

PUBLIC POLICY AND PRODUCTIVE  
TRANSFORMATION SERIES  
N° 6 / 2012

# Corporate Governance in Latin America.

IMPORTANCE FOR  
STATE OWNED  
ENTERPRISES - SOEs



# **Corporate Governance in Latin America.**

## *Importance for State Owned Enterprises - SOEs*

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**Public Policy and Productive Transformation Series**

**No. 6 / 2012**

**Andrés Bernal, Andrés Oneto, Michael Penfold,  
Lisa Schneider and John Wilcox**

**Corporate Governance in Latin America.  
Importance for State Owned Enterprises - SOEs**

Public Policy and Productive Transformation Series

Depository collection number: if 4320126383201

ISBN for Volume: 978-980-6810-78-5

ISBN for whole work: 978-980-6810-67-9

**CAF Publisher**

This series is coordinated by the Vice-Presidency of Development Strategies and Public Policies of CAF

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This document was created with the support of the General Fund of Italian Cooperation. The Sodali SPA – Governance Consultants S.A. Consortium were the firms hired for its execution.

Sodali SPA and Governance Consultants are responsible for the translation to English.

Digital publication in English in June 2013.

Public Policies and Productive Transformation consists of a series of documents aimed at disseminating successful experiences and cases in Latin America as a tool for producing knowledge for the implementation of best practices in the field of business development and productive transformation.

Editorial production: Cyngular

The ideas and proposals contained in this issue are the exclusive responsibility of the authors and do not reflect the official position of CAF.

The digital version of this publication can be found at:  
[www.publicaciones.caf.com](http://www.publicaciones.caf.com)

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# Foreword

Productive transformation has been one of the areas that CAF, as the development bank of Latin America, has fostered as a necessary condition for reaching a high and sustainable level of development in the region.

The experience and expertise generated in each project over the last decades have made the Institution to become a Latin American point of reference in areas of competitiveness, Corporate Governance, local and business development and productive inclusion.

The public policies necessary to drive productive transformation are based on the development of those capacities aimed at the implementation of good practices and on specific supports for improving business management and productivity. Thus, CAF makes its knowledge and expertise available and offers efficient support to a variety of sectors while, at the same time, creates documentation and research on success stories that are relevant to the region

“Public Policies and Productive Transformation” consists of a series of policy documents aimed at disseminating those experiences and successful stories in Latin America, as an instrument for spreading the knowledge that CAF makes available to the countries in the region so that better practices with respect to business development and productive transformation can be implemented.

L. Enrique García  
**Executive President**



## **Executive Summary**

Corporate Governance practices strengthen governing and control bodies of companies (shareholders meeting or owners, directors and management), while defining clear rules applicable to different actors, and increasing the level of transparency and accountability before different stakeholders.

State-owned enterprises (SOEs) should set an example of the best principles and practices of corporate governance as a means to strengthen their institutional and management capacities, and to promote transparency and effectiveness of its management. In this regard, all participants in an SOE -government, government department or agency, board, executives and managers, must ensure that the company is organized and operates as a model of excellence in corporate governance, good environmental, social and high ethical standards.

*Keywords: Corporate Governance, State-owned enterprises, SOEs, good practices.*



# Introduction

State-Owned Enterprises (SOEs) in Latin America have an enormous economic and social impact for the region. In this regard, the States, at national, state and municipal level, must aim to ensure the sustainability and maximize the generation of both economic and social value of this enterprises.

This paper highlights the importance of implementing Corporate Governance practices as a mechanism to improve the development of SOEs in Latin America. Corporate Governance practices strengthen the governing bodies that oversee and control (Shareholders or Owner Meetings, Board and Management, internal monitoring structures) while defining clear rules of engagement between the different actors as well as increase the transparency and accountability towards the stakeholders.

CAF - Development Bank Latin America is an established promoter of corporate governance in SOEs and also leads initiatives for its implementation. The Guidelines for Good Corporate Governance of State Enterprises (2010) were a first step forward in this regard, to warn about the particularities of the context and nature that determine the governance model of Latin American SOEs and also, to establish practices that go beyond local boundaries to be implemented effectively at a regional level<sup>1</sup>. This White Paper reflects CAF continuous efforts to promote corporate governance in SOEs and as such it should be used as a conceptual tool and guideline that will hopefully serve as basis for Latin American level discussion, involving both state and private actors to help generate policies towards good governance.

The first section addresses the most important aspects in understanding the Corporate Governance issues in SOEs and outlines the main benefits and motivations for the adoption of such practices. In the first part, the emphasis is on the role of the State as owner -which acts as regulator and a user/customer at the same time and also on its fundamental role in the preservation of the company's corporate governance -through the definition of a regulatory framework for the SOEs in line with good practices and through commitments that set the framework for exercising its ownership.

The second section examines some SOE cases in the region, highlighting key strategies and tools that have enabled progress in governance. The emphasis of this section is to present concrete examples of Latin American SOEs that have applied corporate governance practices and how these, have contributed to the growth, strategic risk management and competitiveness.

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<sup>1</sup> CAF - Development Bank of Latin America. Guidelines for Good Corporate Governance of State Enterprises. CAF, 2010.



# The importance of Corporate Governance in State Owned Enterprises

The State Owned Enterprises (SOEs) should set the example of best corporate governance principles and practices to strengthen their management and corporate skills and to promote transparency and effectiveness in their performance. In this regard, all participants in a SOE – the State – represented by the government, a ministry or administrative agency, the board of directors, the executives and managers– should ensure that the business is organized and operated as a model of excellence in corporate governance, environmental practices, social policy and ethics.

## Definition and Fundamentals of Corporate Governance and Environmental, Social and Governance (ESG)

Corporate governance can be broadly defined as *the proper allocation of power and responsibilities among the board of directors, the management and the owners of a business.*

This definition recognizes that corporate governance is not just a set of external rules. It is an internal discipline needed in order to maintain stable and productive relations among the participants in a business enterprise. Corporate governance, transparency and accountability are more than a compliance exercise; they are essential ingredients of good management and a prerequisite for a healthy business.

Although the development of corporate governance standards has evolved primarily in connection with listed companies in capital markets, it is relevant to all types of companies, including private companies, family businesses and state-owned enterprises (SOEs).

Under this definition of Corporate Governance, the primary participants in a business enterprise are:

- The owners and investors who provide capital to fund the business;
- The executives, managers and employees who run the business day-to-day and implement the policies and strategies set by the board; and
- The board of directors, which has four primary roles: (i) to represent the interests of the owners; (ii) to oversee and give strategic advice to executive management; (iii) to establish policies that support the corporate purpose; and (iv) to fulfill its legal duty and act in the best interest of the company.

The complex interactions among these three participants are graphically represented by the Corporate Governance Triangle.

The structure of the triangle represents the governance model in which good Corporate Governance represents a balance and equilibrium among the three groups, thereby providing optimal conditions for the business to thrive, fulfil its strategic goals and achieve sustainable long-term performance.

The Corporate Governance Triangle describes an additional responsibility of the Board of Directors: to mediate and align the interests of owners and managers with respect to certain issues where they are likely to have conflicting but equally valid perspectives. As it will be mentioned later, the board's role in mediating and aligning interests assumes even greater importance at SOEs where the company may have a social and public policy mission in addition to its commercial goals.

During the past decade, environmental practices and social policies affecting society and communities served by companies have become tightly integrated with corporate governance. These related issues, which are the responsibility of the board of directors, are referred to collectively as "ESG" (Environment, Social and Governance). Many ESG issues are defined in terms of enhanced business risk. Many are categorized as "non-financial" or "long-term" issues, in specific contrast to the quarterly earnings and short-term financial metrics that have been the principal concern of both investors and companies leading up to the global financial crisis of 2008. As a result of the crisis, business and investor groups have been looking for ways to break the short-term cycle, reinforce corporate governance and develop performance metrics that reflect ESG and non-financial goals.

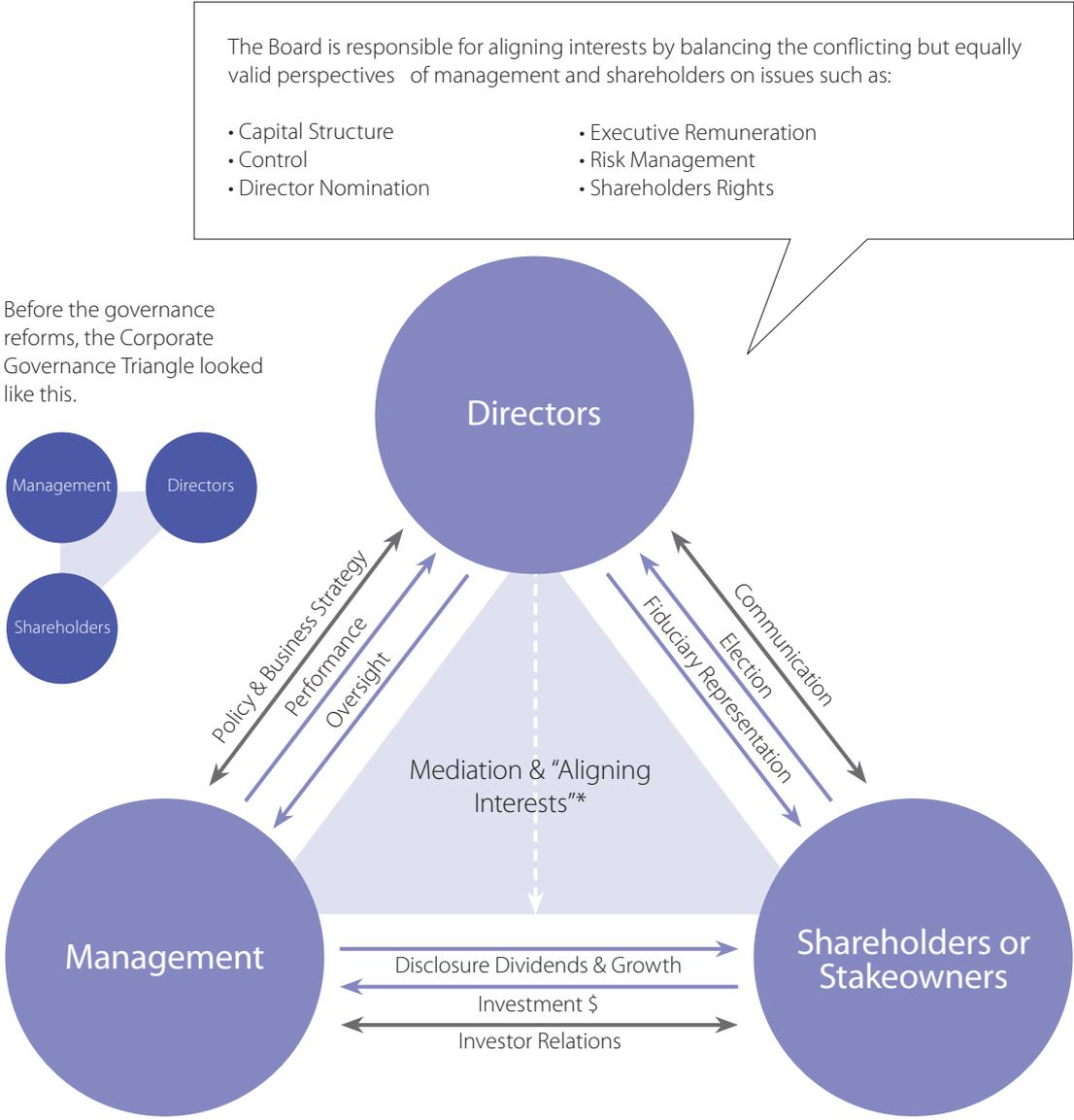
Although the Corporate Governance Triangle was originally designed to illustrate the dynamics of corporate governance at listed companies with diverse public ownership, the arrangement is essentially the same for SOEs.

The key differences in an SOE are: (1) the State is the exclusive or dominant owner; (2) the State controls or has an influential role on the board of directors; (3) the State determines the objectives of the business according to the public interest and sometimes, has to balance a public political agenda with managing the SOE.

Regardless of these differences, a SOE's commercial goal remains the same as that of other for-profit companies: to produce goods and services, make a profit and achieve sustainable growth.

The achievement of this commercial goal requires equilibrium in the dynamics of the Corporate Governance Triangle. It is therefore clear that for SOEs, as well as for other types of businesses, good corporate governance is necessary to achieve management excellence,

FIGURE 1. THE CORPORATE GOVERNANCE TRIANGLE



facilitate the achievement of the company goals, and keep a strong and long-term oriented corporate culture.

### **The State Acting as an Owner**

The global financial crisis revealed many governance failures and conflicts of interest at financial institutions, including weaknesses in the exercise of ownership responsibilities by asset owners and managers. In 2010 the UK Financial Reporting Council published a new “Stewardship Code” for the purpose of improving “the efficient exercise of governance responsibilities” by institutional investors<sup>2</sup>. The UK Code currently serves as a model for development of comparable ownership guidelines in many other countries.

Where the State acts as an owner of a business, as in a SOE, it must be aware that its governance responsibilities comprise the proper exercise of its ownership and stewardship duties. This implies regular monitoring of the performance, based on establish and objective criteria; responsibility of the political interference with the management and respect for the dynamics and entrepreneurial independence

### **Governance Duties of the Board of Directors for an SOE**

As indicated in the Corporate Governance Triangle, the Board of Directors is the centerpiece for the alignment of interests among the three participating groups. More than 20 years of global governance reforms have had the effect of substantially increasing the Board’s powers, responsibilities and accountability.

The primary duties of the Board are at the center of Corporate Governance practices for all companies, including SOEs.

Main Responsibilities of the Board:

- Establish the strategies and supervise the performance results.
- Establish the mission, goals and results of the Company.
- Ensure that environmental and social policies and the policies of the stakeholders are in place and followed
- Safeguard the transparency and the adequate disclosure of information.
- Ensure that an accountability policy and a process of auditing are in place, and are efficient and reliable.

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<sup>2</sup> Financial Reporting Council. The UK Code on Corporate Governance. FRC, 2010.

- Safeguard the independence and competence of Board directors.
- Establish executives' compensation in accordance to the long-term, sustainability and competitiveness of the company.
- Plan and prepare for the succession of management.
- Protect the interests of minority shareholders.
- Enable an ethical environment and an appropriate management of conflicts of interests.

