POLICY ON CORPORATE GOVERNANCE OF STATE-OWNED ENTERPRISES
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1. INTRODUCTION

On 9th April 2009, at its regular 21st session, the Government of the Republic of Slovenia adopted Decision No. 00403-1/2008/73 in which it required the Ministry of Finance to prepare a proposal of the Policy on the State Financial Asset Management whereby the OECD Guidelines on Corporate Governance of State-Owned Companies is taken into consideration.

The Policy on Corporate Governance of State-Owned Enterprises (hereinafter referred to as SOEs), prepared on this basis, incorporates a clear policy on state ownership in SOEs, an accountability mechanism for the implementation of the policy and reporting to the National Assembly on the policy implementation.

1.1. Definition of the term SOE

The term state-owned enterprise or SOE includes the following:
- companies incorporated under the act regulating companies and in which the Republic of Slovenia has a financial investment;
- public companies and institutions incorporated under the act regulating public utility services in which the Republic of Slovenia has a financial investment, assets under management or another form of financial asset belonging to the state, and
- other persons incorporated under public law (public institutions, public agencies, public funds) in which the state has its assets under management.

1.2. The purpose and the principles of the Policy on Corporate Governance of SOEs

The objective of designing a Policy on Corporate Governance of SOEs (hereinafter referred to as the Policy) is to ensure efficient implementation of the principles of economy, efficiency, effectiveness and transparency as well as to determine the accountability and powers of individual state bodies. The design of the Policy follows the OECD Principles on Corporate Governance of State-Owned Enterprises and the OECD Guidelines on Corporate Governance of State-Owned Enterprises as well as the regulations by the European Union and the principles of states’ best practice in the field of corporate governance of SOEs.

The purpose of the Policy is to develop and implement governance of SOEs in compliance with the principles of economy, efficiency, effectiveness and transparency; and the same also applies to the operation of the SOEs. In managing assets, KAD (Kapitalska družba d.d. – Pension Fund Management), SOD (Slovenska odškodninska družba, d.d. – Slovene Indemnity Fund) together with the State should implement the guidelines stated in this Policy in a responsible way and in the public interest, and not in the interests of private objectives of political parties, coalitions, management and supervisory bodies or other private interest groups.

The foundation of good corporate governance of an SOE is to maximise the value of assets and to exercise the best economic governance possible on an SOE founded to provide services in the public interest.

1.3. The function of the State

The State mainly performs the following functions: of the owner, the regulator, the portfolio investor, the guardian of competition, the guarantor of public services, the promoter of the development, the guardian of the environment, the grantor of concessions.

For the efficient implementation of the ownership policy, a system of state ownership function implementation needs to be duly organized. In compliance with the recommendations made both by the OECD and the European Union, the role of the State as the owner of enterprises needs to be separated from the role of the State as the market regulator or the role of the State as the sector guardian for the development of individual industry sectors (implementation of sectoral policy). Sectoral policy is developed by sector ministries, and through this they determine the guidelines for the development of the individual industry sectors; they develop the State's objectives in relation to its investments; they develop
industry legislation; and they define measurable objectives for determining the operational performance of SOEs and the development of individual industry sectors. This separation, however, does not prevent any necessary co-operation between the two above mentioned functions. If the functions are not separated, this may lead to conflicts of interest between the sectoral policy and the State’s ownership function, in particular, if accountability for the sectoral policy and the ownership functions is implemented by the ministries responsible for the same activities or sectors.

The State is an important market player and an arbitrator in assessing whether legislative provisions are respected. Full administrative separation between responsibility for the property and market regulation is therefore the basic pre-condition to create equal opportunities for the operation of SOEs and private companies as well as to prevent distortions of competition when operating under market conditions.

In strategies prepared by sector ministries, reasons for the State’s ownership in SOEs and the State’s objectives (of ownership and in the public interest) should be clearly defined, well grounded and measurable. Objectives may be merely of an ownership nature (such as for example profitability, economic viability, productivity) or they may be set with a view to achieving public interests (such as for example public services, public utility services, other activities in the public interest, monopolistic and other regulated activities). Therefore, in their sectoral policies, the sector ministries should determine priority tasks whereby they should avoid interventions into the management of SOEs and thus respect the autonomy of SOE’s governance.

