best practices indicate various formats of social engagement. Companies covered by these Guidelines have the freedom to choose those most appropriate to their business.

It would be, finally, advisable that SOEs develop value proposal for each of their clients and relevant actors.

Component 4: Economic Performance

We expect companies to be managed based on a strategic plan that contains the actions, goals and results to be achieved in a specific period and that explains the fundamentals of the activity in the long term. The strategic plan must be consistent with the resources assigned to the company in the national budget, seeking above all its financial and economic sustainability. Results-based management is the best way to evaluate performance and show society the use of resources managed by companies.

1. Relevance of a management based on results defined in a strategic plan linked to the company's budget

We believe in companies managed based results. Measurable results allow not only improvement in efficiency but also the effective oversight by the company's shareholder and society at large. In our companies, management based on results must be linked to a strategic plan, which has to be shared and embraced by all the members of the company, promoted from the top management, and be consistently evaluated in order to identify progress, opportunities for improvement and risks.

Budget plays a critical role both in terms of the company's strategic definitions and the allocation of their resources. The strategic plan and the budget need to be aligned both in content and in timing. A strategic plan anchored in a budget allows not only an effective discussion on the need and allocation of resources but also the evaluation of compliance with budgetary targets according to strategic objectives. In those cases where the strategic plan projects negative results, this projection must be reflected in the amount of fiscal transfers contained in the budget.

2. Relevance of reporting compliance with budget and strategic targets

As a shareholder, the State expects from the companies an effective practice of reporting budget and management performance. In order to achieve these goals we recommend that companies:

- Select indicators that are a) specific to areas of improvement, b) measurable in order to identify progress, c) attributable to specific officials d) realistic in the sense that they are materially achievable considering existing resources and e) temporary to the extent that they are related to deadlines.
- Benchmark their performance with equivalent national and/or international companies.
- In cases in which the company is obliged to comply with public policy goals, we recommend companies to publish the actual costs and the source of financing of those obligations.
- Periodically monitor their performance, projecting their results and comparing actual execution against previous years and current allocation of resources.
- Detect and communicate deviations and elaborate readjustment plans.
- Use specific software tools to monitor and consolidate the results, avoiding manual data entry.

3. Relevance of establishing consequences for not meeting objectives

Much has been discussed about the impact of incentives/recognition on the performance of companies where the State is the shareholder. As a shareholder, we prefer leaving the definition of incentives to companies themselves, taking into consideration some elements that should necessarily be present:

- Incentives with a strong motivational content, recognizing leadership and commitment. In other words, incentives that allow staff of the company to be acknowledged before their peers, and possibly other companies, due to efforts and motivation to achieve company goals. Recognitions should emphasize teamwork.
- Recognition has the greatest possible publicity; we strongly believe in the establishment of a meritocratic culture focused on the talent of the employee, his motivation and commitment to the management of his company.

4. Relevance of SOEs making their best efforts to collect debts from other SOEs and/or government

Debts generated between SOEs and SOEs with government are as binding as the debts SOEs have with their peers in the private sector. SOEs must take due care of actions and strategies to achieve full payment of debts. Exceptions should be applied and interpreted strictly.

5. Relevance of budget coordination with government agencies

We recommend that SOEs coordinate the preparation of strategic plans and their budgets with the line ministry, the Treasury Department and the Cabinet of Ministers' Office. Relevant coordination aspects include: content of strategic plans, budget restrictions, works that require capital contributions by the State, financing, other policies or regulations that impact the national budget.

It would be desirable for companies that receive transfers from government to plan their monthly scheduling and coordinate their programming with their shareholder, the Treasury Department and the Cabinet of Minister's Office.

Component 5: Board and Senior Management

Professionalized directories add value to the decision-making process of companies. In order to add value, they must have sufficient authority, competence and objectivity to carry out their functions of strategic orientation and supervision of management. They must act with integrity and take responsibility for their actions. In the same way, executive directors and managers must act, from which performance-oriented management is expected, based on efficiency and sustainability.

1. Relevance of establishing qualification criteria for the appointment of members of the Board and Managers

Leadership is a factor of business success both in private and state-owned enterprises. Granting autonomy to companies is only convenient for the State when he can rest on a management focused on the efficiency and transparency of resources. Leadership in SOEs is mainly exercised through the Board and the company's senior management. The establishment of requirements for the appointment of both has become a good practice recognized by the governments of the region and organizations such as the Organization for Economic Cooperation and Development (OECD).