### **The Balance Between the Political and Business Agenda in SOEs**

SOEs struggle between financial returns and its role in public policy. The role of SOEs on the public policy level - and its inherent business constraints, is one of the biggest challenges for the development of these types of business organizations.

The two main corporate governance models are: (1) Principles-Based, and (2) Rules-Based. The model of "Comply-or-Explain" presents a practical approach to resolve this situation or at least to make it transparent to interest groups.

Principles-based governance, as practiced in the United Kingdom and the European Union, is the preferred model for SOEs. It is also known as the "Comply-or-Explain" governance model. Companies voluntarily adopt a corporate governance code or a set of governance principles, but are required to provide a detailed explanation whenever they determine that non-compliance is in the company's best interest.

The comply-or-explain approach makes sense for SOEs because its flexible and customized approach promotes rigorous Corporate Governance but fits well to their complex missions and corporate purposes. However, it places a substantial burden on the Board and management to provide a detailed rationale and a clear articulation of the business and economic rationale for non-compliance with their governance principles. The European Commission in a recent "Green Paper" has been critical of the adequacy of explanations provided by companies under the comply-or-explain system. Nevertheless, principles-based governance remains the globally dominant model.

The rules-based model is the one used in the United States. The governance of U.S. companies, rooted in State corporation law, is comprehensively prescribed and enforced through federal legislation (such as the Sarbanes-Oxley and Dodd-Frank laws) and rules promulgated by the Securities and Exchange Commission, the stock exchanges and various other regulatory bodies. Transparency and disclosure requirements for companies are also imposed by detailed rules and regulations. The U.S. has a strict-compliance regime in which legal liability is the primary enforcement tool. This system may be inflexible for the dynamic of the SOEs.

## Why is Corporate Governance important in SOEs?

### **Maximizing the SOE Leadership Position.**

SOEs are often the most important companies on a socio-economic level and at the same time their participation in strategic sectors (water and sewage, transport, energy, telecommunications, etc.) makes them the most visible entities in emerging markets and because of this visibility they should have a leadership role in the Corporate Governance model.

*Because of their unique position, SOEs have the ability, and indeed even the responsibility, to set a positive example and help establish a blueprint for other local companies to follow. As governance principles become more recognized globally as an important baseline for healthy markets, SOEs can put forward these initiatives within emerging markets in which they operate.*

### **Maintaining Long-term Business Perspective.**

SOEs often serve a dual purpose –earning profits through a sustainable business practice and serving the public interest– which can create potential conflicts-of-interest, or, at least, perceived conflicts-of-interest. SOEs also commonly face criticism based on the fact that political changes will compel them to focus on short-term or non-business goals, changing their objectives based on a new political environment. Strong Corporate Governance programs provide a clear and transparent means for SOEs to maintain a long-term business focus, countering this criticism and helping to relieve any conflicting.

### **Achieving Business Objectives.**

Corporate governance can help SOEs internally to achieve a number of very specific business objectives, as follows:

***Clearer decision-making structures and processes.*** This is particularly important within SOEs, where the State may have a role in all three aspects of the governance triangle (property, management and control). In particular, where the State assumes the dual role as regulator and owner which can create a conflict of interest by failing to maintain the same level of standards established for companies in the private sector.

***Greater transparency.*** Because of the State's role in SOEs, the public may make the assumption that the SOE is subject to different rules than other companies and has an unfair competitive advantage amongst others. Proactive disclosures of information can lessen this public perception as well as the markets. From a strictly business perspective, transparency can also help to root out potential fraud or mismanagement that might otherwise remain hidden.

**More stable board and management.** Directors and executives at SOEs are more frequently subject to change based on shifts within the political leadership in the State. A well-defined board selection process and executive succession planning can help to ensure continuity within the company's leadership, regardless of changes to the political climate.

**Tighter risk controls.** With the recent global financial crisis, more and more investors and regulators are focused on areas of risk, and are demanding that companies become more sensitive and better prepared to deal with risk within their businesses. Corporate Governance contributes to this process of strengthening businesses.

**Reduced conflicts-of-interest and self-dealing.** Potential self-dealing and other conflicts-of-interest are possible in any business environment. For this reason, well-defined policies, along with clear decision-making processes and transparency, can minimize these potential problems.

**Improved social and environmental practices.** As discussed earlier, social and environmental practices are becoming a mainstream discussion point in any business endeavour.

**Balance economic and social results.** For SOEs, this is often a primary consideration of the company's mandate and overall business objectives. Good corporate governance will help to balance the sometimes competing interests of public policy and profitability.

**Improved public and media relations.** Public perception of SOEs can be improved by greater transparency and disclosure.

**Reduced pressure from the public interest and the oversight organizations.** SOEs can reduce the likelihood that they will be targeted by these groups by developing policies that respond to hot-button issues of concern both locally and globally.

**Better long-term economic performance.** Well-governed companies put themselves in a better position to have sustainable, long-term economic profitability, and better access to capital markets.

**Increased business competitiveness.** Well-governed companies are in a better position to respond to business hurdles, regulatory changes and industry competitors.

**Better access to capital markets.** The process of stock democratization is not only understood as a privatization process or a loss of control by the State; but is also seen as an alternative to growth and expansion. For listed SOEs or that are planning on listing on the stock markets, good corporate governance is a key element to improve the acceptance and the value of stocks. In addition, the participation of different investors with expectations that need to be managed adequately, makes having good corporate governance more relevant. Tighter

risk controls and more transparent governance practices can decrease the perceived risks of investing or lending money to a SOE, and thereby result in a lower cost to obtain capital.

**Access to global capital.** Investors, particularly large global investors, are used to seeing how certain corporate governance principles apply, and are more comfortable investing in a company that provides a level of management accountability, administrative oversight and financial disclosures to which they are familiar.

**Attracting different types of investors.** The perception that the operation and control of SOEs can be influenced by changing political climates can make them less attractive to investors. A well-defined governance structure together with independent board oversight can help reassure investors that the SOE will be run for the benefit of its owners, while still achieving any public policy goals for which it was created.

**Facilitating regulatory compliance.** Companies worldwide are being subjected to greater reporting and disclosure requirements, not only about financial information, but also for environmental, social and governance data. Companies with a good corporate governance program in place have an edge because they are able to accurately report such information and comply with the changing governance regulations enacted by governments, international entities and different kinds of regulators around the world.

**Improving Relations with Minority Shareholder.** While many companies have ownership structures containing majority owners that make decisions affecting the minority owners, SOEs are unique in this regard since the State is the majority owner, and there are often public or social goals in addition to the bottom-line profit objectives. With a strong corporate governance system in place, SOEs are in a better position to manage and explain their social obligations and integrate them within strategic business and economic goals. In addition, SOEs are better positioned to manage political factors that may influence their decision-making, and also to ensure the protection of minority shareholders' expectations.

**Strengthening Public Relations and Communication with Stakeholders.** A strong governance program can help SOEs to inform the public, investors, customers, suppliers, regulators, creditors, organized labour, the media, the financial community and all the other constituencies, as well as political leaders, that they work efficiently and are effective to serve the different interests and objectives for which they were created.

## **Why should States support Corporate Governance Principles for SOEs?**

### **Credibility of the State**

State Owned Enterprises occupy a position of exceptional importance and visibility in the communities and countries where they serve. These represent the best practices at the State level.

Whether the State has complete or partial ownership, an SOE's perceived impact on the general public and on the economy of the State is far greater than that of private or listed companies without State ownership. The SOE should therefore be emblematic of the rule of law enforcement. They should stand as a model of compliance with the legal standards and best practices, setting an example for all businesses subject to the State's laws and regulations. On the contrary, governance failure at an SOE could reduce the credibility of the State and undermine the rule of law.

### **Compliance with Global Norms**

Corporate Governance principles and best practices have become global. The governments, regulatory bodies and stock exchanges of almost every developed and developing country have adopted corporate governance standards by legislation, regulation and private sector initiatives. Global institutions –including the Organization for Economic Cooperation and Development (OECD), the World Bank, the International Finance Corporation (IFC), the United Nations Global Compact Principles for Responsible Investment (UNPRI), the International Corporate Governance Network (ICGN), the Latin American Companies Circle and many other regional groups– form a global network that strongly endorses corporate governance principles and confirms their link to reduced business risk and improved performance. Businesses that ignore global governance rules become the target of a network that includes proxy advisory firms, institutional investors, activists, other stakeholders and the media. Poorly governed companies often suffer a significant discount in value, particularly in developing markets. In addition, institutional investors under increasing pressure to exercise “stewardship” over portfolio companies enhance the importance of corporate governance in calculating the cost of capital.

### **Public Good**

As demonstrated above in Section II, good corporate governance practices can reduce business risk and provide substantial benefits for SOEs. When SOEs are well-governed, well-managed and successful, the economic and social benefits directly affect the communities they serve. The statement “What’s good for business is good for the country” has an added meaning

when it refers to SOEs. The obvious direct public benefits include increased employment, a stronger revenue base, and social and political stability.

Indirect, long-term public benefits include reduced demand for government assistance, less reliance on regulatory interventions, increased investor confidence and stimulation of entrepreneurial culture that occurs when the State is seen as a promoter of development.

### **Business integrity**

When the State supports and enforces corporate governance standards in the SOEs it owns, it is effectively setting a standard of integrity for all companies –both domestic and foreign– that do business in the country. Governance standards improve the quality of domestic businesses, and act as a barrier to foreign businesses of lesser integrity, it reduces the likelihood of a “race to the bottom,” thereby increasing the strength of domestic businesses to compete with external peers.

### **Capital Market Efficiency**

Corporate governance standards increase the access to global capital and reduce its costs. Brazil’s Novo Mercado<sup>3</sup> is the outstanding demonstration of the link between governance and improved performance. The benefits extend from the market to listed companies, to the infrastructures that directly support them, to the communities they serve and ultimately to the general public and the economy of the State.

## **Main Governance characteristics of Latin American SOEs**

Corporate Governance in Latin American State Owned Enterprises is evolving from an ideological discussion to a pragmatic tool. Corporate governance discussion in SOEs is a dynamic topic, due in great part to an institutional leadership<sup>4</sup> in creating a dialogue between governments, SOEs, regulators and other stakeholders. Several activities have been performed in the region to contribute to SOE sustainability and improve quality of life in the region.

Due to political trends of the last decade, and the recent economic development of Latin America, SOEs have become critical players for local economies. Currently, the governance characteristics of Latin American SOEs are<sup>5</sup>:

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3 Novo Mercado is a listing segment designed for shares issued by companies that voluntarily undertake to abide by corporate governance practices and transparency requirements in addition to those already requested by the Brazilian Law and CVM (Brazilian Securities and Exchange Commission).

4 CAF, OECD and other SOEs have supported several activities to increase awareness and interest for corporate governance of SOEs.

5 Andrés, L., Guasch, J., & Lopéz Azumendi, S. (2011). “Governance in State-Owned Enterprises Revisited: The Cases of Water and Electricity in Latin America and the Caribbean”. Policy Research Working Paper 5747, World Bank.

**Corporate structure:** Most Latin American SOEs have adopted a corporate structure. Under a corporate structure SOEs have limited liability, are governed by corporate law and formalities (e.g.: shareholders meetings, board of directors and independent by-laws, among others). However, Latin American SOEs sometimes have special privileges and tax treatment.

**The Board of directors:** Corporate boards are predominantly composed of public officials. Executive members and independent directors are not common practice yet in the region. About one third of Latin American SOEs require specific profiles to appoint Board members. Compensation of boards of directors is not comparable with private standards, and employees' salary levels are higher compared to board fees. Ad honorem boards are common in Latin American SOEs.

**Management selection criteria:** A majority of Latin American States have adopted meritocratic guidelines for hiring upper-management executives and staff. However, discretionary political appointments still occur in many cases and these are common in the appointment of Directors.

**Transparency and disclosure:** Internet and web site development has facilitated SOEs' communication with stakeholders. Most Latin American SOEs use their corporate websites to disclose their governance structure, annual reports, financial statements and procurement processes. A significant and growing number of SOEs are using private external auditors to certify their financial accounts.

All SOEs must explain the objectives and the public role that they are intended to serve. Nevertheless, for some Governments it is still not clear –or it has not been communicated effectively to the stakeholders– what economic, political and social objectives the SOE is intended to achieve.

There is a new trend seen at some SOEs which relates to the use of economic, operational and social indicators which help these entities to clarify their objectives<sup>6</sup>.

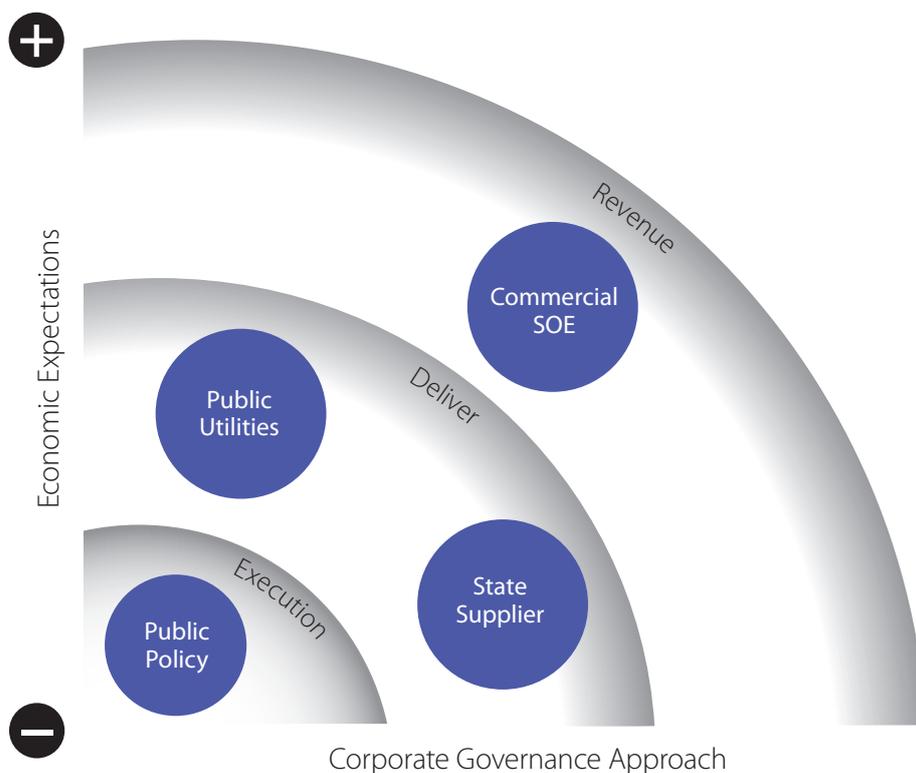
For this purpose SOEs are classified as follows:

- SOEs created for the purpose of achieving public policy objectives; (e.g. banks of industrial promotion or banks of housing development);
- SOEs responsible for providing public utilities and services (e.g. water, electricity, gas, etc.);

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<sup>6</sup> Some examples of this approach are the Ministry of Planning of Brazil, the Ministry of Finance of Colombia and the National Fund to finance States Entrepreneurial Activity (FONAFE) in Peru.