1.4. Basic Guidelines on the Corporate Governance of SOEs

1.4.1. OECD Corporate Governance Principles

The aim of the OECD Principles is to assist the governments of OECD countries as well as the governments of the countries which are not yet members of the OECD in their efforts to evaluate and improve their legal, institutional and regulatory framework on corporate governance in their countries and to provide guidelines and proposals for stock exchanges, investors, enterprises and other parties involved in the development of good corporate governance. The principles are focused on publicly traded companies. In individual cases, the Principles may also be a useful tool to improve corporate governance in enterprises not traded on the stock exchange, both for private and state-owned companies. The Principles provide a common basis which, according to the opinion of the OECD countries, is essential for the development of good corporate governance practices.

The Principles are not binding and their intention is not to give detailed instructions for national legislation. Principally, they try to define goals and propose various ways of achieving them. The Principles should serve as the source of recommended actions. They may be used by policy-makers in developing and verifying a legal and regulatory framework for corporate governance in which the economic, social and cultural characteristics of an individual country are reflected, and also by various market players in developing their own practices.

1.4.2. OECD Guidelines on State-Owned Enterprises

The OECD Guidelines on Corporate Governance of State-Owned Enterprises define and demonstrate ways of balancing between the State's responsibility to actively implement its ownership functions (such as selection and nomination onto supervisory boards) while at the same time resisting inappropriate political interference in the governance of these enterprises. The Guidelines explain that in markets where private companies compete with state-owned companies there are equal opportunities; and also, that by the method in which the States apply their legislative and supervisory powers, they do not distort the competition. The Guidelines suggest that the State should exercise its ownership function through a centralised ownership unit which needs to operate independently and in compliance with its publicly disclosed ownership policy. An important element is a strict separation of ownership and legislative functions of the State. In this way the State’s ownership is exercised in a professional and responsible manner, and the State holds a positive role in improving corporate governance in all sectors of the economy.
The Guidelines also propose that the policy-making in regard to the State’s ownership steering should be publicly disclosed and that the State should prepare annual reports on policy implementation as well as aggregated reports on the SOEs’ performance in order to ensure better transparency of corporate governance of SOEs. An important element of good corporate governance, as emphasised in the guidelines, is the responsible conduct of SOEs’ supervisory and management bodies; the same applies to the relation between the State as the shareholder and these bodies.

The Guidelines are specifically dedicated to issues characteristic of the corporate governance of SOEs, and discuss these questions from the point of view of the State as an owner while also focusing on policies that would provide good corporate governance of SOEs. At the same time, the OECD Guidelines do not oppose various policies or privatisation programmes carried out by the OECD countries.

2. THE EXISTING SITUATION IN THE REPUBLIC OF SLOVENIA

In the Republic of Slovenia, the terms state property and state asset management are not clearly or profoundly defined. Management rights are expressed in implementing the following duties: appointing members of management and supervisory boards, taking strategic decisions, in disposing of stakes and in having an influence on the development of the enterprise. In practice, these decisions often reflect the interests of individual groups while the interest of the actual owners is neglected.

2.1. Current legal framework of SOE corporate governance

The State’s asset management is regulated by the individual legislation and regulations listed below:

- Public Funds Act (Official Gazette of the Republic of Slovenia, No. 22/2000, 77/2008)
- Accounting Act (Official Gazette of the Republic of Slovenia, No. 23/1999, 30/2002-Act Amending the Public Finance Act)
The Government of the Republic of Slovenia has adopted measures with which it has taken a position in certain areas of corporate governance of SOEs, namely:

The nomination process for candidates for management and supervisory bodies is carried out in the following way: the appropriate ministry publishes a public call to invite the interested individuals to apply for the position of members of management or supervisory bodies in an individual SOE. General and special conditions and criteria for nominating members of SOE’s bodies (management and supervisory) are defined by the Staff Accreditation Council (hereinafter: SAC), which is an autonomous expert consultative body of the Government of the Republic of Slovenia responsible for appointing members of supervisory or management boards of individual SOEs. On the proposal of the Government of the Republic of Slovenia or the appropriate minister, the SAC participates in the accreditation and nomination process of candidates for management or supervisory bodies of the SOEs. During the procedure of establishing the suitability of candidates for posts in the management bodies of SOEs, the SAC prepares an expert accreditation on individual candidates and also prepares a list of suitable candidates. When the SAC finishes the selection and nomination process, the nomination of the selected candidates is, as a rule, proposed to the general meeting of the company.

