STATE-OWNED ENTERPRISES: BOARD NOMINATION PRACTICES IN THE PACIFIC

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INTRODUCTION

State-owned enterprises (SOEs) play a dominant role in the provision of essential services in the Pacific and represent a significant component of economic output. In many of the Pacific developing member countries (DMCs) of the Asian Development Bank (ADB) (Figure 1), SOEs are the dominant, or monopoly, operators of water, wastewater, and electricity utilities; airports; ports; development banks; and postal and telecommunications services.

To support the commercial operations of their SOEs, ADB’s Pacific DMCs have made important strides in the past 15 years in establishing legal and regulatory frameworks. While this has contributed to improved transparency and performance, balancing SOEs’ commercial mandate with their shareholders’ political imperatives remains a challenge. Government shareholders have historically sought to influence SOE decision-making through the appointment of directors who are considered loyal to the current administration, rather than those best skilled to assist the SOE in achieving its commercial mandate and addressing the challenges it faces. This practice is rooted in the view that the primary role of SOEs should be to execute government policy, rather than ensure the efficient, sustainable, and cost-effective delivery of services.

Decades of SOE reforms globally, and more recently in the Pacific, have sharpened the distinction between the government’s policymaking role and its responsibility to safeguard its SOE investments. By placing SOEs under the responsibility of specialized SOE ministries (or the ministries of finance), many Pacific DMCs have separated the policy and regulatory functions of sector ministries from the ownership responsibilities of the shareholding minister or, in the case of Papua New Guinea and the Cook Islands, the SOE holding company. This is a critical step to empower SOEs to operate as commercial enterprises and be held accountable for commercial results, while influencing their strategic orientation through regulation.

While legal frameworks in the Pacific increasingly support the commercial operation of SOEs, the board nomination process in many countries remains subject to political influence. Director selection and appointment processes continue to involve sector ministers and/or cabinet. This paper draws on the ongoing work of the Pacific Private Sector Development Initiative (PSDI) with Pacific DMCs to strengthen the commercial orientation of their SOEs, resulting in improved financial performance and sustainable service delivery. The paper includes findings from a survey of board nomination processes in six Pacific DMCs, and challenges policymakers to consider the nomination processes as critical to an SOE’s prospects of achieving its commercial and operational goals. Therefore, the processes must be

1 In this policy paper, state-owned enterprises (SOEs) are defined as corporatized enterprises, majority government-owned and operating within a commercial mandate. SOEs are labeled differently in some Pacific developing member countries (DMCs). In Tonga and Fiji, they are labeled public enterprises; and in Samoa, public trading bodies. For the purposes of this policy paper, the more generic term “state-owned enterprise” is used.


3 Fiji, Papua New Guinea, Samoa, Solomon Islands, Tonga, and Vanuatu.
This paper is organized into three sections. Section 1 summarizes the recent research on the impact of corporate governance practices on company performance. Section 2 outlines a set of good practice guidelines for SOE director selection and appointment as developed by governments and institutions globally, and increasingly applied in the Pacific. Section 3 summarizes the director selection and appointment processes in 11 DMCs, and identifies the degree to which they are codified in law and designed to support SOE commercial mandates. It also highlights the findings of the recent survey of SOE oversight ministries.
SECTION ONE
THE IMPACT OF CORPORATE GOVERNANCE ON PERFORMANCE

KEY MESSAGES

- Good corporate governance practices reduce risks for investors, improve financial performance, and help attract new investors.

- Globally and in the Pacific, SOE board selection processes, and board composition, are fundamental to performance.

Corporate governance—the system by which companies are directed and controlled—encompasses the relationships between a company’s management, its board, its shareholders, and other stakeholders (Cadbury Committee 1992). The shareholders’ role is to appoint directors who will ensure a company achieves its stated goals, and to hold them accountable for doing so. The board selection process, and the resulting composition of corporate boards, is thus fundamental to company performance. This finding has been corroborated by a range of studies, most recently in Japan, where companies that created director nominating committees and allowed them to appoint independent directors were found to outperform rival firms that did neither (The Economist 2020). In Lithuania, the most important factors improving SOE efficiency were the quality of the board and strategic planning (Curi, Gedvilas, and Lozano-Vivas 2016). In Greece, corporate governance is believed to influence economic growth prospects—good governance practices reduce risks for investors, improve financial performance, and help to attract new investors (Spanos 2005).