FIGURE 2. BASIC CLASSIFICATION OF SOES



- SOEs which provides exclusively goods or services required by the State (e.g. military suppliers);
- SOEs responsible to produce revenue for the State and compete with the private sector in equal conditions (e.g. state oil companies).

Once a SOE's classification is defined and communicated, its governance can be structured and adjusted to serve the State's objectives and to manage the inherent conflict of interest of the State's triple role as owner, policy-maker and customer.

As soon as the SOE's objectives are set, the State must determine what ownership structure will facilitate their achievement. Latin American State-owners have principally adopted three options in regard to SOEs ownership:

- 100% State ownership;
- Shared ownership with private investors through public-private association.

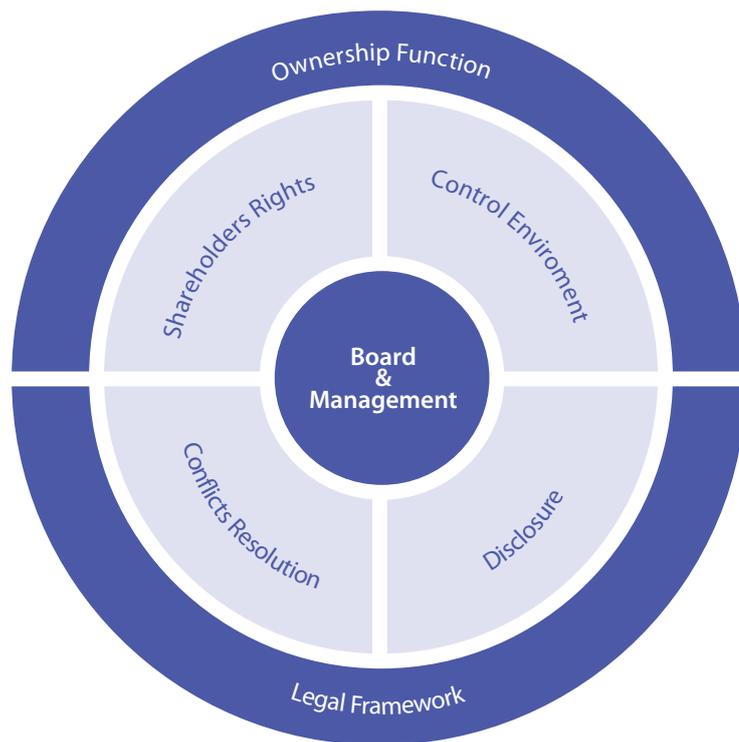
- Listing shares in local and international capital markets.

In any of these three scenarios corporate governance is considered key for creating value and preserving the confidence of stakeholders (including employees, suppliers, investors, communities, regulators, etc.).

### CAF Guidelines for Corporate Governance in SOEs

In 2010, CAF published a set of Corporate Governance guidelines to encourage the discussion of governance in SOEs. The CAF guidelines, based on OECD Guidelines of Corporate Governance for State Owned Enterprises, define the components of governance best practices and make the following recommendations:

FIGURE 3. COMPONENTS OF GOVERNANCE BEST PRACTICES



Source: Diagram prepared by the authors based on "Lineamientos para el Buen Gobierno Corporativo en las Empresas del Estado, CAF 2010".

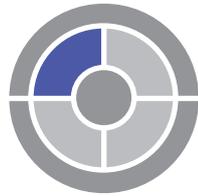
The main CAF recommendations for Latin American SOEs in regards to Corporate Governance are:

**TABLE 1. MAIN CAF RECOMMENDATIONS**

 <p>Legal Framework</p>	<ul style="list-style-type: none"> <li>✓ Separation of the State’s regulatory and ownership functions;</li> <li>✓ Corporate legal structure for SOEs;</li> <li>✓ Allow capital restructuring in SOEs;</li> <li>✓ Market conditions for SOE financing.</li> </ul>
 <p>Ownership Function</p>	<ul style="list-style-type: none"> <li>✓ Ownership statement from the State, with Governance commitments;</li> <li>✓ Operational autonomy for SOEs;</li> <li>✓ Board of Directors independent from government;</li> <li>✓ Central ownership entity identified;</li> <li>✓ Public accountability of central ownership entities;</li> <li>✓ State as active shareholder.</li> </ul>
 <p>Board &amp; Management</p>	<ul style="list-style-type: none"> <li>✓ Board of Directors required;</li> <li>✓ Board functions and special authorities;</li> <li>✓ Board responsible for financial information, risk-management and off-shore transactions;</li> <li>✓ Board charter required;</li> <li>✓ Alternative directors and proper board structure;</li> <li>✓ Independent directors;</li> <li>✓ Nomination process defined and minimum criteria to be director;</li> <li>✓ Board responsibilities &amp; rights formally defined in by-laws or charter;</li> <li>✓ Sufficient and opportune information to directors;</li> <li>✓ Adequate director compensation;</li> <li>✓ Separate management from Governance (board);</li> <li>✓ Chairman selected from external directors;</li> <li>✓ Upper management responsibilities formally defined;</li> <li>✓ Regular board meeting and disclosure directors assistance;</li> <li>✓ Board committees required;</li> <li>✓ Special authorization for related party transactions;</li> <li>✓ Board evaluation.</li> </ul>

Continues

Continuation



Shareholders Rights

- ✓ One share; one vote
- ✓ Reports of related party transactions;
- ✓ Effective shareholders communication;
- ✓ Encourage minority shareholders participation in AGMs;
- ✓ Supermajority voting to authorize special corporate transactions;
- ✓ AGC exclusive authority to decide on special matters;
- ✓ Shareholder meeting charter;
- ✓ Minority right to call extraordinary GMs;
- ✓ Precise AGM agendas;
- ✓ Facilitate proxy voting;
- ✓ Director's liability allowed.



Control Environment

- ✓ Internal audit system required;
- ✓ Independent external auditor;
- ✓ No other services from external auditor;
- ✓ In economic groups, same external auditor required;
- ✓ Time limits for external auditors to preserve independence;
- ✓ Same accounting and auditing standards as listed companies.



Disclosure

- ✓ Financial information in accordance with international accounting standards;
- ✓ Time limit for external auditors in order to preserve the Independence;
- ✓ Transparency of shareholders agreements;
- ✓ Corporate Governance annual report.



Conflicts Resolution

- ✓ Alternative dispute resolution required.

## Corporate Governance in Listed SOEs

Corporate Governance has become a critical factor to attract investors. For SOEs good corporate governance is oriented to regulate the State as controlling owner, regulator and in some cases client or supplier. Listed SOEs in the region have anchored their investors' relations practices in international standards of corporate governance. Several successful listed SOEs (such as Petrobras, Ecopetrol, SABESP and ISAGEN, among others) are recognized as worldwide leaders.

For these companies, listing their shares in a local or international market has the following benefits:

- A flexible regulatory framework that allows the SOE to compete with the private sector;
- Stronger standards of financial and non-financial disclosure that strengthen accountability;
- Permanent oversight of expert analysts, rating agencies and economic journalists based in objective data;
- Better human resources structure due to competitive salaries, hiring processes based in meritocracy and stability of management during electoral periods.

Traditional governance commitments in Latin American SOEs are:

- Commitment to minority shareholder rights, including a clear and stable dividend policy;
- Better structure of board of directors including independent directors, audit committees and board-evaluations;
- Complementary private financial audits to public controls;
- A strong disclosure policy regarding financial and non-financial information.

## How can States encourage Good Corporate Governance in SOEs?

Government and political leaders should make a public commitment to the implementation of good corporate governance practices, transparency and accountability. Every company in which the State has an interest should support corporate governance principles that exemplify the rule of law and demonstrate that protection of the public interest does not compromise a company's ability to achieve commercial and social goals.

At the same time, it is important to encourage self-regulation by SOEs and thereby reinforce the principles-based, comply-or-explain approach to governance. Because SOEs face the challenge of aligning commercial, political and public policy goals, they are best served by

the comply-or-explain governance model. The alternative, rules-based approach would not provide the flexibility needed for SOEs because it imposes a rigid and highly prescriptive regulatory framework. By contrast, principles-based governance endorses customized governance principles and flexible compliance with explanation of context and business purpose. This framework enables SOEs to explain and justify the combination of public and commercial goals that are at the heart of their business model.

All branches of government – executive, legislative and judicial – must agree that corporate governance principles are essential to the success of business enterprises. Within the government structure, the executive branch Ministries and their staffs that are empowered to administer SOEs are of greatest practical importance. They must be educated to understand both the principles and practicalities of governance. In addition, support from the legislative and judicial branches of government is essential to ensure fairness and coherence in the administrative treatment of both listed companies and SOEs.

Education and evaluation is essential within the SOE itself. Governance best practices require annual self-evaluation by corporate boards. SOEs should follow this practice to ensure that directors establish the right priorities and learn how to apply their governance principles and policies in the substance as well as the decision-making process.

Self-evaluation programs should address the questions that relate specifically to members of the Board of Directors who are appointed to represent the State:

- What expertise, qualifications and industry competence do they bring to the Board?
- Do they avoid the appearance of political bias?
- Are they capable of acting independently?
- Do they understand how the interests of the company and the public interest are aligned?
- Is the board structured appropriately to deal with key responsibilities that require objective decision-making?
- Does the board have the internal resources needed to manage the relationships with supervision entities and groups of special interest that often monitor the industries under State control?

A continuous program of education for boards and managers is as essential to SOEs as to listed and private companies.

CAF has designed programs to give technical assistance to Latin American States, with the purpose of ensuring that their SOEs achieve excellence in their corporate governance principles and practices. SOEs that adopt the recommendations set forth in this white paper

will be in compliance with corporate governance global standards and will be well positioned for long-term success.

## **Corporate Governance in Emerging Markets**

As part of the illustration on the development of Corporate Governance practices in different regions of the world, we highlight the process that is being undertaken in emerging markets like Brazil, China and India<sup>7</sup>.

The implementation of corporate governance practices always represents a challenge to all countries regardless of their governments' political ideologies and level of development. Corporate governance is an instrument that strengthens SOEs of all kinds and it is a fundamental tool to guarantee the transparency and solvency in the management of state goods.

Early in the 1990s, Brazil, China and India implemented important political and economic agendas that had an impact on the model of corporate governance followed by their local SOEs. This allowed these companies to have greater competitiveness and in some cases, be more attractive for foreign investors. Corporate governance has been applied in a positive way in emergent economies like Brazil and India, and in societies with non-capitalist economic models -in particular China.

There are natural challenges that need to be addressed while the governance model of the SOEs evolves, in particular, those associated with the State remaining as the owner/ shareholder, the administration of the expectations of other shareholders in listed SOEs (private stakeholders, natural persons, foreign companies, etc.), the Board of Director's structure, and the mechanisms of implementation of corporate governance rules and practices.

The country's characteristics such as culture, natural resources, and history, among others, are key factors while analyzing certain corporate governance matters at SOEs' such as property rights execution<sup>8</sup>, mechanisms of disclosure of information and risk-management. These issues must be adequately addressed to improve the understanding and acceptance of the other owners and stakeholders.

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<sup>7</sup> Brazil, India and China as a group of developing countries, with particular social and economic characteristics, that, according to the experts, place them in a scale of growth that could overcome the traditional economic powers. Some expert's state that by the year 2050 China and India will be the leader suppliers of technology, while Brazil will be the leader in the supply of raw materials. This proposition is a result of the analysis of certain economic factors from these countries and from the rest of the world, such as the size of the economy, the growth rate, income, demographics, the patters of global demand and the currency flows.

<sup>8</sup> Corporate Governance and Development an Update. Stijn Claessens and Burcin Yurtoglu. 2012.

The adoption of better practices of corporate governance on its own, does not guarantee the success of the SOEs per se. There are institutional adjustments that governments must undertake in order to successfully adapt the required changes to their own circumstances and needs. The proper functioning of the legal and judicial system is an imperative for the stability of the enterprises and for economic development in general. Property rights must be clearly defined and implemented and there must be regulations in terms of disclosure and control that ensure an efficient and proper supervision.

## **Brazil**

In the past 20 years, the Brazilian government has privatized around 41 companies; however, there are approximately 100 enterprises in which it has direct or indirect participation. These are created as juridical persons of private law and are mostly organized as stock companies and public enterprises.

There are three governmental entities that influence SOEs corporate governance in Brazil:

- The Ministry of Finance; with competence on political dividends, debt, capitalization, and the designation of a Fiscal Board<sup>9</sup>
- The Ministry of Planning; through the Coordination Department and the Corporative Government of State Enterprises -DEST- establishes other financial policies in line with the policies of state development. This entity has a representation in the SOE's Board.
- The related Ministry to which the SOE is affiliated; this body may influence SOEs investment policy and the Board constitution.

With the purpose of centralizing the State property and deal with the management issues and the control of the SOEs, the Commission of Inter-sectorial Corporate Governance and Property Administration -CGPAR- was created, by Presidential Decree 6021 of 2007.

Important changes in Corporate Governance practices for Brazilian enterprises and SOEs were established by Law 10303, Corporations Law<sup>10</sup>, in 2001 and later through Law 11638 in 2007. The main changes are highlighted below:

- Conditions for transferring the company's control ("tag along") as a mechanism to ensure the respect of minority stakeholder rights.

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<sup>9</sup> Law 6404, article 161 and subsequent. The enterprise will have a Fiscal Board (or Supervision) and the statute will dictate the guidelines of its functioning. (Add by the Law 9457, 1997).

<sup>10</sup> Amendment of the Law 6404, from December 15<sup>th</sup>, 1976.