In relation to any conflicts of interest that may arise during the execution of a public function and the execution of a function of the supervisory board member, on 15 February 2007, the Government of the Republic of Slovenia adopted two decisions, namely:

a. »The decision on the position in regard to remuneration of members of supervisory and management boards in public companies and other companies owned by the Republic of Slovenia, and on incompatibility of officials holding the supervisory function in the supervisory boards and management boards of public companies performing public functions «, No. 00712-35/2005/24, and

b. the decision in which it stated its positions in regard to the limitations of membership of officials and civil servants in supervisory boards and stated recommendations for the
In these two decisions, the Government of the Republic of Slovenia adopted the position that civil servants performing a public function is incompatible with their performing a supervisory function in supervisory boards of companies. Therefore it decided that civil servants in state bodies cannot hold positions of supervisory board members in companies. The Government of the Republic of Slovenia also decided that officials in state bodies cannot hold positions of supervisory board members of legal persons of the public sector in which the role of the founder and on behalf of the state is performed by the Government of the Republic of Slovenia unless otherwise explicitly stipulated by the law. It made the same recommendations to local communities - to apply these positions of the Government of the Republic of Slovenia and not to appoint their officials to supervisory boards; it also recommended that their officials resign from supervisory bodies (when such is the case).

- In order to limit the effects of the financial crisis, on 22 January 2009, the Government of the Republic of Slovenia adopted »The decision on positions about attendance and director’s fees in relation to limitation of effects of the financial crisis«, No. 10007-1/2009/3, with which it adopted the position on reducing attendance fees paid to members of supervisory board by half. The decision should be implemented immediately, in such a way that members of supervisory boards provide a statement in which they themselves waive their right to half of the attendance fees until the decision of the first general meeting when an adequate resolution is adopted in which the reduced amount of attendance fee is determined. On the same day, and in view of limiting effects of the financial crisis, the Government adopted »The decision on recommendations to representatives of the Republic of Slovenia in supervisory bodies of companies in which the Republic of Slovenia is the majority owner, in relation to concluding employment contracts for managers« No. 01400-3/2009/3, in which the criteria were set, recommending the definition of the managers’ rights regarding their salary, performance bonus and severance grant.

2.2. Legal structural forms of SOEs

The State exercises its ownership rights in companies organised according to various legal structural forms; however, some of these will need to be modified in order to adapt their structure better to the company’s mission and operational activities. The State is a direct and indirect owner (through KAD and SOD) of holdings in enterprises operating under private or public law in any legal form.

It is typical of the existing SOE corporate governance system that governance is highly fragmented - SOEs operate under various ministries in which sectoral policy is formulated and where the corporate governance is carried out, which leads to conflicts of interests. The result of this is non-transparency and a lack of co-ordination among individual holders of SOE governance, ineffective and unprofessional governance and complicated decision-making processes including several levels of decision-making in regard to exercising ownership rights in SOEs.

2.2.1. Companies

An enterprise is a legal entity, operating independently under market conditions, and with the profit motive as its primary motivation; it is usually organised in the form of a joint stock company or a limited liability company.

An analysis of the state ownership status in companies shows that state ownership is predominant in industries performing public services, in infrastructure industries such as energy, transport,
telecommunication, and in the financial sector. The operating results of these companies are very important to a large proportion of the population and other business sectors since they represent a substantial share of gross domestic product, employment and the market value of enterprises. Thus, for there to be good corporate governance of SOEs, it is critical to ensure their positive contribution to the general economic efficiency and competitiveness of the state. This, after all, is an important pre-condition for an economically efficient transformation of ownership, since companies that become more attractive to potential buyers see their value increase.