ADB’s Finding Balance 2016 report observed that there is also strong evidence of a correlation between board composition and SOE performance in the Pacific (ADB 2016). The director selection process is critical to establishing effective boards. Two Pacific DMCs, Solomon Islands and Papua New Guinea (PNG), illustrate opposing approaches to SOE director selection, which are likely impacting SOE performance (Box 1).
BOX 1 PAPUA NEW GUINEA AND SOLOMON ISLANDS: IMPACT OF DIRECTOR SELECTION AND APPOINTMENT PROCESSES

The 2007 Solomon Islands State-Owned Enterprise (SOE) Act and 2010 Regulations set out a codified skills-based director selection and appointment process. The performance of Solomon Islands’ SOEs improved dramatically after the act and regulations were implemented, with the SOE portfolio’s average return on assets rising from -4.3% during 2002–2009 to 6.7% during 2010–2016.

Before 2015, the Independent Public Business Corporation (now Kumul Consolidated Holdings), the PNG SOE ownership entity, was primarily responsible for SOE director selection. In 2015, the National Executive Committee, the cabinet, took over responsibility for director selection and appointments, without an underlying skills-based process to recruit and vet candidates. Following this change, the debt of Kumul Consolidated Holdings’ SOE portfolio rose to unsustainable levels, from PNG Kina (K) 2.5 billion in 2014 to K5.2 billion by the end of 2019.

Source: Pacific Private Sector Development Initiative.
SECTION TWO

BOARD NOMINATION GUIDELINES OF STATE-OWNED ENTERPRISES

KEY MESSAGES

- SOE director appointment approaches are increasingly aligned with the practices of publicly-traded firms.
- Where SOEs have a commercial mandate, directors are sought with the necessary skills, experience, and background to help the SOE succeed commercially.
- The selection of preferred candidates is best left to nonpolitical agencies, such as SOE ownership monitors, independent selection committees, or professional search firms.
- The government’s responsibility is to establish a codified selection process, which is anchored in an objective analysis of the skills that are required for each board position.

Over time, approaches to SOE director selection and appointment have aligned increasingly with the practices of publicly-traded firms, while recognizing the unique factors inherent in government ownership (Frederick 2011, World Bank 2014, Organisation for Economic Co-operation and Development [OECD] 2015, and OECD 2020). Where SOEs have a commercial mandate, the nomination process seeks to appoint directors with the necessary skills, experience, and background to help the SOE succeed commercially, and in so doing protect the shareholders’ investment. As summarized in Table 1, a core set of guidelines is emerging from this global experience, which is centered on objectivity and transparency.

One of the greatest challenges in the SOE board nomination process is balancing the level of political involvement with the need to ensure that the board is commercially independent. As government owns the SOE, government—through either a responsible minister, shareholder ministers, or cabinet—has a legitimate role in appointing directors. However, the selection of preferred candidates is best left to nonpolitical agencies, such as the SOE ownership monitor, an independent selection committee, or a professional search firm reporting to the ownership monitor.

Government’s primary responsibility is to establish a codified process that creates the highest probability

4 A minister, who is usually a shareholding minister, is designated as the responsible minister for the SOE portfolio.
that the best-qualified candidate will be selected. This process is anchored in an objective analysis of the skills, experience, independence, and diversity that are needed on each board, which then informs the terms of reference for each new vacancy, and the evaluation of all candidates. The process outlined in Box 2 is based on the central SOE ownership monitoring model that is the most prevalent in the Pacific. However, some or all the tasks assigned to the SOE ownership monitor could be undertaken by an independent selection committee or contracted search firm reporting to the ownership monitor.

### TABLE 1 GUIDELINES FOR STATE-OWNED ENTERPRISE BOARD NOMINATION

<table>
<thead>
<tr>
<th>Key Factors</th>
<th>Guideline</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Board composition</strong></td>
<td>• Ministers, elected officials, and civil servants do not serve on boards of state-owned enterprises (SOEs).</td>
</tr>
<tr>
<td></td>
<td>• Directors are free to act in the best interests of the SOE, and face no conflicts of interest.</td>
</tr>
<tr>
<td></td>
<td>• The composition of the board incorporates gender balance to enhance effectiveness, quality of decision-making, and innovation.</td>
</tr>
<tr>
<td><strong>Independent selection panel</strong></td>
<td>• To improve outcomes and reduce inappropriate political interference, the government delegates all or part of the selection process to an advisory body, expert panel, centralized SOE monitor, or a search firm.</td>
</tr>
<tr>
<td><strong>Selection and appointment</strong></td>
<td>• Candidates are selected on the basis that they possess the competencies, skills, knowledge, and experience to exercise independent judgment and assist the SOE in achieving its commercial mandate.</td>
</tr>
<tr>
<td></td>
<td>• Where ministers or cabinet appoint directors, they adhere to the recommendations made through an independent selection process.</td>
</tr>
<tr>
<td></td>
<td>• All appointees sign a consent to act, and the appointment is publicized.</td>
</tr>
<tr>
<td><strong>Due diligence and induction</strong></td>
<td>• Candidates are given the opportunity to undertake due diligence prior to signing the consent to act and, once appointed, are inducted by the SOE and the appointing agency.</td>
</tr>
<tr>
<td><strong>Public disclosure</strong></td>
<td>• The director nomination process is publicly disclosed, and its implementation regularly audited.</td>
</tr>
<tr>
<td></td>
<td>• Results and recommendations from implementation audits are publicly disclosed.</td>
</tr>
<tr>
<td></td>
<td>• Persons, agencies, or ministries that are appointing directors publicly certify that they have followed the mandated process.</td>
</tr>
</tbody>
</table>