TABLE 2. RULES DIFFERENTIATED INTO THREE LEVELS

Level 1	Level 2	Level 3 Novo Mercado
Improvement in CG practices		
Higher Disclosure of Information:	Higher Disclosure of information:	Higher Disclosure of Information:
Financial Information. About the Government bodies that own capital. About transactions with related parties. Corporation events.	Financial Information under IFRS or US GAAP standards.	Negotiations of the government bodies that have stocks from the company.
Minimal rights of Minority Shareholders: Minimum of shares in transfer Public stock offering. Public meetings.	Additional Rights of Minority Shareholders: Vote in special subjects. Tag along. OPAs (takeover bids)	Additional rights of Minority Shareholders: Capital only in ordinary shares.
	Government Bodies: Composition of the Board, duration and re-election. Minimum of 20% independent directors.	
	Resolution of Conflicts: Arbitration.	

Source: Based on the information of Bovespa.

- Obligations about accounting, preparation of financial states, and independent auditing, in order to align open capital companies to international standards.

Nevertheless, the increase in the application of corporate governance practices in SOEs has been higher in those companies listed in the Sao Paulo Stock Exchange (BOVESPA) in three different levels<sup>11</sup>.

Brazil is one of the more advanced Latin American countries in terms of implementation and promotion of Corporate Governance, having therefore, a positive impact on SOEs. Still, SOEs have the challenge of adopting their own corporate governance practices, going beyond legal requirements and strengthening the specific practices of disclosure of information and internal and external auditing.

<sup>11</sup> Resolution 264/2000 and Resolution 265/2000. Bovespa.

**PICTURE 1.** PETROBRAS DEMOCRATIZATION AND GOVERNANCE

Petrobras is one of the major oil companies worldwide and is currently listed in Brazil's largest stock market. In 2010, Petrobras was transformed from a purely state-owned company into a mixed company, through a process of share democratization that represented –until today, the largest capital increase transaction in the history of capital markets.

This process of democratization not only meant an increase of market value of the company and an opportunity to access the necessary resources to support its growth's strategy, but it also allowed limiting the risks associated with the participation of the State as the sole proprietary through strengthening the Corporate governance model of the company.

When the Brazilian State was Petrobras' sole proprietary, and given the absence of particular owners -who would act as entities of control for the decisions of the representative of the State and of its administrators, the company was subject to potential risks associated with political influence, hijack by groups of interest and the absence of commitments by the organs of direction and control. The numerous new shareholders of the company act as a consequence as groups of pressure that promote and supervise the correct performance of the company.

Also, by listing Petrobras' shares on the stock market the company accepted the rules specified for listed companies, and had to ensure the adoption of international standards of transparency to enhance its credibility in the market and improve its relationship with stakeholders.

Today Petrobras is a company committed both to align the expectations of owners with economic and social impact of its actions, and to adopt international standards through a voluntary regulatory framework becoming an example of how the process of democratization of the capital's shares is a starting point for strengthening the company's commitment to Corporate Governance.

## India

SOEs in India find themselves operating in one of the economies with the greatest growth potential in the world.

Even when the impact of SOEs on the local economy is still considered as very important (especially in the electricity, gas and water sectors) the trend is towards the privatization and de-regulation, facilitating the adoption and implementation of corporate governance practices<sup>12</sup>:

<sup>12</sup> This section has used as source, mainly the documents from OECD: State Owned Enterprises in India: Reviewing the Evidence (2009).

- The investment in SOEs is increasing, in particular in sectors such as electricity, mining and manufacturing. This would require increasing the implementation of corporate governance practices which ensure the efficient use of capital and the generation of profits in a responsible way.
- The SOEs' role in the economy has decreased (de-monopolization) as well as the dependency on them.
- Due to the economic policies applied since 1991 and the corporate governance practices implemented, the State is increasingly looking after the profitability of listed SOEs.
- The internationalization policy allows a greater autonomy in foreign investments and participation of investment funds. The listing of SOEs in the New York Stock Exchange (NYSE) and the London Stock Exchange is part of a strategy to compete in international markets, which forced them to accommodate the management and control of these entities to new and more demanding practices of corporate governance.
- Implementing good corporate governance in SOEs has had a safeguarding effect to a certain degree, given the high risks associated with fast economic growth and the internationalization process referred above. The country faces the important challenge of continuing the process of adopting and implementing corporate governance rules and practices in order to support the adequate integration of the regional SOEs into the international markets.

## **China**

The process of reform of economic policies in China had as result, a re-formulating of the role of SOEs. This process originated in the serious deterioration of SOEs' financial performance, given the impact on the entrepreneurial environment of different situations (competition with the private sector and foreign enterprises). The goals of these reforms were not the improvement of productivity and financial performance alone but also establishing the institutional framework required to support the newly adopted market-oriented economic policy. As a result, the reforms had significant political, economic and social implications and were complemented by a significant implementation of corporate governance practices. Below, a summary of the most relevant governance topics related to SOEs follows<sup>13</sup>:

**Relation between SOEs and the State.** It clarified the property rights, responsibilities, the need to divide the role of the state as regulator and as owner and promote the technical management instead of a political one.

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<sup>13</sup> This section has used as source, mainly the documents of OECD: *State owned enterprises in China: reviewing the evidence* (2009). See Bibliography.

**Conversion of SOEs into companies.** It was fundamental to convert SOEs into limited enterprises or stock corporations in order to achieve goals such as appointing reasonable management, enabling the supervision of State's assets, and the compatibility of the State's role as regulator.

**Supervision System.** A 3 level of supervision –which is not interchangeable amongst them, was established. In the first level, the ministries exercise the property rights; in the second one, the direct stockholders and in the third place, the SOEs.

**The exit mechanisms.** In the stock market (i.e. Initial Public Offer-IPO) were used as an efficient measure to support the reform of public enterprises, since they help increasing transparency, and it is an efficient supervision tool. Listed SOEs are ruled by the Good Corporate Governance Code of Open Capital Enterprises<sup>14</sup>.

It is important to emphasize the interest and caution with which corporate governance practices are being adopted in China, even though there are still important gaps that must be dealt with while the governance model evolves. In particular those gaps are related to matters such as the State remaining as owner/stockholder and the administration of the expectations of other stockholders in listed SOEs (private stockholders, natural persons, foreign enterprises, etc.).

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<sup>14</sup> Guidelines for the Good Corporate Governance of State Owned Enterprises. CAF 2010.



# Cases of Corporate Governance in State-Owned Enterprises in Latin America

This section presents successful experiences in the implementation of good Corporate Governance practices in Latin America, with highlights of different models, strategies and good practices some countries used to move from theory to practice.

The different experiences highlighted below provide an overview of the current status of corporate governance in SOEs, acting in strategic sectors of local economies such as mining and energy sector with companies such as Isagen (Colombia) and Codelco (Chile), Transportation with the Panama Canal (Panamá) and Public Services with EPM (Colombia). It has been included also the experience of the Entity/Centralized Property Unit (UCP) from Peru - Fonafe.

In each case, we present a brief description of the SOE, the main aspects of its corporate governance, and the most important challenges they face and the relevant characteristics that made them successful.

Each of these cases reflects a different issue of the dynamics of corporate governance within SOEs:

- Codelco highlights the role of the State in the implementation of best practices, while regulating, in order to strengthen the corporate governance structure, the selection of board members and the establishment of the roles and responsibilities of the board.
- Fonafe highlights the important role accomplished by the Property Control Unit as managers and promoters of corporate governance in the respective SOEs.
- Isagen reflects the commitment of listed SOEs, by having a first-class Board of Directors, the implementation and observance of the best governance standards and the respect of minority shareholders rights.
- EPM highlights the management skills of the local entity –the Medellin Municipality) in establishing the adequate legal framework to exercise its property, the management of corporate governance within a conglomerate of companies, and the establishment of an Annual Improvement Plan to implement the best corporate governance practices and follow-up.

- The Panama Canal shows how the implementation of gradual systems for the election of Board members, is a mechanism which help strengthening the autonomy of SOEs, in response to the inherent impact of the State's participation as owner.

## **Codelco: Corporate Governance adjustments within a regulatory process**

### **Codelco and Corporate Governance Reforms in Chile**

Since Chile's admission as an OECD country member, the country has been adopting regulatory changes in favor of transparency and good governance<sup>15</sup>. In this case, reform by virtue of the statue laws of Chile's most important company (Codelco) meets OECD's criteria of incorporating international governance practices by adopting its main recommendations for state owned companies.

### **Codelco - World leader in the copper industry**

Codelco was founded in 1976 after a merge of the major copper mines in Chile and the government took control over its administration. Since its foundation, it has become one of the largest companies of the mining sector in the world (by capacity and profitability).

Research and technological innovation has been one of Codelco's areas of growth which have contributed to its policy of financial and environmental sustainability.

### **Codelco's Corporate Governance Tools**

In March of 2010, the Chilean government enacted the law 20.392 which introduced important modifications to Codelco's organic laws aimed to improving its Corporate Governance. The new Corporate Governance Law established among other aspects, a professional Board of Directors without the presence of the Ministers of Mining and Finance and representatives from the Armed Forces. It also established rules on the rights, obligations, responsibilities and prohibitions as set for in the Corporations Law which rules private companies.

These efforts aimed to:

- Relying on State Companies and not Government ones;

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<sup>15</sup> Organisation for Economic Co-operation and Development. [http://www.oecd.org/document/20/0,3746,fr\\_21571361\\_44315115\\_44375060\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/20/0,3746,fr_21571361_44315115_44375060_1_1_1_1,00.html). June 20, 2012.

TABLE 3. GENERAL DESCRIPTION OF CODELCO

<b>Key Company Data</b> <sup>16</sup>	
<b>Country</b>	Chile
<b>Shareholders</b>	100% state ownership of Chile.
<b>Industry</b>	Mining-Copper. In 2010 produced, 1.76 million metric tons of refined copper. In 2011 this number grew near 2%
<b>Number of employees</b>	19.347 employees in 2010 and 18.247 in 2011.
<b>Consolidated Net Income</b>	In the 2004-2010 periods, pre-tax earnings reached \$44 million US Dollars. In 2011 the surplus (gross) amounted U.S. \$ 7,033 million (21.2% increase over 2010).
<b>Other data</b>	Codelco represents close to 11% net income for the Chilean government. In the next decade, investments are expected to exceed \$30 million US Dollars. The number one copper producing company in the world.

- Breaking political business cycle dynamics;
- Establishing a professional board, without public officials;
- Establishing requirements and incompatibilities for board members;
- Securing a long term decision-making structure;
- Establishing adequate mechanisms for the capitalization and funding of projects;
- Strengthening the financial reporting and transparency of the company.

The process of implementation of this new law prompted the following changes to the Board of Codelco:

<sup>16</sup> Codelco. <http://www.codelco.cl/>. June 20, 2012.

TABLE 4. BOARD CHANGES AT CODELCO

Board	Before	After
<b>Board Structure</b>	<b>7 Directors:</b> <ul style="list-style-type: none"> <li>✓ Minister of Mining (Chairman)</li> <li>✓ Minister of Finance</li> <li>✓ 2 Presidential Representatives</li> <li>✓ 1 Armed Forces Representative</li> <li>✓ 2 Union Representatives</li> </ul>	<b>9 Directors:</b> <ul style="list-style-type: none"> <li>✓ 4 Directors appointed by the Public Management Council</li> <li>✓ 3 Presidential Representatives</li> <li>✓ 2 Union Representatives</li> </ul>
<b>Term</b>	Presidential Term	4 years partially rotated (classified)
<b>Roles and Responsibilities</b>	<ul style="list-style-type: none"> <li>✓ Establish general policies</li> <li>✓ Approve investments of over US\$50M</li> <li>✓ No liability (civil and/or criminal)</li> <li>✓ Not regulated by corporate law</li> </ul>	<ul style="list-style-type: none"> <li>✓ Designates and appoints CEO</li> <li>✓ Approves the strategic plan</li> <li>✓ Civil and criminal liability for their decisions</li> <li>✓ Governed by corporate law</li> </ul>

In brief, the new Corporate Governance law meant the following for the largest company in Chile:

- A new nomination process -independent and technical, for the role of Chief Executive Officer (CEO);
- A new Code of Corporate Governance;
- Code of Ethics;
- A renewal process of Senior Management Team;
- Definition of the strategy and long term development plan;
- Corporate restructuring and strengthening on the issues of security, environmental and social responsibility;
- A market alignment process of executive salaries and a 10% workforce reduction,
- A capitalization process of \$376 Million US Dollars (20% net income).

## Conclusion

The corporate governance practices promoted by the State towards a more professional approach on the SOEs, have had a positive impact in Codelco and have allowed it to be a more competitive and efficient enterprise and a leader in the world. It has an organization and a business model, which promotes the creation of value and the long-term growth.

In this regard, the improvement in SOEs corporate governance requires an active State which is compromised with the implementation of a legal framework aligned with better practices aimed for the strengthening of its companies.

## Fonafe: Centralized Management of State Enterprises

### Managers

The appointment of a centralized Entity/Unity is an effective mechanism to harmonize the administration and control of the SOEs. This harmonization takes place through the establishment of general guidelines that enable the monitoring and reporting of results in a systematic and productive way as well as a more active participation by the owner in the management of SOEs.

Fonafe as a centralized entity which manages Peruvian companies has been distinguished for its good management and promotion of corporate governance practices not only to provide guidance to the state as an owner, but also to strengthen and encourage companies under its management.

### Fonafe - Peruvian State Holding Company

Fonafe is a holding company of the Peruvian State regulated by law which operates in the sectors of Economics and Finance of Peru and created in 1999 to regulate and run state business activities.

Fonafe's main functions are<sup>17</sup>:

- Exercise the ownership rights of the shares representing the capital of the companies (generated or about to be generated) in which the state participates in and also manage the ownership of these proceeds.

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17 National Fund for Financing Government Enterprise Activity - Fonafe. <http://www.fonafe.gob.pe/portal?accion=c&t=13&i=106&n=1&o=106&m=4>. June 20, 2012.

TABLE 5. GENERAL DESCRIPTION OF FONAFE

Key Company Data <sup>18</sup>	
<b>Country</b>	Peru
<b>Number of companies in the corporation</b>	<p>Close to 70 companies in the following sectors:</p> <ul style="list-style-type: none"> <li>✓ Electrical Power Generators: Egasa, Egemsa, Egesur, Electroperú and San Gabán.</li> <li>✓ Electricity distributors: Adinelsa, Electro Oriente, Electro Sur Este, Electro Ucayali, Electrocentro, Electronoroeste, Electronorte, Electro Puno, Electro sur, Hidrandina and Seal.</li> <li>✓ Infrastructure and transport: Banmat, Corpac, Enapu, Sedapal, Sima-Iquitos and Sima-Perú.</li> <li>✓ Hydrocarbons and environmental remediation: Activos Mineros and Perupetro.</li> <li>✓ Others: Editora Perú, Enaco, Fame and Serpost.</li> <li>✓ Financial: Banco de la Nación, Cofide, Fondo</li> <li>✓ Mivivienda and Agrobanco.</li> <li>✓ Companies in charge of (3).</li> <li>✓ Companies in liquidation (15).</li> <li>✓ Companies with minority shareholdings (20).</li> </ul>
<b>Consolidated Net Income</b>	\$568.2 million US Dollars as of December 2011 <sup>19</sup> .