2.2.2. Public companies

Under the Public Utilities Act, a public company is a special legal structural form of a company; its founder is the Republic of Slovenia or the local community. It may also be established as a company with private capital holdings if this is in line with the public interest reason for which the company was established.

Public utility companies differ from other companies, since they perform a public utility service or monopolistic activity which is defined as a public utility service.

In public companies, the director of the company is nominated by the founder; for matters related to the status of the public company which are not otherwise regulated by the Public Utilities Act, the Companies Act applies. In companies established under the Companies Act, the director is nominated by the supervisory or the management board.

2.2.3. Public institutions

The main providers of public services are public institutions. The State is their founder, the main regulator of their whole activity, the owner of the major part of their assets and the financing body of the public utility service. This brings a bureaucratic model of governance and operation into the institution. For the institution, the following is typical: state-planned regulation; limited financial and HR policy; relatively small influence of the public and institutions’ employees in the formulation of public programmes; universality of programmes; non-responsiveness to the needs and wishes of users; state allocation of funds. Universal programmes carried out by public services are determined outside. Due to existing financing method, which is mostly dependent on public finance sources, the institute does not connect the provision of public services with its price; the latter is also determined outside. In spite of that, the public institution also performs market activities, however, due to the unclear definition of a public service, the consistent separation of costs for the provision of different activities is not ensured.

Public institutions are established via an instrument of incorporation in which the mission and the business policy are laid out. The public finance system treats the institutions as indirect budget users which means that by means of financing, the State decides on their programme of work. A public institute is a legal entity without its own assets although it is responsible for the liabilities of the institute, using the funds available. The founder, who is the owner of the institute’s assets, on the other hand, is held responsible for the institute’s liabilities if the founder’s liability is not explicitly excluded under the law or in the instrument of incorporation.

2.2.4. Public agencies

Public agencies are established to perform regulatory, development or professional activities in the public interest if no other legal form is prescribed by the law; in regard to the performance of its activities, the agency is autonomous. A public agency may be established by the State or self-governing local community or association of self-governing local communities. For the founder to establish an individual public agency, the legal base needs to be formed by means of a special law. The powers of a public agency are defined by the law.
2.2.5. Public funds

A public fund is a legal entity of public law which manages assets at its disposal dedicated to it by the Republic of Slovenia or a self-governing local community in order to ensure public interests are met. A public fund may be established as a public financial fund, a public real-estate fund or a public institution.

3. POLICY ON CORPORATE GOVERNANCE OF STATE-OWNED ENTERPRISES

The policy on corporate governance of SOEs will be implemented in three phases as follows:

In the first phase, the institutional framework, which will be based on a uniform institutional arrangement of all financial assets of the State, will be established; it will be implemented in full by 31st March 2010. Management of financial assets will be centralised and performed within an agency which will employ solely and exclusively experts in asset management. Within this agency, the Ministry of Finance will form a group which, until the agency is established, will perform all the necessary activities in compliance with the adopted Policy that forms part of the institutional framework.

In the second phase, which will take place simultaneously with the first phase, sector ministries, in co-operation with the group from the Ministry of Finance, will prepare a list of assets and categorise them into strategic and market holdings; the privatisation programme will also be prepared.

In the third phase, in the co-operation with KAD, SOD and DSU (state-owned advisory and asset management company) the group will perform activities needed for the transformation of these entities.

3.1. Central unit for corporate governance of SOEs

The establishment of a central unit means the centralisation of the state ownership functions, separation of exercising the ownership function from other functions performed by the State, strengthening and integration of individual powers by organising groups of experts for key functions such as financial reporting or the nomination of members to the SOEs’ management and supervisory bodies. In this manner, the centralisation will be an important element in developing aggregate reporting on State property.

The central unit will be structured as an agency, and by 30th September 2009 the relevant legal base will have to be prepared in which the activities and the mission of the agency will be clearly defined. According to the act regulating public agencies, a public agency may be established if, inter alia, in regard to its nature or the type of its activities, constant direct political supervision over the execution of activities is not needed or is not appropriate. Thus, in regard to its operations the central unit, structured as an agency, will be autonomous from the Government; it will operate in compliance with the guidelines which will be adopted once a year by the Government of the Republic of Slovenia following the proposal by the sector ministries. Its operation will be controlled by the Court of Auditors.