Source: Pacific Private Sector Development Initiative.
### BOX 2 DIRECTOR SELECTION AND APPOINTMENT PROCESS

1. **Assess skills gap:**
   - a. Board and SOE ownership monitor (SOEOM) undertake board skills gap assessment.
   - b. Prepare job description or terms of reference for vacant positions based on skills gap assessment.
   - c. Share skills gap analysis and terms of reference with responsible minister.

2. **Advertise:**
   - a. SOEOM advertises vacancy through the media, on its website, or through professional associations.
   - b. SOEOM reviews potential candidates from its database (if available).

3. **Short list and interview:**
   - a. Review candidates against job description and assess any conflicts.
   - b. Consider gender diversity targets for each SOE board.
   - c. Prepare short list comprising at least two candidates, and interview and identify preferred candidate.

4. **Appoint:**
   - a. Submit preferred candidate to responsible minister for appointment, with rationale for selection.
   - b. If preferred candidate is not appointed, go back to short list and interview stage (step 3).

5. **Induct and disclose:**
   - a. Responsible minister certifies that approved selection and appointment process has been followed.
   - b. Successful candidate signs consent to act.
   - c. Board and SOEOM provide induction training.
   - d. Appointment tabled in Parliament, and advertised on SOEOM and SOE websites.

Source: Pacific Private Sector Development Initiative.
KEY MESSAGES

- Many Pacific DMCs have an overarching SOE act with provisions on the nomination of directors. In most cases, the act prohibits the appointment of elected officials to SOE boards.
- Half of the Pacific DMCs studied undertake some form of board skills gap assessment for the director selection process, but only three have codified the director selection and appointment process.
- All Pacific DMCs surveyed agreed that a robust skills-based SOE director selection process has a positive impact on governance, and its codification would improve implementation.
- All Pacific DMCs indicated a desire to increase the percentage of female directors on SOE boards, but only two have set formal targets.

As is the case globally, the Pacific DMCs have evolved their corporate governance and board nomination practices over the past 2 decades, which allows them to increase their support to the commercial operation of SOEs. Most of the 11 Pacific DMCs studied have adopted elements of the guidelines outlined in Section II, and many have an overarching SOE act that includes provisions on the qualification, disqualification, and nomination of directors (Table 2). In all but one country surveyed (the Marshall Islands), these acts prohibit the appointment of elected officials to SOE boards and limit the number of public servants. In most cases, these acts confer appointment powers to the responsible minister or cabinet, but do not outline the processes for director selection and appointment.

A. SELECTING A CANDIDATE

More than half of the 11 Pacific DMCs studied undertake some form of board skills gap assessment (the Marshall Islands), these acts prohibit the appointment of elected officials to SOE boards and limit the number of public servants. In most cases, these acts confer appointment powers to the responsible minister or cabinet, but do not outline the processes for director selection and appointment.

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5 The SOE acts of Samoa and Solomon Islands allow the appointment of ministers under exceptional circumstances, which must be supported by a certification that the appointment is in the national interest and meets the skills gap requirement. Tonga’s SOE act allows ministers to be appointed to newly established SOEs, but only for the first year following the establishment.
to inform the director selection process and delegate the selection process to an advisory body (e.g., an SOE ownership monitor or independent selection committee). For example, the process adopted in Solomon Islands requires accountable ministers to appoint the candidate recommended by the SOE board, while the responsible minister in Tonga must either appoint a candidate short-listed by the advisory body or the vacancy must be readvertised, and the process repeated.6

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6 Tonga intends to convert the existing cabinet directive into regulations made under the SOE act. Draft regulations were prepared in October 2021. If the regulations are adopted as drafted, the responsible minister could appoint a person who is not recommended, but must justify his or her decision in writing when seeking the cabinet’s consent to the appointment. Most other provisions in the draft regulations are consistent with the cabinet directive.
Only PNG, Samoa, Solomon Islands, and Tonga have codified the director selection and appointment process. PNG incorporated it in its 2021 Kumul Consolidated Holdings (KCH) Amendment Act; Solomon Islands and Samoa have issued regulations; while Tonga has issued a cabinet directive, with the intention of converting it into regulations. While the PNG process is only starting to be implemented, in the other countries these processes are largely adhered to, with only a few departures. Solomon Islands adopted its process in 2010 and the Economic Reform Unit advises it has been fully implemented. Samoa has been using an Independent Selection Committee (ISC) since 2010. The Ministry of Public Enterprises advises that, since 2016, cabinet-appointed candidates that were not ISC’s preferred choice represented only 8.5% of appointments. The ISC has primary responsibility for the nomination process, including advertising.