- Approve the consolidated budget of the companies in which Fonafe has majority ownership within the framework and rules of the corresponding budgets.
- Approve management procedures of these companies.
- Appoint its representatives to the Annual General Shareholders Meeting of the companies in which it is a majority shareholder.

Vision: To be recognized as a model for efficient state management.

Mission: Promote efficiency in the business activities of the state and in the management of the companies under its control. As well as contribute to the well-being and development of the country.

<sup>18</sup> National Fund for Financing Government Enterprise Activity - Fonafe. <http://www.fonafe.gob.pe>. June 20, 2012.

<sup>19</sup> National Fund for Financing Government Enterprise Activity - Fonafe. <http://www.fonafe.gob.pe>, Exchange 1USD= 2,67 PEN. June 20, 2012.

Strategic Objectives:

- Generate value through efficient management of the holding companies.
- Strengthen state enterprises.
- Enhance the image of the Fonafe holding.
- Reinforce values, communication and staff development.
- Promote transparency in the management of companies of the holding.

### **Fonafe's Board of Directors**

The composition of the Board of Directors of Fonafe is an element that contributes strengthening its direction of the entity due to the participation of representatives of different State Ministries which enables a more plural and professional management of the state property:

- Ministry of Economy and Finance.
- Ministry of Telecommunications and Transportation.
- Ministry of Housing, Construction and Sanitation.
- Ministry of Mines and Energy.
- Ministry to which PROINVERSIÓN is ascribed to.
- President of the Ministries Board.

Some responsibilities of the Board of Directors<sup>20</sup>

- Appoint the Presidents and the members of the companies' Boards.
- Regulate through its directives, the compensation of the companies' directors.
- Approve rules and regulations for the budgeting process and the management of the companies.

### **Fonafe's Executive Director**

The Director is appointed by a Ministerial resolution of the Ministry of Economy and Finance. He is the legal representative and executes the Board agreements.

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<sup>20</sup> Regulation N° 27170: Supreme Decree No. 072-200- EF. Fonafe Law.

## **Fonafe's Challenge**

Fonafe's constant challenge is to foster improvements in the management of its portfolio of companies while creating value, achieve their purpose and have the social impact for which purpose they were created for. Furthermore, Fonafe also has to overcome and deal with the following management challenges:

- Simultaneous interaction with several companies while maximizing its processing time.
- Vision of unique corporate responsibility.
- Unification vs. fundamental uniqueness of the companies.
- Expectations of specific stakeholders in each company.

## **Fonafe's Corporate Governance Tools in correlation to the companies it manages**

The exercise of ownership rights by the state in SOEs can be decentralized or under one body, as is the case with Fonafe in Peru. This is the reason for which some states created an entity that runs the coordination of several public aspects in relation to SOEs and serve as a "Unit of Property Control" (UCP) - Property Control Unit (PCU) of state agencies<sup>21</sup>. Fonafe exercises the ownership rights of Peruvian state companies under its management as well as enhances their value.

As a centralized manager of Peruvian companies, Fonafe provides Corporate Governance guidelines designed to ensure minimum compliance of governance standards in state entities. These efforts include the development and implementation of the "Guidelines for managing State Ownership" and a "Code of Good Corporate Governance of State Enterprises" which guide the corporate governance process in Fonafe portfolio of companies.

## **Acting Directives**

Fonafe has formal directives which establishes the framework for policies for corporate purchases, corporate governance practices, and the selection of directors and managers of the companies in which FONAFE is a stockholder.

Regarding governance issues, the directives that promote Good Corporate Governance including the Guidelines for the State acting as Owner, and the Framework Code for Good Corporate Governance of SOEs, and the ones on directors and managers are the most important.

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<sup>21</sup> Guidelines for the Governance of State Enterprises. CAF. 2010.

FIGURE 4. FONAFE DIRECTIVES



The directives about directors and managers for companies under Fonafe's management include the following rules:

- Maximum amounts of compensation for Directors and the guidelines for the application of variable compensation;
- Designation of Directors, including process, rights, obligations, prohibitions, liabilities, management and others;
- Selection of managers and equivalent positions, and guidelines for the designation of the managers, terms of selection, and mechanisms for the identification of potential candidates with high professional capabilities through head hunters.

These directives are part of the strong Corporate Governance system that has reinforced the SOEs from Peru.

## Guidelines for exercising state's ownership

The guidelines ratify the State's fiduciary obligations as owner of a portfolio of companies and its duty to manage them with diligence, objectivity with the aim of value creation.

**Separation of regulatory and property functions.** For management the state should act as a business owner.

### **Property policies clearly defined:**

- *Objective:* To establish clear and consistent overall goals that the state expects from the different companies under its ownership.
- *Institutional Framework:* goals should be clearly defined; the responsibilities for achieving them and the monitoring of performance must be clearly assigned to different entities or agencies.
- *Market conditions:* Endorse state enterprises functioning under market conditions without the aid of special benefits, subsidized schemes or any other mechanism that create artificial results.
- *Financial Sustainability:* Make them more efficient and maximize their profits.
- *Social Interests:* Social goals should be specifically identified in a manner that allows for proper planning.

**Board Empowerment.** The boards are appointed to act in favor of the interests of the SOEs, assume the main responsibilities of their conduct or the results achieved and be adequately compensated for their assigned responsibilities.

**Avoid interference with daily activities.** The state grants autonomy to the companies and does not interfere with the normal day to day activities.

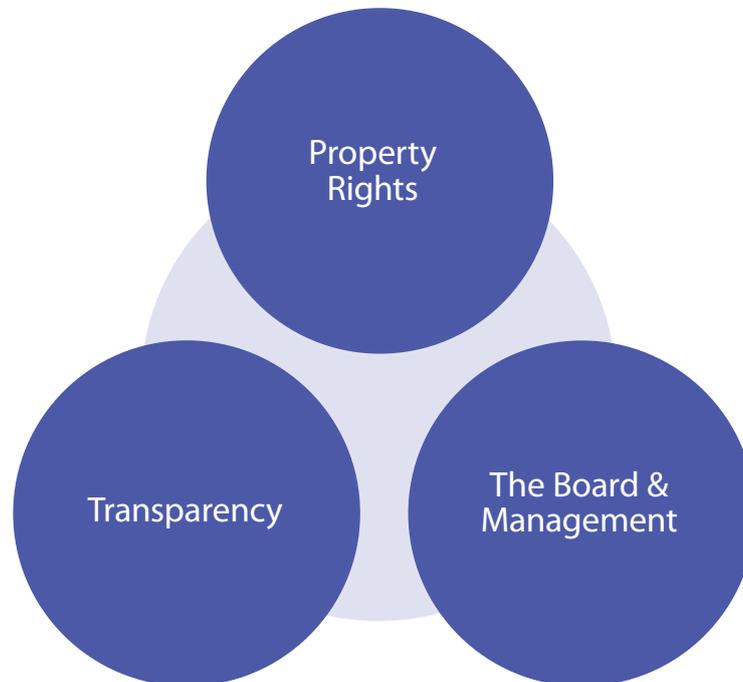
**Effective monitoring systems.** Establish monitoring systems that track the real financial situation of the SOEs, in terms of budget and strategy, as well as the performance of governing bodies.

**Stakeholders.** Promote the recognition of SOEs responsibilities towards them.

**Advocate Good Corporate Governance (GCG).** Endorse the main principles that lay the foundation of CGC.

FIGURE 5. TOPICS WHICH ARE PROPOSED AND DEVELOPED BY THE CODE

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### **The Framework of State Enterprises Code of Good Corporate Governance**

This document compiles the practices that are promoted within the companies under FONAFE. Although this document is not enforceable it acts as the main reference for the implementation and discussion in regards to Corporate Governance topics within the companies.

### **Conclusion**

The UCPs are constituted as viable and beneficial for the management of the SOEs. Fonafe as a UCP has contributed to the adoption and strengthening of corporate governance in SOEs's in Peru, by providing directives and guidelines that clarify the role of management and control bodies, and the transparency process towards stakeholders. In this regard, Fonafe has implemented framework guidelines through the "Guidelines for the performance of the State as owner and the Framework Code of Corporate Governance in SOEs".

TABLE 6. GENERAL DESCRIPTION OF ISAGEN

Key Company Data <sup>22</sup>	
<b>Country</b>	Colombia
<b>Shareholders</b>	57.66% is owned by the Republic of Colombia through the Ministry of Finance and Revenue, 15.7% is held by minority shareholders and 13.7% by Pension Funds and 12.9% by EPM (Telecommunications).
<b>Industry</b>	Producer and provider of electrical energy and energy solutions. Ranked third producer in its market.
<b>Number of employees</b>	530 employees
<b>Net Income</b>	\$221.7 million (US Dollars) in 2010 <sup>23</sup> and in 2011 increased by 17%.
<b>EBITDA</b>	\$371.4 million (US Dollars) in 2010 and EBITDA margin was 3% in 2011.

## Isagen: High quality of Directors in the Board

### Isagen's Example of Corporate Governance in Colombia

The corporate governance practices implemented by Isagen have distinguished the company as a reference point at the national and regional level. The incorporation of a first-class Board of Directors -highly qualified and unbiased, is an essential piece of Isagen's Corporate Governance.

Having a professional and highly qualified Board of Directors -desirable to any public or private Latin American company, was made possible due to the State's commitment as majority stockholder, to give assurance on the company's management preference for business initiatives and not political ones.

### Isagen-First Place in the Country's Survey of Good Corporate Governance Practices in the Real Sector

Isagen is a joint-venture public services company. It was created in 1995 as the government's response to the 1992 Colombian electricity crisis. During this crisis, the entire country

<sup>22</sup> Isagen S.A. ESP. In <http://www.isagen.com.co/>. June 20, 2012.

<sup>23</sup> \$409,776 million Colombian pesos, exchange rate used COP/USD average 2011: 1,848 Banco de la República de Colombia.

experienced continuous blackouts as a result of the split of the company Interconexión Eléctrica S.A. (ISA).

Today, Isagen is one of the most recognized companies in Colombia, particularly for its commitment to adopting Corporate Governance practices and transparency which has earned it several recognitions:

- It is recognized as the number one company in the country for its standards on self-regulation and business ethics according to Colombia's Transparency Corporation (Corporación Transparencia por Colombia).
- Ranked first in the energy sector according to a 2011 study by RepTrack Pulse Colombia on corporate reputation management and awarded 32nd place in the overall assessment, granted by the Reputation Institute and Good Will.
- First Place among the Public Services companies listed on the Colombian Stock Exchange
- The Andesco Prize for Corporate Responsibility and Good Corporate Governance

### **The Isagen Corporate Governance Challenge**

As a joint venture company, Isagen dealt with huge governance challenges. In particular:

- Determining a strategy which would meet the expectations of both private and public shareholders.
- Remaining a sustainable company in a market that is competitive and highly regulated.
- Creating value and social credibility.

### **Corporate Governance Tools**

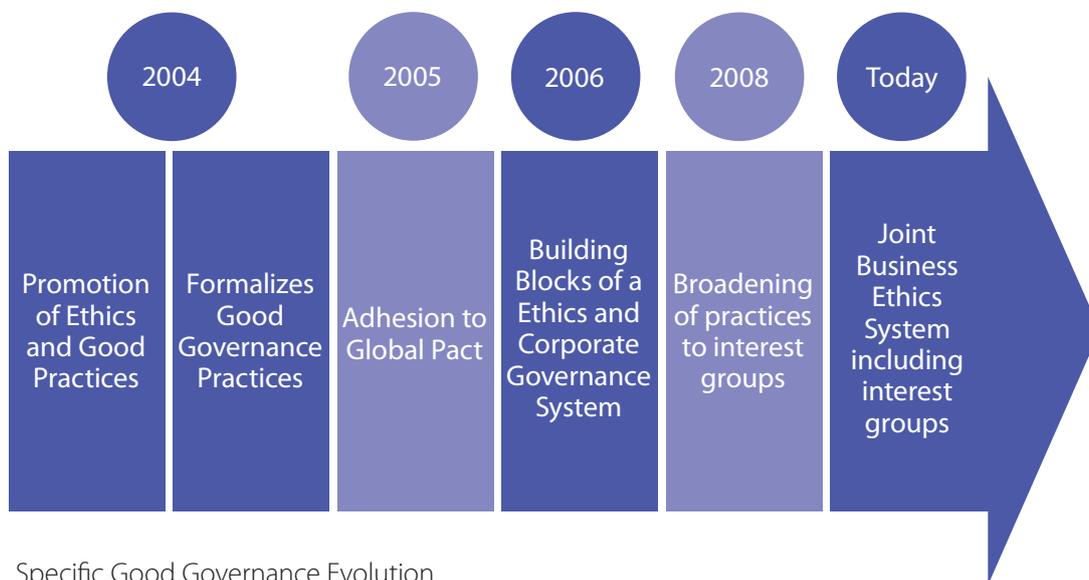
The construction of Isagen's Corporate Governance model was focused on recognizing and respecting shareholder rights, ensuring transparency in its stewardship and disclosure of relevant business and financial information that should be known to its stakeholders. All of this, within a governance structure led by a top level Board of Directors.