In order for the central unit to operate efficiently and fulfil its mission, the unit will, in co-operation with the sector ministries, form a special working group; on the basis of the list of all the State’s assets, this group will categorise these assets into strategic assets in which the State has a long-term strategic ownership interest, and market assets (portfolio assets) which may be subject to market transactions. This group will include experts with legal, financial, economic and managerial knowledge and skills and with experience in exercising custodial responsibilities in individual ministries and outside the ministries.

The central unit will, inter alia, perform the following tasks:

- transparent exercising of the State's ownership function,
- keeping records of the State's direct and indirect financial holdings,
- participating in defining the important goals of the SOEs,
- regular monitoring of SOE operations and the achievement of objectives,
- participating in designing the individual companies' corporate policies,
establishing the State's positions for general meetings of companies,
exercising ownership rights at the general meetings of the companies,
developing and upgrading the nomination mechanisms for the selection of nominees to SOEs' management and supervisory bodies and their remuneration,
supervising consistent implementation of responsibilities of the appointed members of SOEs’ management and supervisory bodies,
co-operating and reporting on relationships with stakeholders,
acquiring, disposing and exchanging State property,
preparing annual reports on exercising the ownership function, to be reported to the National Assembly,
determining measurable objectives of corporate governance which will increase the efficiency of governance,
preparing a code on SOEs which is compliant with the OECD Guidelines and Principles and the corporate governance code of public limited companies,
establishing relations with relevant government bodies (e.g., the Court of Auditors).

3.2. Exercising shareholders' rights

The basic shareholders rights and the exercise of them, how participation is encouraged at general meetings and shareholders included in key decisions of individual companies, the equitable treatment of all shareholders including minority and foreign shareholders as well as relations of the State and its affiliated companies in the relationship of shareholders to other shareholders are already legally and equally regulated for all entities of public and private law with the legislation in the field of regulating companies. It is in the State's interest to ensure that in all companies in which it has a stake, all shareholders are treated equally, and that the equitable treatment of minority shareholders is assured. Whenever a part of an SOE’s capital is held by private shareholders, whether they are institutional or individual, the State should recognise and respect their rights and establish itself as an exemplar of corporate governance.

Rules and procedures regulating the acquisition of control in a company (the acquisition of a majority share in the company) traded in the financial markets, and extraordinary transactions such as changes in the capital structure of the company and disposal of significant holdings of the company's assets should be clearly defined so that investors understand their rights and the legal redress available to them. Transactions should be transparent, and performed at transparent prices and under equitable conditions that protect the rights of all shareholders in compliance with the rights belonging to individual classes of shares.

In the past, State funds KAD and SOD presented concerns in the field of corporate governance of SOEs; that is clear from the OECD documents. The first measure in relation to this matter will be that all the shareholders who manage shares and holdings which are owned by another economic owner who is affiliated to the State should disclose their general governance and voting policy including the procedures established for decision-making on exercising voting rights as well as conduct in cases of substantial conflicts of interest that might influence the exercising of key ownership rights connected with their assets.

Besides this, the policy refers to the State and its affiliated companies. A complete separation of entities such as KAD and SOD is not realistic in the current circumstances. Due to the shareholder structure of Slovene companies and established processes of the funds' operations it is urgent that the State continues to pursue its interest as an indirect shareholder of companies in KAD and SOD’s portfolio and, above all, that it also formally accepts responsibility for governing these companies and ensures higher transparency and accountability in this field. It is necessary to ensure separation of governance of the companies owned by KAD and SOD from the governance of funds, which the fund managers should perform independently and autonomously. The central unit will therefore, using the SOE Corporate Governance Code, prepare a concrete list of persons affiliated with the State who are a part of the SOE corporate governance system, as co-ordinated by the central unit. These companies should be included in the common SOE Corporate Governance Policy through the central unit and respect the guidelines of the adopted SOE Corporate Governance Policy. The manner by which KAD and SOD are included still needs to be finalised; it is necessary to achieve a clear separation of responsibilities and efficient use of
resources, offices and institutes already available to the funds for the corporate governance of enterprises. The first option is to transform KAD and integrate a part of KAD with the central unit; the other option is to include KAD under the central unit as a provider of certain services (for example controlling) and to obtain a commitment by both funds to consider the central unit's processes and instructions in exercising voting rights at general meetings. As mentioned, the objective is to provide the integral corporate governance of enterprises in direct and indirect state ownership through the central unit in a transparent manner.