While the cabinet may not always appoint the preferred candidate, except in a very few cases, the appointed candidate was on the short list.

### BOX 3 SAMOA AND TONGA: USE OF SELECTION COMMITTEES

<table>
<thead>
<tr>
<th>Samoa’s Independent Selection Committee</th>
<th>Tonga’s Director Selection Subcommittee</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Independent Selection Committee (ISC) was established through regulation.</td>
<td>• The subcommittee was established through cabinet directive.</td>
</tr>
<tr>
<td>• All members of ISC are drawn from the private sector.</td>
<td>• The subcommittee comprises a cabinet minister, chief executive of the Ministry of Public Enterprises (MPE), and a private sector representative.</td>
</tr>
<tr>
<td>• ISC members are appointed by the cabinet, and the cabinet approves their terms of reference.</td>
<td>• MPE determines board skills gap and drafts the terms of reference for the vacancy, which drives the short-listing process.</td>
</tr>
<tr>
<td>• The ISC is responsible for advertising director vacancies.</td>
<td>• MPE is responsible for advertising.</td>
</tr>
<tr>
<td>• Not all candidates are interviewed.</td>
<td>• MPE submits short list to the subcommittee for interview and assessment.</td>
</tr>
<tr>
<td>• The ISC develops a short list.</td>
<td>• The subcommittee and MPE submit a short list of three candidates that identifies preferred candidate to the responsible minister for approval.</td>
</tr>
<tr>
<td>• The ISC submits short list, with preferred candidate identified, to the cabinet for approval.</td>
<td>• The responsible minister must appoint a short-listed candidate.</td>
</tr>
<tr>
<td>• The cabinet can appoint candidate not listed in the ISC short list.</td>
<td></td>
</tr>
<tr>
<td>• The ISC also has responsibilities relating to board composition, training, and development.</td>
<td></td>
</tr>
</tbody>
</table>

Source: Pacific Private Sector Development Initiative.
vacancies and short-listing candidates. Meanwhile, Tonga uses a selection subcommittee to assist the Ministry of Public Enterprises (MPE) in the selection process. Tonga’s selection process was developed in 2015 and was most recently upgraded in 2020, when the selection subcommittee was established. Tonga’s MPE advises that the process is followed for the bulk of appointments.

In Fiji, the Marshall Islands, Nauru, Solomon Islands, and Tonga, the person or agency appointing an SOE director can approve the appointment only if they believe the candidate possesses the skills, knowledge, and experience for the role. While this is an important principle, the absence of an objective, codified process for director selection in Fiji, the Marshall Islands, and Nauru increases the risk of suboptimal or politicized appointments. Only 4 of the 11 Pacific DMCs studied are required by law to advertise director vacancies, and 4 are required to either publish or table director appointments in parliaments. Four of the DMCs have formal director induction programs.

In PNG, the new Kumul Consolidated Holdings Authorisation (Amendment) Act 2021 includes a new director selection and appointment process that has most of the features outlined in Section II, despite maintaining the appointment power with the cabinet. Previously, the SOE ownership entity (KCH) had no formal role in nominating directors. In Palau, the government intends to adopt an SOE act to implement the core tenets of its SOE policy, including a skills-based director selection and appointment process. Currently, the president makes appointments without support from a structured process or advisory body.

Vanuatu has no overarching SOE legal framework, and the director selection and appointment process remains ad hoc. All appointments are made by the minister responsible for the sector in which the SOE operates, which creates a significant conflict of interest. An SOE bill, currently awaiting submission to Parliament, would give the minister responsible for SOEs the authority to appoint SOE directors subject to the approval of cabinet. It would also empower an SOE monitoring unit to advise the minister on the selection and appointment process. However, the draft law does not outline the selection process nor obligates the minister to act on the advice of the monitoring unit.

B. GENDER DIVERSITY

All countries that participated in PSDI’s SOE board nomination survey indicated a desire to increase the percentage of women directors on SOE boards. While only KCH in PNG and the ISC in Samoa have set formal targets (30% female directors in PNG, at least one woman director per SOE in Samoa), the remainder recognize the value of increased gender diversity. For example, Tonga’s MPE observes that the presence of women directors on SOE boards improves overall governance, board performance, and board behavior, particularly during formal board meetings. PNG’s KCH believes that greater gender diversity brings different perspectives to board debates and decision-making, enhances collaboration, and provides SOEs with a competitive advantage. Samoa’s MPE observes that boards with gender diversity demonstrate greater adaptability to the SOE’s environment, show greater innovation, and facilitate multiple perspectives, which encourage debate and lead to better decision-making.