The establishment of qualification criteria is a policy that, from the Executive, we recommend introducing among SOEs. Several countries in the region have emphasized the relevance of having a process of selection of directors and managers that is transparent and oriented towards the professional excellence of the candidates. They also highlight the importance of having percentages of independent directors, who lack direct or indirect links with the government and / or with the company where they perform their duties. The introduction of qualification criteria for the appointment of members of the Board is also desirable senior managers.

2. Relevance of preventing situations of conflict of interest

The recently enacted Corporate Liability Act, together with pro-integrity regulations such as Decree 202/2017, demonstrate the firm decision of the Executive Power to promote integrity in the decision-making process of companies.

It is recommended that companies establish effective mechanisms to prevent the occurrence of conflicts of interest by the top management of SOEs. Such policies, for example the publication by members of the Board of conflicts of interests' manifestations, would not only help to build trust in society but also attract talent.

3. Relevance of assessing the performance of Board members and senior management

Assessing the performance of companies' top management is a consolidated practice in the private sector, which becomes even more relevant in the public sector given the need to maximize the efficiency and effectiveness of public resources.

There are various mechanisms designed to evaluate the performance of senior management. Some companies lean towards self-evaluation mechanisms, others through external evaluation such as comprehensive integral audits and / or performance contracts. Beyond the company's choice for its institutional design, it is recommended that it implements a performance evaluation assessment that is unbiased, based on measurable goals, and linked to the company's strategic plan.

4. Relevance of Boards with strategic responsibilities

For the Board to contribute with value added to the decision-making process, it is necessary that its time is used on those aspects related to the definition and monitoring of the company's strategy. Members of the Board should be hired and organized according to "expertise" and leadership. Shareholding ministers should maximize their efforts to select directors with the appropriate profiles to meet the strategic targets of the company.

5. Relevance of Advisory Committees

The establishment of Board's Committees is another way to professionalize decision-making within SOEs. The objective of Committees is to organize the work among the board members, taking advantage of the specialized knowledge and experience of each member. Responsibilities of Boards are purely advisory. It is the responsibility of the full Board to make decisions.

Examples of Committees include Strategy, Audit (required by SIGEN's Resolution 37/2006), Good Governance and "Compliance", Remuneration and Management. The composition of the Committees varies according to companies, although it is recommended the engagement of independent members, either from the Board or external to the Board.

Component 6: Procurement Policies

Good procurement practices are critical at generating savings and improving the quality of good and services purchased by SOEs. Equally relevant are those strategies aimed at promoting transparency and integrity of procurement processes and competition among market suppliers. Companies must make its best efforts to avoid cartelization strategies by suppliers. Additionally, SOEs would benefit from a procurement unit with strategic functions, whose activities are planned in advance, and whose performance is assessed according to previously identified indicators.

1. Relevance of promoting transparency at all stages of the procurement process

The State as a shareholder promotes the application of good practices and standards of transparency in the acquisition of goods and services by SOEs. Transparency in procurement refers to guarantee to suppliers their effective engagement at the different stages of the procurement process, from the open call to tenders to the final decision on the awarding the contract to the winner. It also refers to the need for companies to formally define the need of the purchase and the awarding criteria in advance of the bidding process. The more specific and quantified in numbers the need for the purchase the more transparent and less contested the bidding process will be.

Among the practices aimed at guaranteeing transparency, we recommend the preparation of the bid evaluation methodology prior to the bidding document and the digitization of procurement and supply processes.

2. Relevance of promoting integrity at all stages of the procurement process

The State as a shareholder promotes the integrity of the processes and the behavior of companies involved in the acquisition of goods and services. Integrity in procurement refers to the need for companies to reduce the risk of corruption and fraud between the members of the company themselves and between the members of the company and external suppliers. It also refers to sanctioning such behaviors.

Among the practices aimed at guaranteeing integrity we recommend the auditing of processes and the development of an integrity program applied to all sectors and members of the company, including procurement.

3. Relevance of promoting fair and open competition for bidders

We promote fair and open competition for biddings in SOEs. Only free competition from suppliers will reduce the cost of acquisitions and increase their quality.

Among policies aimed at improving competition we recommend that companies develop frequent market analyses, the identification of key players, their history and other relevant aspects by main purchasing areas, the establishment of collective decision-making for adjudications and monitoring of purchases, and Buyer-Users Committees where empathy and team-work are encouraged.

4. Relevance of a procurement unit that provides value to the company

Procurement efforts of companies should be aligned with their business and strategic plan and be focused on both the generation of savings and the acquisition of quality goods and services at the lowest possible cost. In this way, the purchasing unit would generate value for the company as it would contribute to achieving its strategic and efficiency objectives.