3.3. Key functions of SOE bodies

The corporate governance policy of individual SOEs should ensure strategic guidance of the enterprises, efficient supervision of management boards through supervisory boards and accountability of management and supervisory bodies in relation to the enterprise and shareholders. The SOE bodies should carry out their functions in a transparent manner; the data of each enterprise should be publicly available.

Corporate governance is a system of legislation, autonomous resources, institutions and concrete processes and practices which determine how SOEs are managed, governed and supervised. Corporate governance also determines relations among interest groups (stakeholders) and objectives according to which the SOE operates.

The management board should have the appropriate diligence, professionalism and act in the best interests of the company and shareholders and following high ethical standards. When management decisions may influence different groups of shareholders in a different way, management should provide impartial treatment to all shareholders. Management should fulfill certain key functions such as assessing and leading company strategy, risk management policy, annual budgets and business plans, determining the objectives of business performance and monitoring their execution, control of the main investment projects and others.

The SOE’s supervisory board, inter alia, controls the management of the company’s operations, controls and verifies annual reports, requires additional information from the management board, convenes general meetings, and together with the management board defines strategic objectives and monitors their implementation, nominates and discharges members of the management and the CEO and verifies their remuneration.

The members of the supervisory boards are not bound by the instructions of owners by whom they were nominated – not even in the case of the State. In performing their tasks, the members of management and supervisory boards must act with the due diligence of a conscientious and distant manager in the best interests of the company and all its owners and protect the company’s business secrets; they are also committed to respect the policy and its implementing measures as well as the SOE’s code. The members of the management and supervisory boards are liable for unlimited damages with their own personal assets for the harmful consequences of their decisions, since they bear joint and several liability for the damage that may arise as a consequence of breaching their duties (except if they prove that they carried out their tasks fairly and diligently). The central unit shall be liable for the consistent execution of their duties or penalising them over any liabilities.

The State should ensure that the management and supervisory boards have complete autonomy and independence in performing their tasks and should not interfere in their business decisions. The State shall exercise its ownership function at the general meetings of the companies.

3.4. Nomination of members to management and supervisory boards

The mechanism for selecting nominees for the members of the management and supervisory board will be prepared by the central unit together with the SAC. The mechanism will include measures and criteria on the basis of which the selection of candidates will take place considering their professional expertise,
integrity and the potential existence of any conflicts of interest. Candidate recruitment will take place both in the domestic as well as in the foreign environment. By supervising the SOE’s performance, the central unit will assess the adequacy of the nomination mechanism.

3.5. Remuneration of members of management and supervisory boards

On 30 April 2009, the European Commission adopted its Recommendation complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies and invited the member states to take the necessary measures to promote the application of this Recommendation by 31 December 2009.

The main objectives of these Recommendations are to ensure transparency of remuneration practices, shareholder control of the remuneration policy and individual remuneration through disclosure, the introduction of a mandatory or advisory vote on the remuneration statement and shareholder approval for remuneration schemes, effective and independent supervision, and at least an advisory role for the remuneration committee with regard to remuneration practices. The structure of management and supervisory boards’ members’ remuneration should promote long-term development and the continued viability of the company and ensure that remuneration is based on performance. Variable components of remuneration should therefore be linked to predetermined and measurable performance criteria, including criteria of a non-financial nature. Reasonable limits should be set on the variable components of remuneration. Significant variable components of remuneration should be deferred for a certain period, for example three to five years, subject to performance conditions. Furthermore, companies should be able to reclaim variable components of remuneration that were paid on the basis of data which proved to be manifestly misstated. Moreover, further disclosure of information relating to the structure of remuneration is necessary.