PNG, Samoa, Tonga, and Vanuatu have proactive policies and practices to encourage more women to apply for appointment to SOE boards. Tonga’s MPE includes a statement in director vacancy advertisements specifically encouraging qualified women to apply. In 2014, Vanuatu’s Council of Ministers agreed that all statutory and public institutions must have 30% women representation on their boards (Council of Ministers 2014), but implementation has been slow, with women filling only 8% of SOE board positions in 2018 (ADB 2018). Increasing the number of women directors on SOE boards continues to be a focus of the Pacific Islands Forum Secretariat. In 2012, all members of the
Pacific Islands Forum Secretariat signed the Pacific Leaders’ Gender Equality Declaration, which includes commitments to increase women participation in public and private sector governance. The 2019 SOE Act in Nauru also sets a pro-gender diversification target in legislation, a first for the Pacific. When appointing SOE directors, the responsible minister in Nauru should seek to achieve gender equality, wherever possible.

In Samoa and Solomon Islands, training programs are available to support women in gaining positions on boards. The Samoa Institute of Directors, with funding from the UN Women, the United Nations Development Programme, and the Government of Australia, holds week-long workshops specifically for aspiring women directors. More than 60 women have attended these workshops. The MPE advises that, in July 2020, 30% of the 143 directors serving on their Public Trading Bodies and Public Beneficial Bodies° were women. In Solomon Islands, the Chamber of Commerce and Industry has sponsored director training programs for women also, and similar initiatives are being planned in other countries to increase the pool of available candidates.

Despite a consensus, more needs to be done to encourage women applicants and appoint more women directors; concrete progress has been uneven. This could reflect the absence of a consistent approach or commitment (Figure 2). As documented in PSDI’s (2021) Leadership Matters study, the overall

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8 Corporatized not-for-profit.
The percentage of women on SOE boards in the Pacific was the same in 2020 (18%) as it was in 2012.

C. USE OF EXTERNAL SEARCH FIRMS

KCH is the only SOE ownership entity in the 11 Pacific DMCs surveyed that has used external search firms to identify potential director candidates, and only Fiji is of sufficient size to sustain local search firms. However, the MPE in Samoa often uses the Samoa Institute of Directors’ database to identify potential candidates. KCH, the MPEs in Samoa and Tonga, and the Department of Public Enterprise in Fiji have all developed SOE director candidate databases to which they refer whenever a vacancy arises. They also advertise regularly to fill vacancies and expand the database.

Wherever possible, the use of external search firms or other agencies that have directors as members, such as institutes of directors and chambers of commerce, is encouraged. Not only does it expand the possible pool of candidates, but it can assist in targeting skills or gender. In New Zealand, for example, even though the SOE ownership monitor had more than 1,000 director candidates in its database, it would regularly communicate with the Ministry for Women and the Ministry for Māori Development whenever a director vacancy arose to ensure that they canvass as widely as possible.

D. PRACTITIONER PERSPECTIVES: STATE-OWNED ENTERPRISE OVERSIGHT MINISTRIES

Many of the survey participants have agreed that a robust skills-based SOE director selection and appointment process has a positive impact on governance and performance, and its codification would improve implementation. A summary of comments is included in Table 3.
### Table 3 Summary of Comments from Survey Participants

<table>
<thead>
<tr>
<th>Country and Institution</th>
<th>Consolidated Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fiji: Department of Public Enterprises</strong></td>
<td>The skills-based selection process “has a positive impact on state-owned enterprise (SOE) governance, board performance, and SOE performance.” Selecting and appointing directors through a transparent and rigorous process ensures that boards include professionals who possess the skills, knowledge, and experience that are required to assist the SOE in achieving its objectives.</td>
</tr>
<tr>
<td><strong>Papua New Guinea: Kumul Consolidated Holdings</strong></td>
<td>Following the codified process has a positive impact on SOE performance—directors add value in terms of decision-making as they bring the right mix of skills, knowledge, and experience. Diversity and inclusiveness are improved through proactive appointment of women and minorities.</td>
</tr>
<tr>
<td><strong>Samoa: Ministry of Public Enterprises</strong></td>
<td>The skills-based selection process has a positive impact on SOE performance. The use of the Independent Selection Committee, which comprises representatives from the private sector, provides an independent assessment of the candidates against the approved board composition criteria, which improves the likelihood that each SOE board has the best balance of skills, knowledge, and experience in achieving the primary objective.</td>
</tr>
<tr>
<td><strong>Solomon Islands: Economic Reform Unit</strong></td>
<td>Following the implementation of the codified selection and appointment process, the performance of SOEs has improved significantly. SOEs are now submitting annual reports on time, and the overall financial performance and service delivery to the community has improved dramatically.</td>
</tr>
<tr>
<td><strong>Tonga: Ministry of Public Enterprises</strong></td>
<td>The experience of the Ministry of Public Enterprises is that directors selected through the skills-based process have a positive impact on SOEs’ corporate governance and decision-making. An appropriate mix of skilled directors will form a high-quality board, and that board will have a positive impact on the SOE’s financial and nonfinancial performance.</td>
</tr>
<tr>
<td><strong>Vanuatu: Government Business Enterprise Monitoring Unit</strong></td>
<td>The Government Business Enterprise Monitoring Unit believes a codified director selection process would have a “huge positive impact”. This will (i) ensure that the best people are appointed to SOE boards and (ii) reduce inappropriate levels of political influence in director selection.</td>
</tr>
</tbody>
</table>