### **Top Level and Independent Board of Directors**

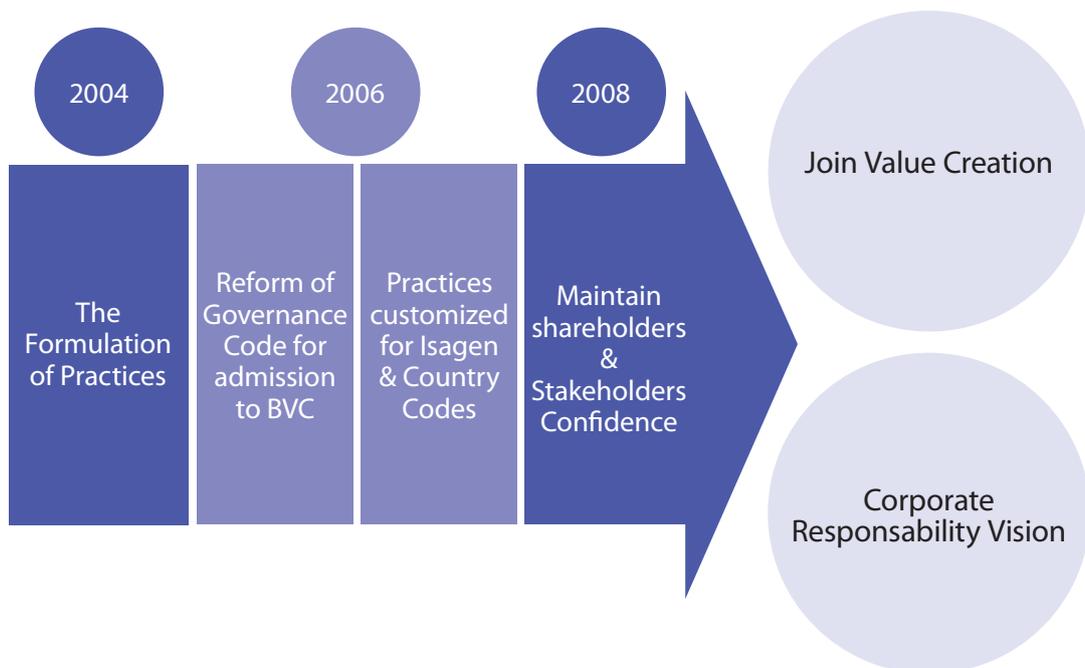
Isagen's Board of Directors incorporates various key aspects that have shaped it into a highly qualified governing body of representation and leadership:

FIGURE 6. ISAGEN'S ETHIC AND GOOD GOVERNANCE EVOLUTION

Promotion of Business Ethics and Corporate Governance



Specific Good Governance Evolution



Sources: "Good Governance of Colombian Companies", Ministry of Finance and Public Credit of Colombia.

TABLE 7. THE BOARD OF DIRECTORS OF ISAGEN AND PROFILE OF ITS MEMBERS 2011-2012

<b>Profile of Board Members of ISAGEN<sup>24</sup></b>	
<b>Professional background</b>	All Board members are professionals in the areas related to and Isagen's business and its management (Economy, Law, Business Administration, Electrical Engineering) with Master and Ph.D. degrees from universities of international prestige (for example the University of Chicago, Booth School of Business - Chicago-, and Georgia University).
<b>Experience in particular</b>	<p>All Board members have extensive experience (usually more than 10 years) in public and private sectors. In particular, they held the following positions:</p> <ul style="list-style-type: none"> <li>✓ Ministers or Vice Ministers (Ministries of Transport, Economic Development, Public Works and Transportation).</li> <li>✓ Directors of state agencies (National Planning Department).</li> <li>✓ Principal Executives of public utility companies (Company of Energy of Bogota, Company of Telecommunications of Bogota), and in the private sector (Company of Investments Bogota S.A., Interamerican Radio Television S.A. RTI S.A.).</li> <li>✓ International business executives (Latin America Initiative at Brookings Institution, Bank of Montreal - BMO Nesbitt Burns Investment, Investment Banking Chase Manhattan Bank NA).</li> <li>✓ Members of local unions (Governing Board of the National Hydrocarbons Agency) and foundations (Fedesarrollo, Cerrejón Foundation for the Advancement of Guajira).</li> <li>✓ Members of the Board of national companies of great prestige (Ecopetrol, International Carvajal, Cements Argus, Smurfit Kappa, Carton of Colombia, Foundation Exito).</li> <li>✓ Consultants (Independents, World Bank, United Nations University).</li> </ul> <p>Members of the Board of Isagen also have parallel activities in the academia and other research communities (universities).</p>

- The election of its members is conducted by the Shareholders General Meeting in a democratic process; where all shareholders are allowed to participate. The curriculums of candidates are provided to the shareholders in advance. The selection process accepts the re-election of members in order to maintain the knowledge of the company and the dynamics of the Board.

The profiles of the members include professionals with commensurate experience, training and capacities, both technical and financial, all within the interests of Isagen's key areas.

<sup>24</sup> Isagen elect Board of directors in the Annual shareholders meeting of 2011. In <http://www.isagen.com.co/accionistas-inversionistas/gobierno-corporativo/>. June 20, 2012.

**TABLE 8. BOARD DYNAMIC**

<b>Regulation of the Board of Directors</b>	The rules for the operation of this body are included in a formal document that allows follow-up on what has been accomplished and defined the consequences accordingly.
<b>Evaluation of the Board of Directors</b>	There is an annual evaluation process directed by the Board Committee. The Board is evaluated on its functioning as a body, as well as the personal participation in 3 aspects: contributions, commitment and performance.
<b>Rights of the Board of Directors</b>	In order to function adequately, the Board can hire external assessment in particular cases. They have the right to have all the information needed for the decision-making process.
<b>Conflicts of interest</b>	This is assessed on a case by case basis in particular in regards of confidentiality of the information, and the discussion of strategy.
<b>Induction Process</b>	The new members are given all the information in order to participate productively.
<b>Committees</b>	There are supporting committees, permanent and temporal, for specific subjects such as auditing, finance and corporate governance. Each committee has its own rules.

Source: Good Corporate Governance Code. Isagen S.A.

Regarding independent members, they could only be appointed if –in addition to the conditions legally established, they do not fall within the following circumstances:

- An employee associated with the Majority Shareholder or controlling interests;
- A member or employee of entities that supply goods and services where the value of purchased goods represent more than twenty per cent (20%) of Isagen’s operating costs or if it represents twenty per cent (20%) of profits to the entity that supplies goods and services;
- A member or employee of a client when the profits account for more than twenty per cent (20%) of Isagen’s total sales<sup>25</sup>.

<sup>25</sup> Isagen Corporate Governance Code. 2009. Page. 15.

The structure of this governing body incorporated by internal regulations (Board of Directors Regulations and Code of Corporate Governance) requires the participation of a minimum of three (3) independent members (more than 40%) within its composition. In practice, the Board normally incorporates a majority of independent members as a way to strengthen the impartiality of its decision making process, going beyond, the legal requirements of a 25% minimum of independent members (Law 964 of 2005).

Additionally, the Board of Directors has enabled the following process to support a more efficient and productive work dynamic.

### **Shareholder Agreement**

The shareholders' agreement signed at Isagen by the nation's Ministry of Energy and Mining, as part of the shareholder liberalization process (20% share capital), constitutes the state's formal commitment to protect the rights of minority shareholders.

The state agreed to the following commitment on Good Corporate Governance:

- Compliance with the Policy of distribution of utilities.
- Clear and sufficient information.
- Integration of governing bodies with the aim to defend minority shareholders. The election of some independent Board members through an election process that involves the participation of minority shareholders.
- Commitment by third-party buyers of adopting these obligations.

### **Conclusion**

Isagen has earned recognition from the general public, shareholders and investors as one of the companies with the best corporate governance practices in Colombia thanks to its strong engagement with corporate governance practices.

The Board of Directors is strong enough to support the governance of the company, by providing clear rules that limit the interference from political actors, and also guidelines for an efficient management.

## EPM: Corporate Governance in a 100% Public Stock Company

### Corporate Governance in a Public Company

TABLE 9. GENERAL DESCRIPTION OF EPM

Key Company Data <sup>26</sup>	
<b>Country</b>	Colombia
<b>Shareholders</b>	100% ownership by Municipality of Medellin.
<b>Industry</b>	Public Utilities (water, sewage, energy and telecommunications).
<b>Number of employees</b>	13.835 employees around the Group EPM in 2011.
<b>Consolidated Net Income</b>	Business Group-USD6.013 approx. (million) in 2011. Central American companies contributed 25%.
<b>EBITDA</b>	Matrix-2,4 billion pesos in 2011 with a growth of 24% over the previous year.
<b>Transfers to the Municipality</b>	797.500 million pesos in 2011.
<b>Community and Environment Investments</b>	\$221.133 million pesos in 2011.

The Corporate Governance dynamic in companies with 100% public capital stock faces the particular challenge of exercising the ownership rights by the state while safeguarding the company's competitiveness in the private sector. EPM has set the example on how to achieve both goals.

The corporate governance model, the sustainability and the competitiveness of this important group of companies, was strengthened by the establishment of an Annual Corporate Governance Plan. This plan determines improvement initiatives under a medium-term strategic vision along with the framework of the Governance Agreement between the Municipality of Medellin and EPM.

<sup>26</sup> Public Companies of Medellin EPM ESP. <http://www.epm.com.co/site/>. June 20, 2012.

## **EPM – Successful Colombian SOE**

Empresas Públicas de Medellín (EPM) is the head of the holding group with the same name, and it was created August 6<sup>th</sup>, 1955 to ensure the supply of energy services, water, sewage and telecommunications in the municipality's metropolitan area of Medellín.

EPM is seen as one of most successful companies in Colombia, given the continuous high level of profit, a growth strategy and fluid contact with its stakeholders.

Today, the holding group has around thirty affiliated enterprises throughout the country as well as in Guatemala, El Salvador and Panama.

## **EPM's Corporate Governance Challenge**

In regards to the relationship with the owner, all of the utility companies in Colombia face the dilemma of balancing the interests of the territorial entity-owner with the goal of creating growth, profits and efficiency which should boost the company's management regardless of the strategy it follows.

The following situations represent a major corporate governance challenge of Colombian public utility companies at the municipal level.

- Representatives of the municipality-owner have full authority regarding the integration of management and supervisory bodies of the company. They chair the Board -the highest governing body of the companies, and choose their members with discretion, including a third of them which are selected from the representatives of the controlling group. They also elect the Chief Executive Officer<sup>27</sup>.
- The periodic rotation of the representatives of the owner implies frequent changes in management criteria.
- In general, companies transfer to the municipality a fixed percentage of adjusted net profits; however, it is possible for the owner to request a higher percentage.

## **Corporate Governance Tools**

EPM defined a governance model based in 3 principles:

- Clear delimitation of the roles of the control and direction bodies.

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<sup>27</sup> Colombia's Political Constitution, article 305 - Law 142 of the year 1994. Article 27.

FIGURE 7. PRINCIPLES OF CORPORATE GOVERNANCE AT EPM



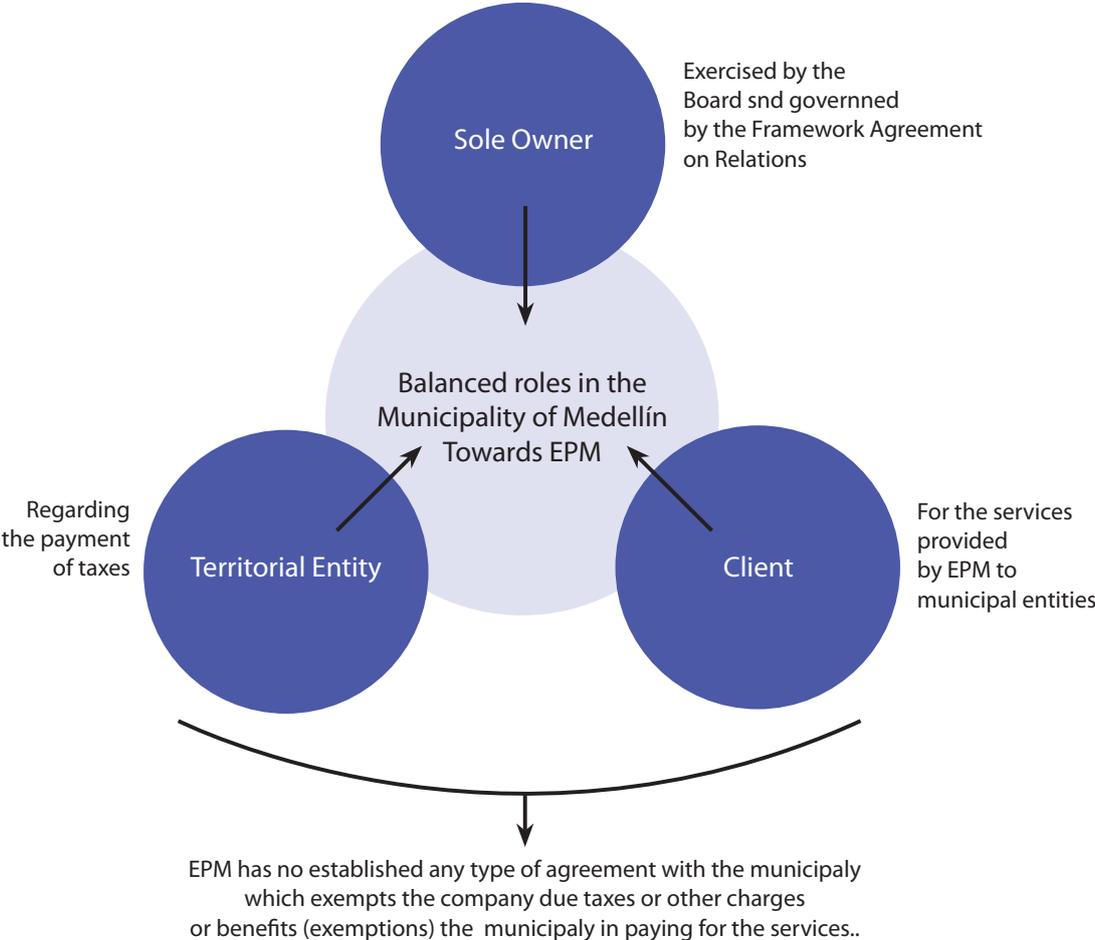
- A culture of transparency, ethic rules and an efficient and appropriate relation with stakeholders.
- Implementation of self-regulation mechanisms, and warranties of an independent, objective and impartial control.

In this regard, this model aims to maintain a fundamental balance considering the role of the Municipality of Medellin as triple actor on EPM; clarifying the responsibilities regarding the rules of the company with the Municipality and vice versa, within a framework which ensures equal treatment.

### **Annual Improvement Plan**

As a result of EPM's commitment to Corporate Governance within the framework of negotiations for the financing of multilateral Banks, EPM has implemented since 2006 an Annual Activity Plan for improving its corporate governance practices. This plan is verified by an external consultant and its execution and monitoring is carried out by EPM's Corporate Governance Committee.