The central unit will harmonise its valid positions in regard to the remuneration of boards’ (management and supervisory) members with these Recommendations by the European Commission; by means of resolutions passed at general meetings it will implement them in practice. A remuneration scheme will be designed on this basis; it will divide the remuneration structure of the members of the management and supervisory boards into a fixed and a variable component; the variable component, which will be redesigned every year following the determination of performance results, will be emphasised. The objective is to promote the most effective and professional governance of SOEs. The remuneration scheme will also include measures (such as liabilities for damage) in case of non-professional and non-responsible action by management and supervisory boards, as reflected in bad performance results.

By formulating new positions that will be harmonised with the recommendations of the European Commission and prepared by the central unit, the government resolutions in regard to remuneration of members of management and supervisory boards in public companies and other enterprises will be repealed.

3.6. The State’s responsibility and its role in an SOE

The reason for State ownership in companies differs from industry to industry; in most cases it is a result of social, economic, public and strategic interests. Reasons therefore include sectoral policy, regional development, public provision of commodity goods and the existence of so-called »natural« monopolies. Globalisation of markets, technological changes and deregulation of previously monopolistic markets have led to the adaptation and restructuring of sectors owned by the State.

The Policy establishes the legal and regulatory framework for SOEs which ensures a level-playing field in markets where SOEs and private sector companies compete in order to avoid market distortions. There is a clear separation between the State’s ownership function, which will be exercised in the central unit, and other State functions (market regulator, formulator of sectoral policy) that may influence the conditions for SOEs, particularly with regard to market regulation. In their operation, SOEs should respect laws and regulations valid for other companies, whereby amendments to the individual laws will
be needed. Regarding access to finance, SOEs will not be put in a privileged position but will have to face competitive conditions, since their relations with state-owned banks should be based on purely commercial grounds.

The State will act as an informed and active owner and in compliance with a clear and consistent ownership policy ensure that the governance of SOEs is carried out in a transparent and accountable manner, with the necessary degree of professionalism and effectiveness. The State will not be involved in day-to-day management of SOEs and will allow them full operational autonomy. The State will thus let SOE management and supervisory boards exercise their duties and responsibilities and respect their independence. The State as an active owner will exercise its ownership rights according to the legal structure of each company, facilitated solely through the central unit.

It is in the interests of the State that all shareholders in SOEs are treated equally, and to ensure equitable treatment for minority shareholders. Whenever a part of an SOE’s capital base is held by private shareholders, whether they are institutional or individual, the State will have to recognise their rights. It is in the interests of the central unit and SOEs themselves that minority shareholders are protected from abusive action by controlling shareholders.

3.7. Changes to the State’s equity holdings in SOEs

Together with representatives of sector ministries, and on the basis of the defined criteria of sectoral policy, the central unit will classify assets into individual groups according to their importance for the State or for the industry. On this basis and in compliance with the Public Finance Act, the programme of the State's financial assets' disposal, exchange or acquisition will be prepared. Each change of equity will be carried out in a reasonable and transparent manner.

4. MEASURES

In order to implement the written Policy on Corporate Governance of SOEs, the following measures are necessary:

- preparation of the appropriate legal basis to establish the central unit in the form of an agency by 30 September 2009,
- transfer of powers for the exercise of corporate governance of SOEs in order to establish an agency and reallocate staff from the Ministry of Finance, Ministry of the Economy and other ministries who perform duties related to State’s financial asset management to the agency at the latest by 31 March 2010,
- transfer of financial assets (shares and other securities, business shares, founding rights, etc.) of the Republic of Slovenia held in legal entities, including all the accompanying documentation, to the agency at the latest by 31 March 2010,
- developing the nomination mechanism for the selection of nominees of management and supervisory boards who will be duly competent as regards the complexity and the responsibility of work, to be recruited both from the domestic and from the foreign environment at the latest by 31 March 2010. The mechanism must also include an assessment of the integrity and ethics of nominees as well as potential conflicts of interest,
- verification of the adequacy of the nominees selection for the members of supervisory board by supervising the performance of SOEs,
- adoption of the Code of Corporate Governance in SOEs (hereinafter referred to as the Code) by 30 June 2010. The aim of the Code will be that all SOEs commit to conduct themselves in compliance
with the Code. The Code also imposes limits on the central unit and on all bodies with public powers in regard to the manner and the scope in which they exercise their management rights,