Source: Pacific Private Sector Development Initiative.
CONCLUSIONS

SOEs are dominant in the economies of most of ADB’s Pacific DMCs, and their performance has a significant impact on economic outcomes, poverty alleviation, and the quality of life experienced by residents. There is a strong correlation between corporate governance and SOE performance, which makes the board selection process and the resulting composition of corporate boards fundamental to SOE performance. While the board nomination practices adopted by the Pacific DMCs vary in their design and implementation, all countries surveyed for this study agree that the most important outcome is the selection of the best-skilled candidate.

To improve the likelihood that the most qualified candidate is appointed, several Pacific DMCs have adopted codified director selection processes. These codified processes have common elements: (i) candidates are assessed against identified skill requirements by a nonpolitical entity (i.e., the SOE monitoring agency, independent selection panel, or subcontracted search firm); (ii) the best-skilled candidate is selected and recommended for appointment; and (iii) there are high levels of transparency around the process and its outcomes. This paper observes that, while politicians have an important role to play in the nomination process, outcomes are improved when they rely on a nonpolitical entity to select the best-skilled candidate.

Developing and implementing codified SOE board nomination procedures is highly recommended. The procedures adopted in Papua New Guinea, Samoa, Solomon Islands, and Tonga, and the procedure developed for Palau, are worthy of examination by the Pacific DMCs that have not yet adopted a codified process. There are also opportunities to improve and strengthen the processes already in place (Table 4).

All surveyed countries have agreed that gender diversification adds value to board procedures and decision-making, which support improved SOE performance. However, several of the SOE monitoring agencies noted that achieving higher levels of gender diversity is hindered in part by the lack of suitably qualified candidates. While recognizing this is not the only obstacle, Samoa is making efforts to increase the pool of women candidates through director training programs specifically for women, and other countries are exploring similar initiatives.
### TABLE 4 STATE-OWNED ENTERPRISE DIRECTOR SELECTION PROCESSES, AREAS FOR IMPROVEMENT

<table>
<thead>
<tr>
<th>Area for Improvement</th>
<th>Description</th>
</tr>
</thead>
</table>
| **Develop a codified selection and appointment process** | • Develop job descriptions for all director positions that include the required skills, directors’ duties, and core competencies. The required skillset and experience should be tailored to each position, and updated when the position becomes vacant or the director’s term expires.  
• Interview all candidates either at the time of application or at the time when their names and information are added to the state-owned enterprise (SOE) director database.  
• In the codified process, include a requirement for director induction, ongoing training, and performance evaluation.  
• Require all appointments to be in accordance with the process, or otherwise be deemed in law as null and void. |
| **Clarify the role of SOE ownership monitoring agency** | • Involve the SOE ownership monitor in developing board profiles, identifying any skills gaps, and drafting director job descriptions.  
• Where there is a holding company, it must appoint all directors to subsidiary SOEs and be accountable for those appointments. |
| **Clarify appointment responsibilities** | • The minister responsible for SOEs must be (i) accountable for all SOE director appointments; and (ii) may delegate the power to appoint to an independent body or agency, but must remain accountable for ensuring that a proper appointment process is followed.  
• The minister responsible for SOEs should be required to appoint only short-listed candidates.  
• Cabinet may be consulted on an appointment, but should not be the appointing body. |
| **Strengthen transparency** | • Require the entity or person responsible for SOE director appointments to certify that the process has been followed for each appointment. Publicly disclose the certification.  
• Table all appointments and reappointments in Parliament and publish on the SOE ownership monitor’s website.  
• Publicly disclose the codified selection and appointment process. |
| **Gender diversity** | • The selection and appointment process should encourage the appointing entity to consult with ministries for women, institutes of directors, and other bodies that represent women to expand the candidate base and to develop director training programs for women.  
• Set and publish time-bound gender diversity targets. |