FIGURE 8. BALANCING THE ROLE OF THE MUNICIPALITY OF MEDELLIN AT EPM

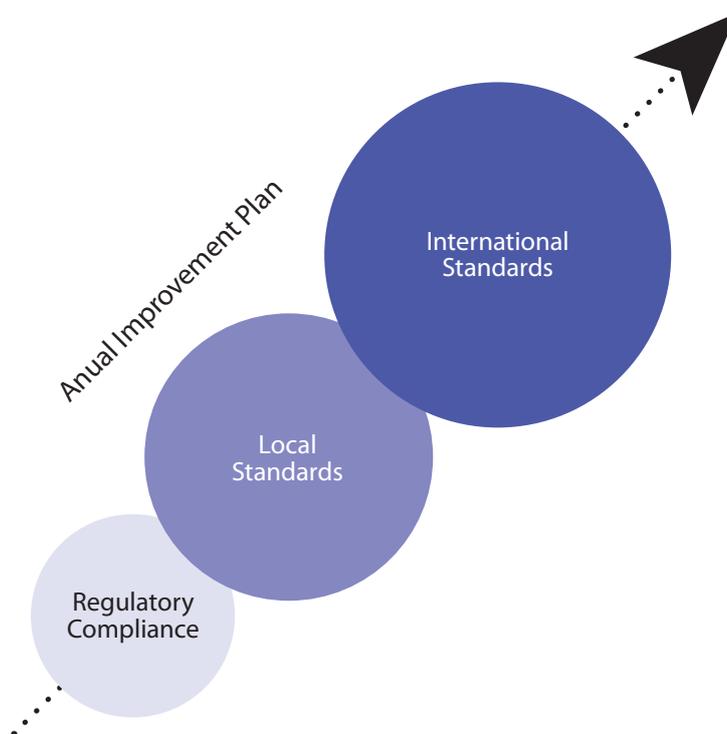


The Improvement Plan allowed EPM to have an effective tool for monitoring and supporting corporate governance practices as well as for creating an aggregation process and continuous growth cycle in implementing best practices.

**Framework Agreement for Relations between the Medellín Municipality– EPM ESP**

In 2007 the city council of Medellín approved the EPM-Municipality Governance Agreement which complements the Code of Governance and the Corporate Governance annual reports. This agreement aims to regulate the relationships between the company and its owner,

FIGURE 9. BASIS OF EPM'S ANNUAL CORPORATE PLAN



limiting the role of the owner in the company and formalize its commitments for corporate governance standards. This document is based on the principles of transparency, sustainability and competitiveness, submission to the company's social goal, responsible autonomy, profitability and efficiency.

The owner agreed to the following main commitments:

**Property.** Delineates the property rights of the owner through self-regulation, respecting the autonomous management of the company.

**Administration.** Define eligibility criteria for the appointment of Board members. Ensuring transparency in the selection of the board.

**Management.** Define general management criteria of the company, maintaining the independence of managing financial resources and establishing compliance with performance indicators.

**Social Regulation.** Establish a mechanism for citizen's participation and corporate social responsibility, addressing the commitments agreed with the community and a permanent presence of an external audit process.

In addition, there is a clear definition of the different roles of the Municipality of Medellin with EPM as owner, territorial authority and client, as follows:

**Property Role.** This is accomplished by participating as president of the Board of Directors, and is ruled by the Framework Governance Agreement. This is a document that describes the principles, the actions and the duties of both entities regarding the growth and sustainability of the EPM.

**Role of the territorial authority.** In regards of the taxes that EPM must pay to the Municipality, the company is treated as any other juridical person and there are no differential agreements or a special treatment.

**Client Role.** EPM does not recognize special treatments or exonerate the payment to the Municipality of Medellin as a user of public services.

## **EPM and its Board of Directors**

Selection Criteria

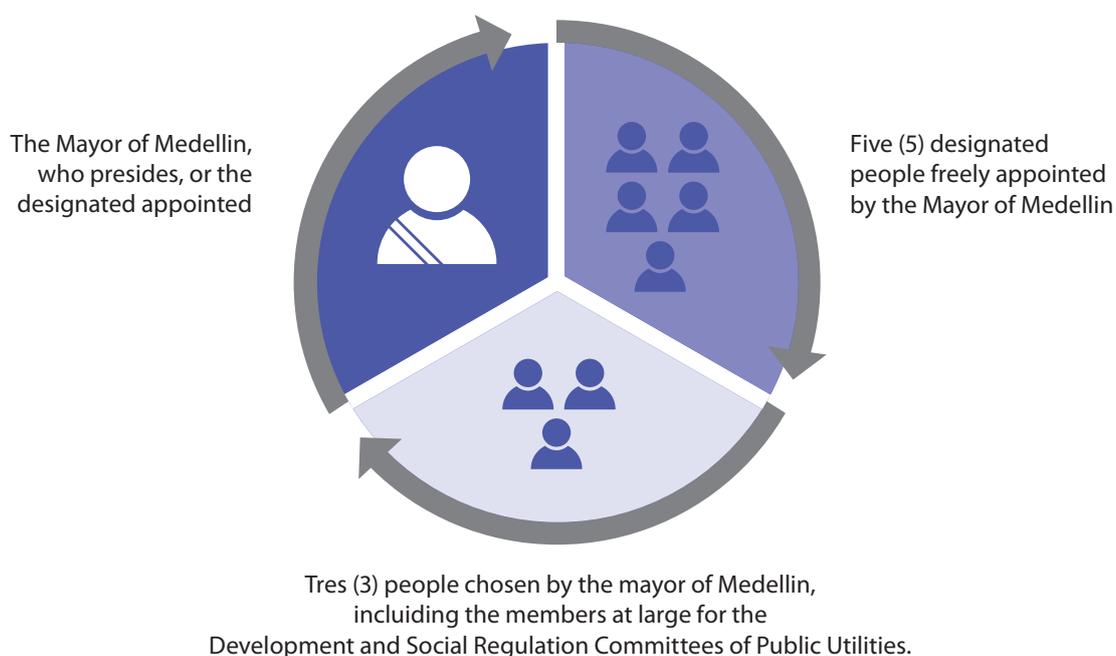
- Composed of nine (9) members, chosen by the city's Mayor (three (3) of the members at large).
- Qualified educational background and professional experience in the sector.
- Members at large accredited by the Development and Social Regulation Committee

The municipality agreed -through the Municipal-EPM Member Relations Agreement (Convenio de Relaciones Municipio – EPM), to name at least five (5) independent members in relation to EPM and the Municipality's management. The condition of independence adopted by the company is based on the terms established by the Act 964 of 2005 (mandatory for companies issuing securities in Colombia).

## **Conclusion**

The commitment of the owner -in this case the Municipality of Medellin, is fundamental for the adoption of a proper corporate governance and functional framework. In this regard, the formalization of these commitments through a Framework of relations is an efficient mechanism to shield SOEs from the effects of political circumstances, inconvenient State's interference and also to engage them with good results (according to their social goal). The permanent independent evaluation by external actors facilitates the improvement process is permanent and stable over time.

FIGURE 10. THE COMPOSITION OF EPM'S BOARD OF DIRECTORS



## Panama Canal: Staggered Board of Directors as a mechanism to mitigate the impact of political changes

### Staggered Board of Directors

The election of Board members in a phased manner is one of the best mechanisms that SOEs have to safeguard themselves from the inherent impact of the state's share of ownership. This case provides an overview of the adoption of this mechanism by the Panama Canal Authority.

### Panama Canal Authority (ACP)- The Panama Canal is the nation's most strategic resource

In 2000 the Panama Canal became formally owned by the State of Panama after twenty years of transition, during which the operation of the Canal was in charge of the Panama Canal

TABLE 10. GENERAL DESCRIPTION OF CANAL DE PANAMA

<b>Key Company Data</b> <sup>28</sup>	
<b>Country</b>	Panama
<b>Shareholders</b>	100% owned by the Republic of Panama.
<b>Industry</b>	Services to the maritime industry and conservation of the Canal basin.
<b>Number of employees</b>	9.759 employees in 2010 (Sept). 84% permanent.
<b>Net Income</b>	Approximately B/1.229.434 (thousands of Balboas) in 2011.
<b>EBITDA</b>	Approximately B/1.039 (millions of Balboas) in 2010 (Sept).
<b>Payment to National Treasury</b>	B/344.1 (millions of Balboas) in 2010 (Sept).
<b>Recognitions</b>	<p>2009 Project Finance Deal of the Year. For the expansion program, in recognition of the successful negotiation and the financing of the expansion on the aquatic route.</p> <p>Best International Project. Logistics International Salon (SIL 2009). Recognition for the enlargement of the inter-oceanic route, as the largest infrastructural initiative in Latin America</p> <p>International Prize SAMOTER 2008. Recognition for the contribution to the progress and development of construction, in a national and international level.</p> <p>Project of Long-Term Performance (2008) and the Strategic Project (2008) Sixth Latin American Leadership Forum.</p>

Commission, an agency of the U.S. Government<sup>29</sup>. During this period a representative of The United States and a representative of Panama acted as principal administrators of the Channel.

Previously, under The United States control, the operation of the canal constituted an element of military strategy without a profit goal. This situation would change under the Panamanian management that would seek to produce the Canal of Panama in a profitable and competitive

28 Panama Canal. In <http://www.pancanal.com/esp/index.html>. June 20, 2012.

29 The operation of the Canal of Panama was in hands of the Government of The United States until 1977, year in which there are signed the agreements Torrijos - Carter, through which there is established the transition of the rights of property of the Canal to the Republic of Panama, effective from October 1979 to December 31, 1999.

**TABLE 11. ACP'S PERFORMANCE**

<b>Responsibility</b>	The ACP has the exclusive responsibility over the operation, administration, functioning, conservation, maintenance, improvement and modernization of the Canal as well as its activities and connected services, in order to work on a safe, continuous, efficient and profitable way. Given the public international essential service provided by the Canal, its operation and functioning should not be interrupted by any reason.
<b>Nature</b>	Autonomous legal entity of public law which enjoys administrative and financial autonomy and has its own equity capital.
<b>Income</b>	It generates directly and independently its income (which does not come from the State) from tolls, rates and rights for the Canal services.
<b>Financials Management</b>	The ACP adopts a system of three-year financial planning and management under which it approves its annual budget (independent from the State Budget). The budget is the responsibility of the Canal Manager and is monitored by the Board of Directors, Internal and External Audit and by a subsequent check of the General Comptroller of the Republic.
<b>Transfer of economic surpluses to the National Treasury</b>	The ACP pays annually a fee per net ton or its equivalent received from the ships subject to the payment of tolls to the National Treasury.
<b>Labor Regime</b>	The ACP is subject to a special labor regime based on a merit system and adopts a General Plan for Employment in which arbitration is the final administrative instance.
<b>Conditions of employment and shopping</b>	It is subject to its own, special and autonomous regime of contracting and purchases that is not subject to state controls, and it is founded on the efficient and prompt obtaining of supplies and services.

Source: Annual Report ACP 2011

way, which was implying giving a draft to the approach of the business and certainly initiating a process of redefinition of the Model of Corporate Government.

In the process of consolidation of ownership of the canal, and with a view to stabilizing the new model of ownership and management, the practices of Corporate Government contribute to the fulfillment of the internal policies in alignment with the legal foundations of the Government of Panama, improvement in accountability mechanisms, relationships with stakeholders, sustainability, value generation and preserve the image of the Canal as an example of engineering in the service of international trade.

The Panama Canal Authority was established in 1999 as a result of this reconfiguration. The Panama Canal Authority (ACP) is an entity of the Government of Panama which was established in the National Constitution and organized by Act of June 11, 1997<sup>30</sup>. This entity took full responsibility of the administration, operation and maintenance of the canal when the Panama Canal Commission was dissolved in 1993.

The legal framework establishes that ACP's main purpose is to preserve the operating conditions of the Panama Canal and that it is in exclusive charge of the operation, administration, maintenance, improvement and modernization of the Canal and its activities and related services in order to work on a safe, continuous, efficient and profitable way.

The performance of the ACP<sup>31</sup> is measured upon the following:

The management of the ACP has been successful because it has consolidated a solid financial base for the operation and growth of the Canal, at the same time as it completed the program of modernization and improvements initiated in the year 2000 that was financed entirely by the profits of the operation.

Business Model. Its goal is to optimize the economic value of the route. the ACP has financial goals included in its mission, vision and strategic aims. It's run by an Independent Board of Directors, which must protect the business model.

### **ACP's Corporate Governance Challenge**

The main challenge associated with the ownership of the Panama Canal was to ensure that management and control structure would not be subject to political interests that could eventually lead to levels of corruption, inefficiency or become financially unsustainable affecting the Canal which is considered a strategic asset of the country.

### **Corporate Governance Tools**

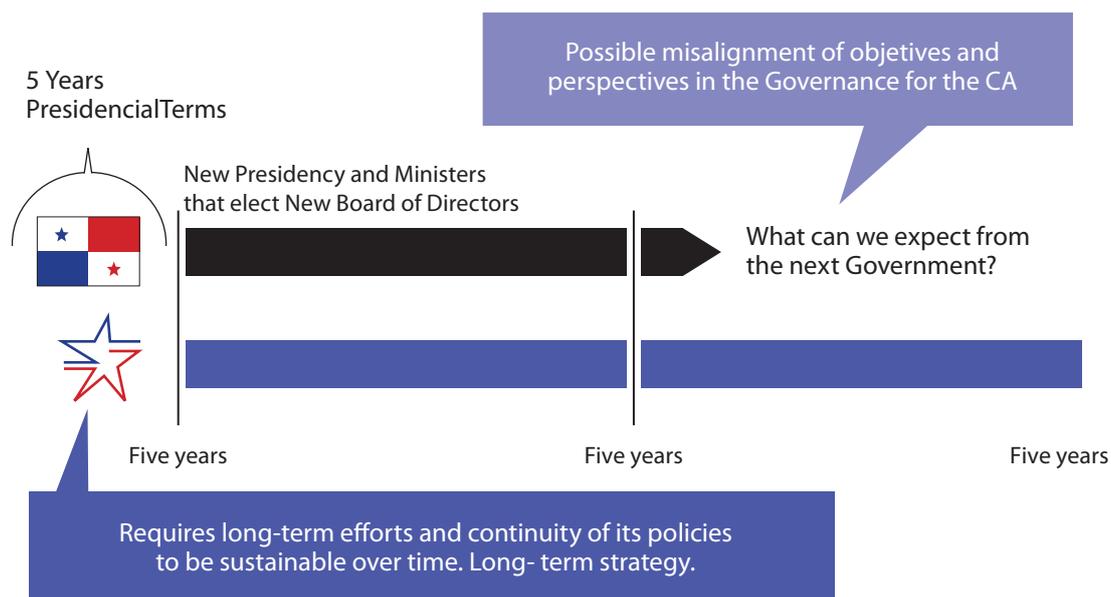
The Corporate Governance of the ACP is framed in the rules governing its operation, structure and composition and dynamics of their governing bodies. It is based on the commitments to the principles of participatory management, transparency and fairness and inclusion of stakeholders.