Among others, we recommend a) that the procurement unit has a strategic role and the financial resources and human resources necessary to meet the challenges of the area b) that companies plan the inputs and outputs expected each year for the operation of the company c) that the procurement unit develops indicators to assess impact of the procurement strategy, monitoring the expense by item of purchase and the strength of the procurement process d) that the performance of suppliers is assessed on a regular basis.

5. Relevance of engaging suppliers in meeting good governance standards

Good procurement practices within SOEs are not enough if those same standards are not met by providers. International best practices inform the relevance of companies demanding from their suppliers the compliance with standards of good governance and management.

Among good practices, we recommend that suppliers abide by ethical behavior commitments and that they develop management systems that facilitate compliance with applicable laws.

Component 7: Audit and Control

A well-functioning audit system allows SOEs not only to monitor compliance with current legislation and regulations but also to identify and assess critical risks and the impact of corporate policies. Complementing the work of the National Internal Audit Agency, we recommend that SOEs develop policies and capacities aimed at audit activities that are effective and that generate value to the decision-making process of the company. It is vital that everyone in the company perceives internal control as an inherent part of their responsibilities. We also recommend that external auditors be hired according to open and competitive processes and that they audit both the financial accounts and performance of the company regarding its strategic plan.

1. Relevance of having an independent and professionalized internal audit unit

The audit area should be led by a professional with the necessary qualifications and experience to carry out the internal control of the company. It would be advisable to assess skills such as the lack of conflicts of interest in the specific industry and with the top management of the company, as well as having relevant professional experience for the position. The internal auditor should report to the Audit Committee.

The internal audit area would also benefit from a team of professionals with experience in different aspects of internal control such as risk management and evaluation, corporate governance, transparency and integrity standards, and the assessment of audit policies.

We expect SOEs, especially the internal auditor, to develop a relationship of mutual benefit with the National Internal Control Agency, which is responsible by Law 24.156 for the internal control of the public sector, including companies where the State is the majority shareholder.

2. Relevance of having risk-based audits focused on the company's business

We recommend that companies conduct an annual risk assessment, which we suggest to monitor frequently. This activity includes the establishment of the objectives to be achieved (for example, strategic, operational, governance), the identification of events that may affect (positively or negatively) the achievement of the objectives, the evaluation of risks (probability and impact) and the responses aimed at preventing, mitigating, sharing or accepting them.

It would be desirable for companies to have a "Risk Map" that identifies and facilitates the assessment of financial and non-financial risks. The "Risk Map" should be approved by the Board, so that the latter is fully aware of those risks to which the company is exposed to. It would also allow monitoring the implementation of specific actions.

We suggest the inclusion of the risk of corruption and of the inefficient use of resources.

3. Relevance of external audits that include both the analysis of financial statements and strategic plans

It is critical that external audit processes are comprehensive, taking into account both the analysis of balance sheets and financial statements and the assessment of how the company meets targets of the strategic plan.

We recommend that SOEs hire external auditors through an open and competitive process emphasizing independence and professional quality criteria. We also recommend the rotation of contracted firms so that they do not exceed five financial terms.

Companies must have their financial statements audited by an external auditor within the following three months after the end of the fiscal year.

4. Relevance of the Audit Committee

In accordance with Resolution 37/2006 of SIGEN, we recommend that companies set up Audit Committees in the structure of the Board of Directors. The purpose of these Committees is to oversee the compliance with audit, corporate and good governance policies of companies. The Committee should develop its own organizational manual, which would contain the components of the audit policy and the roles of those engaged in its implementation.

We recommend the composition of Audit Committees by a majority of independent members, which do not necessarily have to be part of the Board of Directors of the company. The independence criteria of the members of the Committee, together with their responsibilities, are defined in Resolution 37/2006 of SIGEN.

5. Relevance of establishing a dynamic of audit reporting

Boards should be regularly informed by the Audit Committee on the implementation of the Audit Plan, especially of those events that could affect the achievement of the company's objectives. We recommend that the Board receives the audit implementation plan report on a monthly basis. We also recommend that the report identifies the main actions aimed at mitigating risks.

OECD REVIEW OF THE CORPORATE GOVERNANCE OF STATE-OWNED ENTERPRISES

ARGENTINA

This report evaluates the corporate governance framework for the Argentinian state-owned enterprise sector relative to the OECD Guidelines on Corporate Governance of State-Owned Enterprises. The report was prepared at the request of Argentina. It is based on discussions involving all OECD countries.