Source: Pacific Private Sector Development Initiative.
## APPENDIX

### TABLE A.1: LEGAL BASIS FOR SELECTION AND APPOINTMENT OF STATE-OWNED ENTERPRISE DIRECTORS IN THE PACIFIC

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal Provisions</th>
<th>Codified Selection and Appointment Process</th>
<th>Selection/ Appointment Powers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cook Islands</td>
<td><strong>Cook Islands Investment Corporation Act 1998:</strong> The Cook Islands Investment Corporation (CIIC) board, which is the state-owned enterprise (SOE) holding company, appoints directors to subsidiary SOEs.</td>
<td>No codified process.</td>
<td>CIIC has the legislative mandate to appoint all SOE directors but, in practice, the minister of finance approves the appointment of directors to CIIC’s subsidiary SOEs.</td>
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<td>Fiji</td>
<td><strong>Public Enterprise Act 2019:</strong> • The minister must be satisfied that the candidate has the skills, knowledge, and experience to assist the SOE in achieving its primary objective. • Contains list of persons who would not be suitable for appointment. • Ministers or elected officials cannot be appointed. • Public servants who work in relevant sector ministry cannot be appointed.</td>
<td>No codified process. The Department of Public Enterprises undertakes a skills-based selection process that includes public advertising in some cases.</td>
<td>With the approval of the Prime Minister, the responsible minister selects and appoints directors.</td>
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<td>Kiribati</td>
<td><strong>State-Owned Enterprise (SOE) Act 2012:</strong> • In appointing SOE directors, the minister must take into consideration the comments and recommendations made by the SOE Monitoring Unit; and the balance of skills, knowledge, and experience that will exist on the SOE board after the appointment, having regard to</td>
<td>No codified process.</td>
<td>Responsible minister.</td>
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<td>Kiribati (ctd)</td>
<td>the nature and scope of the SOE’s activities and objectives.</td>
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<td></td>
<td>• Ministers or elected officials cannot be appointed.</td>
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<td>• Public servants who work in relevant sector ministry cannot be appointed.</td>
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<td>Marshall Islands</td>
<td><strong>SOE Act 2015:</strong> • Act requires the appointment of directors who can assist SOEs in achieving their primary objectives (to be profitable).  • Allows for appointment of ministers as SOE directors.  • Allows up to three public servants to be appointed to each board where such appointment will have a significant impact on the economic and general wellbeing of the people of the Marshall Islands.</td>
<td><strong>No codified process.</strong> Of the 58 SOE board positions in 2019, 24% were occupied by elected officials, and 62% by elected officials and public servants.</td>
<td>With the consent of the cabinet, the minister of finance appoints the SOE director.</td>
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<td>Nauru</td>
<td><strong>Public Enterprise Act 2019:</strong> • Directors are appointed by the responsible minister with approval of cabinet.  • Minister can only appoint persons who will assist the SOE in being successful, defined as profitable and achieving returns that cover its cost of capital.  • When appointing a director, the minister should seek to achieve gender balance.  • Politicians, persons standing for election, and public servants employed in the SOE’s sector ministry cannot be appointed.  • Maximum of two public servants per board, and public servants can never constitute a majority of directors.</td>
<td><strong>No codified process.</strong> The act stipulates that:  • SOE ownership monitoring unit advises on board selection and appointment.  • All appointments must be tabled in Parliament.</td>
<td>With cabinet approval, the responsible minister appoints SOE director.</td>
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<td>Palau</td>
<td><strong>No overarching SOE act.</strong> SOE policy establishes some common practices:</td>
<td><strong>Codified process drafted and approved for one SOE in 2021,</strong> which includes:</td>
<td>The President appoints, with advice and consent of the Senate and on the recommendation of the Minister of Finance.</td>
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<td>• Directors must be persons with knowledge, skills, and experience to assist SOEs in meeting their primary commercial objective.</td>
<td>• SOE board undertakes skills gap analysis and drafts the terms of reference.</td>
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<td>• Prohibit appointment of elected officials.</td>
<td>• Vacancy advertised and candidates assessed against the terms of reference.</td>
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<td></td>
<td>• Establish SOE monitoring unit (SOEMU) that will advise on director selection.</td>
<td>• SOEMU submits short list to minister of finance.</td>
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<td>• The minister recommends preferred candidate to the President.</td>
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<td>Papua New</td>
<td><strong>Kumul Consolidated Holdings Authorisation (Amendment) Act 2021.</strong> Papua New Guinea’s SOEs are held in a trust managed by Kumul Consolidated Holdings (KCH), the successor to Independent Public Business Corporation.</td>
<td><strong>Codified process in 2021 KCH Amendment Act:</strong></td>
<td>The minister of state-owned enterprises selects one of the short-listed candidates and submits to the National Executive Committee for appointment.</td>
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<td>Guinea</td>
<td>• Public servants, politicians, and employees of the SOE are prohibited from being appointed.</td>
<td>• SOE board must maintain board profile, listing skills, experience, and attributes that are absent on board.</td>
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<td>• All appointments made by the National Executive Committee must be made in accordance with the codified process.</td>