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30 Organic Law of the Panama Canal Authority Legislative Assembly. Act No. 19 of June 11, 1997 "The one that organizes the Panama Canal Authority."

31 Panama Canal. In <http://www.pancanal.com/esp/legal/title/index.html>. Constitution of the Republic of Panama, Part XIV. Cited June 20, 2012.

FIGURE 11. ACP'S CORPORATE GOVERNANCE CHALLENGE



The ACP is headed by an Administrator and Deputy Administrator under the Board of Director's supervision. The following describes the composition of the principal organs of government:

### Classified Board System

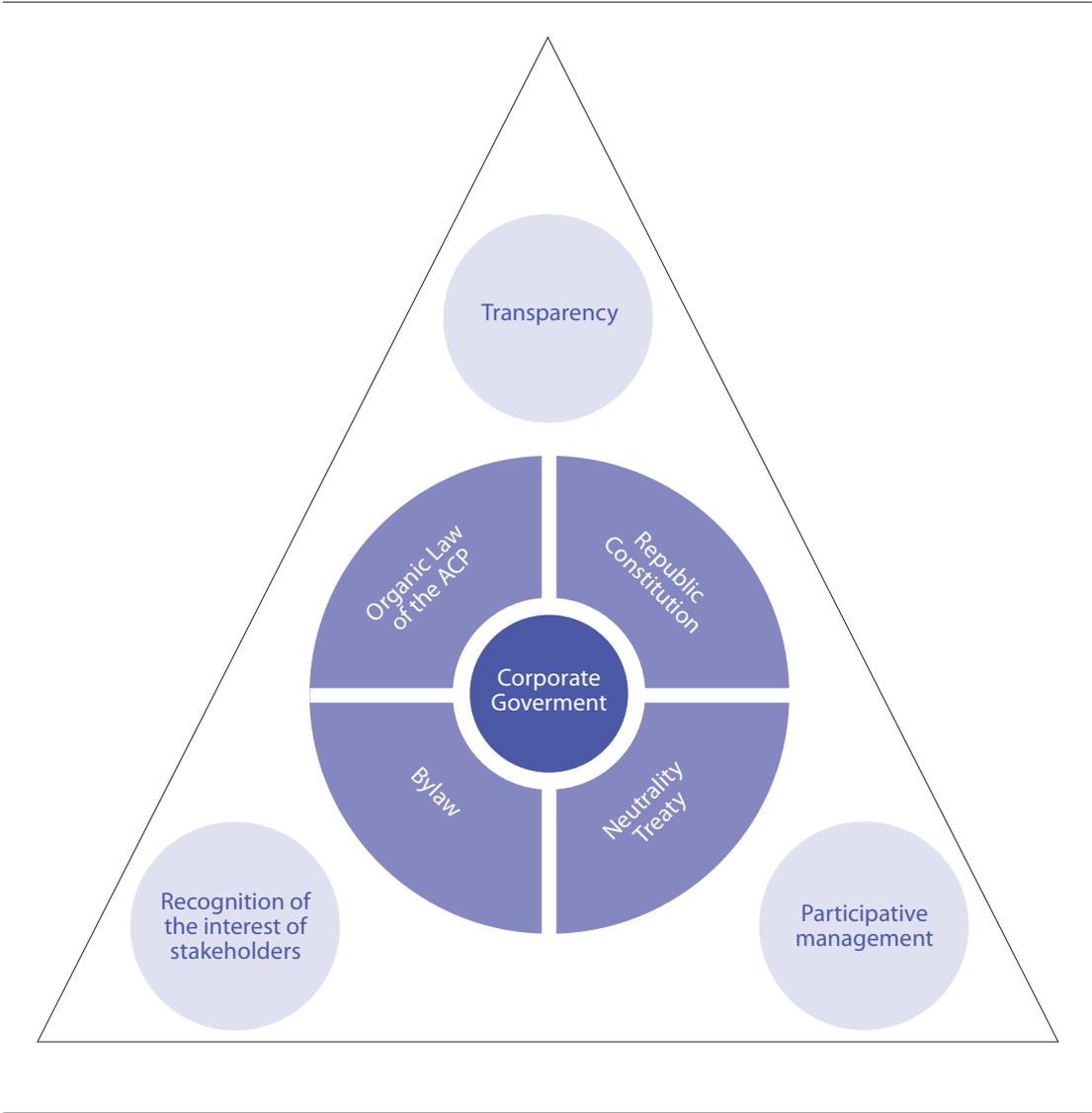
*The appointment of the first Board was done in phases in order to ensure its Independence from governments.*

This mechanism of staggered Directories (Boards of directors) is based on the periods of choice of members. It seeks to guarantee a major Independence of judgment of the owner (state), while generating a fluid dynamic skills, knowledge and experience.

Board of Directors Election Periods: The Constitution of Panama (Art 318) and the Organic Law of the ACP establishes the phased renewal of the nine (9) directors who are appointed by the President, in groups of three every three years. From the first renewal, the first period for all directors shall be nine years.

The ACP applied this system for the first time in 1997, electing three directors for a period of three (3) years, three more for a period of six (6) years, and the remaining three for the entire period of nine (9) years.

FIGURE 12. CORPORATE GOVERNANCE MODEL



As a result, the election of new Board members do not necessarily coincide with the country election periods, reducing the prevalence of political factors in the process, while preserving significant level of knowledge and experience of former members of their responsibilities and ACP business.

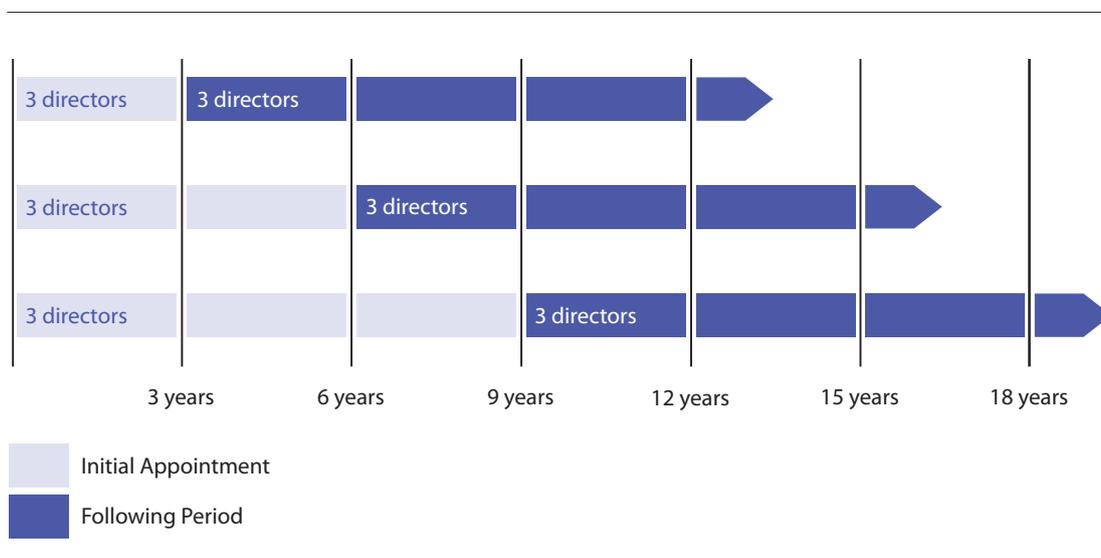
**Board of Directors Formalities**

The dynamics of the board is given by the regulation and good practices adopted voluntarily by the ACP.

TABLE 12. PRINCIPAL BODIES OF GOVERNMENT

<p><b>Board of Directors of ACP</b></p>	<p>Composed of eleven (11) members.</p> <ul style="list-style-type: none"> <li>✓ 9 are appointed by the President with the Cabinet Council's agreement and the ratification by a majority of the Legislative Assembly's members.</li> <li>✓ 1 is designated by the Legislature, which shall be freely appointed and removed.</li> <li>✓ 1 is the Minister of State for Canal Affairs, appointed by the President (presides over the Board of Directors).</li> </ul>
<p><b>Administrator - Principal Executive</b></p>	<p>The Administrator is the highest ranking senior executive, legal representative of the entity responsible for its administration. The appointment of the Administrator is for a seven year period, after which may seek reelection for an additional period</p>
<p><b>General Inspector</b></p>	<p>Is elected by the Board for conducting and supervising audits and investigations related to the operation of the ACP. Its activity is independent and reports directly to the Board<sup>32</sup>.</p>
<p><b>Advisory Board</b></p>	<p>The Advisory Board advises on the topics that the Board submits to its consideration. It is elected for the Board of directors for periods of two years<sup>33</sup>.</p>

FIGURE 13. CLASSIFIED BOARD MECHANISM



32 Regulation of the General Inspector of ACP. Page. 1.

33 Regulation of the Advisory Board of ACP. Page. 2.

**TABLE 13.** BOARD OF DIRECTORS - FORMALITIES

<p><b>Principal Functions of the ACP Act- Law No. 19 of 1997</b></p>	<p>Appoint and remove the administrator, deputy administrator and the general auditor.</p> <p>Fix the tolls, rates and rights for the use of the canal and its connected services, subject to the final approval of the Cabinet Council.</p> <p>Adopt the annual budget project of the Authority.</p> <p>Approve the necessary or suitable regulations for the canal due functioning and modernization.</p> <p>Adopt the policies, programs and projects of the Authority.</p> <p>Approve policies on accomplishing commercial, industrial activities or services, which complements the functioning of the canal</p> <p>Adopt the administrative, scientific and technological policies, which promote and assure the competitiveness and the profitability of the canal and the development of its human resources.</p> <p>Appoint committees integrated by three or more of its members, and delegate functions.</p> <p>Dictate its internal regulation.</p>
<p><b>Internal Regulation of the Board of Directors Panama Canal Authority</b></p>	<p>President, Secretary: the Board of directors has a President that represents the body, calls and presides the meetings; the Board will also have a secretary whose basic responsibility is to support its daily activities and of its committees.</p> <p>Committees: the ACP has permanent committees including Juridical Matters, Audit, Finance, Human Resources, Permissions of Compatibility, and Modernization and Extension of the Canal.</p> <p>Conflicts of interest: board members cannot work in government roles for two years after leaving the ACP and for six months after the resignation if it is an elected position.</p>

## Conclusion

In order to ensure the good functioning and the profitability of the Canal the regulations established the mechanism of Staggered Board among other good corporate governance practices. The appointment of members of the Board of Directors through this method is perhaps one of the most effective corporate governance elements to shield SOEs against changing political dynamics. Also this helps preserving a high level of knowledge of the Company at the Board level and progressively linking new skills (experience, visions, abilities, etc.) enriching the performance of this body.



## General conclusions

Corporate Governance requires a commitment to maintain a stable and productive relationship between the participants of any company, as a key ingredient for good management and sustainability. The Board has a fundamental role in aligning the interest of the Administration, the Board and the owners.

For State-Owned Enterprises (SOEs) corporate governance is particularly important, given the impact on the business, and requires a serious commitment from Governments, Boards and high levels of management in Latin America.

Some of the main benefits of implementing Good Corporate Governance Practices in SOEs are:

- Maximize the leadership position of the SOE.
- Keep the long-term company perspective.
- Ensure that the State acts as an active and responsible shareholder.
- Reach the company goals efficiently.
- Ensure that the Board and Senior Management act in accordance with the company's goals.
- Improve relations with minority shareholders.
- Strengthening communications with stakeholders.
- Citizens must be adequately consulted and informed by SOEs that deliver public services.

It should be understood that the adoption of best governance practices does not mean the privatization of the company

In Latin America there has been progress in the level of awareness of various stakeholders on this issue, however a number of challenges still remain:

- State-Owners have undefined expectations on the economic, social, and political goals, about the companies where they act as owners.
- The absence of actors from the civil society and stakeholders that systematically monitor reward or punish the governance practices of SOEs.

- The lack of regulatory frameworks that recognize the special conditions of SOEs, allowing them to act in competitive conditions. This includes public hiring processes and remuneration systems for SOEs executives.
- The low recognition and application of rules that tend for the protection of minority shareholders and for the equitable treatment of the different types of shareholders, who facilitate the exercise of their rights and the communication with the administrators.
- The deficiency in the process of selecting members of the Board of Directors, which should be improved to fully empower this body and increase its level of professionalism and independence.
- The inexperience and low efficiency of accountability process which should contribute to preserve the sustainability and transparency of the EPEs and act as compromising processes of administrators.
- In general, a low level of transparency that is demonstrated in a very limited disclosure of financial and not financial information, which allows the markets and the public in general to take or to assume positions on EPEs.

In this regard, States-owners (municipality, department, centralized property entity, etc.) must become active promoters of good corporate governance practices. The alignment with international standards, the formalization of the rules and the strengthening of the board as the direction and control body, are some of the tools that States have within their reach, through Corporate Governance.

Latin American SOEs made significant progress in the improvement of corporate governance in. However, there is a need for improvements which are evident. The successful experiences in implementing best practices highlighted in this document provide guidance for the implementation of improvement actions and how to address different challenges faced by companies in their dynamics while interacting with their governments' owners.

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The version of this document in Spanish was printed  
in September 2012.  
Printed by Express Estudio Gráfico y Digital S.A



Corporate Governance practices strengthen governing and control bodies of companies (shareholders meeting or owners, directors and management), while defining clear rules applicable to different actors, and increasing the level of transparency and accountability before different stakeholders.

State-owned enterprises (SOEs) should set an example of the best principles and practices of corporate governance as a means to strengthen their institutional and management capacities, and to promote transparency and effectiveness of its management. In this regard, all participants in an SOE-government, government department or agency, board, executives and managers, must ensure that the company is organized and operates as a model of excellence in corporate governance, good environmental, social and high ethical standards.

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