- supervision of the way in which the Code is followed in SOEs; this will be implemented by the central unit and once a year details of how the Code is being followed are to be disclosed in an aggregated report,

- development of groups of financial assets (marketable, non-marketable, strategic, public interest, etc.) and definition of the State’s objectives for these assets by 31 March 2010,

- action plan for the transformation of KAD, SOD and DSU and their integration into the agency by 30 June 2010.

Sector ministries should implement the transfer of all financial assets to the central unit by 31 March 2010. Therefore a working group will have to be established as soon as possible; the group, including the representatives of sector ministries and the representatives of the central unit, and representing a key link among the sector ministries and the central unit, will be responsible for the development of companies in the individual industry.

By transferring all financial assets to the central unit, it will be necessary to repeal the Decision of the Government of the Republic of Slovenia No. 47600-5/2006/4 as of the day of 27 July 2006, determining which ministries and government offices have the power to manage individual State capital assets in companies.

Appendix 1

INTERNATIONAL BENCHMARKS

Finland

The Corporate Governance of State-Owned Enterprises Policy in Finland is founded on the OECD Principles and Guidelines. Corporate governance policy is clear, predictable and developed on firm principles. The role of the State acting as the owner is the same in all enterprises regardless of which ministry is responsible for them. Already in 1999 the Government was addressing the question related to the role of the State in the corporate governance of enterprises in which the State holds a stake. The State is the owner of various companies, both of companies operating in the market as well as of companies operating in the public interest. In the governance of these companies it is important to separate the function of the State acting as an owner and the function of the State acting as a regulator. After many years of co-ordination and searching for the best solution, in 2007 the Ownership Steering Department was established, centralised in the Prime Minister’s Office. In the individual company, the unit exercises ownership functions in compliance with recommendations and the guidelines issued by the Cabinet Committee on Economic Policy. The tasks of the unit are as follows: co-operation in developing the corporate policy of individual companies; nomination of the State’s representatives to the companies’ management boards; drafting proposals for voting at general meetings of these companies; implementation of control over communication among the representatives of the owners, the management board of the company and executive directors; and exercising ownership on a company-specific basis in relation to the sector and strategic interests of the State in the field of infrastructure, public services; and that the provision of commodity reserves is ensured.

The objectives of individual companies are not only defined in the interest of the State’s ownership objectives but also on the development of the company itself or rather the development of the industry. The representatives of the Ownership Steering Department co-operate with the representatives of sector ministries and form a working group which takes care of the development of individual companies in an industry and monitors the strategic interest of the State. Finnish politics has categorised the companies into strategically important companies in which the State’s stake in the company should not change, and into companies of less strategic importance. The Ownership Steering Department prepares an annual report on the performance of the companies and an overview of the development of the industries.
France

In 2004, France established the Government Shareholding Agency (APE - Agence des Participations de l'État). The establishment of this Agency was marked as an important step with which the State exercises its role as a shareholder. The Agency was established with the aim of defining precisely the role of the Government as the shareholder, including a precise definition of state property, and to increase the value of financial assets. It actively co-operates in nominating members to the management and supervisory boards and special committees. The Agency ensures that annual reports on SOE operation are published giving a true and fair view of the companies' performance, and makes strategic decisions for companies whereby the interests of all shareholders and the long-term viability of the companies is taken into consideration. It also adopts annual budgets and medium-term plans and makes strategic decisions. The Agency manages a broad portfolio of assets that differ in size and sector, according to the listing in the organised security market and in regard to the legal structural form. It strives to make a portfolio of assets interesting both for existing as well as for potential investors. The Agency performs its services in connection with the Ministry of the Economy, Industry and Employment and the Ministry of Finance.