<td>• Attributes must be based on performance objectives in KCH Amendment Act and SOE’s corporate plan targets.</td>
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<td>• When a vacancy arises, SOE board advises KCH of required knowledge, skills, and attributes; and submits the terms of reference for the vacancy.</td>
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<td>• KCH is responsible for selection process, including advertising (top three candidates are interviewed).</td>
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<td>Solomon</td>
<td><strong>SOE Act 2007:</strong></td>
<td><strong>Codified process contained in regulations.</strong> Key features:</td>
<td>The accountable ministers must jointly appoint from the short list submitted by the SOE board.</td>
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<tr>
<td>Islands</td>
<td>• Directors must be persons who will assist the SOE in achieving its primary objective.</td>
<td>• When a vacancy arises, the SOE board determines the skills gap and advises the accountable ministers.</td>
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<td>• If the selection and appointment do not follow the process which is stipulated in the regulations, the appointment is null and void.</td>
<td>• Vacancies must be advertised.</td>
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<td>• The board gives the accountable ministers a short list that includes at least three candidates.</td>
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<td>• The accountable ministers must select an appointee from the shortlist.</td>
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| **Solomon Islands (ctd)** | • Ministers and public servants can be short-listed only under exceptional circumstances. | **Codified process set out in regulations to the act (Schedule 3):**  
• The regulations establish an Independent Selection Committee (ISC) made up of three independent private sector members.  
• The ISC is responsible for the full selection process. The Ministry of Public Enterprises acts as the ISC’s secretariat and undertakes interviews of some of the candidates.  
• All candidates are assessed against the required skillset and their experience, qualifications, and corporate governance experience are also considered.  
• The ISC submits three short-listed candidates to the responsible minister.  
• The responsible minister recommends a preferred candidate from the short list to the cabinet for approval.  
• Although the cabinet can appoint a candidate other than that recommended by the responsible minister, this is rare. | The ISC selects and recommends three short-listed candidates to the responsible minister; the responsible minister recommends to the cabinet, which appoints one of the short-listed candidates. 
The ISC’s recommendations, ranking, and reasons are submitted to the cabinet with the responsible minister’s recommendation. |
| **Samoa**     | **Public Bodies (Performance and Accountability) Act 2001**:  
• All decisions made by directors must be consistent with the act.  
• The act contains a primary objective that all SOEs must be profitable. | **Codified process set out in cabinet directive:**  
• The responsible minister must appoint or reappoint in accordance with the codified process.  
• The Ministry of Public Enterprises (MPE), in conjunction with the SOE board, undertakes a skills gap analysis.  
• Based on skills gap, MPE develops | Responsible minister, with the consent of the cabinet |
| **Tonga**     | **Public Enterprise Act (as amended in 2010):**  
• The responsible minister can only appoint persons as SOE directors who can assist the SOE in achieving its primary objective.  
• The primary objective is to be profitable, and all decisions made by directors must be consistent with that objective. | **Codified process set out in cabinet directive:**  
• The responsible minister must appoint or reappoint in accordance with the codified process.  
• The Ministry of Public Enterprises (MPE), in conjunction with the SOE board, undertakes a skills gap analysis.  
• Based on skills gap, MPE develops | Responsible minister, with the consent of the cabinet |
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| Tonga (ctd) | a short list. Candidates on the short list are assessed by a subcommittee comprising a minister, the MPE chief executive officer, and an independent member.  
|            | • The responsible minister must appoint a candidate from the short list.  
|            | • Most vacancies are advertised, and appointments are publicized.  
|            | • Terms of Reference exist for all director and chair positions.               |                                                                                                           |                                                                                                |
| Vanuatu    | Commercial Government Business Enterprise (CGBE) Bill is substantially drafted but not enacted. | **No codified process.** Draft CGBE bill provides that:  
|            | • CGBE monitoring unit must advertise all vacancies  
|            | • Ministers or elected officials cannot be appointed SOE directors.  
|            | • Appointment of public servants is limited to two if more than three directors, or one if only three directors.  
|            | • Public servant who performs a function related to the policy or operational business of the SOE cannot be appointed director.  
|            | • CGBE monitoring unit advises the responsible minister on director appointments, and evaluates SOE director performance.  
|            | • The responsible minister must table in Parliament all orders for the appointment or removal of SOE directors. | Directors are appointed by the responsible minister with the approval of the Council of Ministers (cabinet). |

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a The Public Body (Performance and Accountability) Act 2001 establishes two types of public bodies: (i) public trading bodies, which are required to achieve a profit; and (ii) public beneficial bodies. For the purposes of this policy note, public beneficial bodies are not considered SOEs and are not included.

Source: Pacific Private Sector Development Initiative.
REFERENCES


STATE-OWNED ENTERPRISES: BOARD NOMINATION PRACTICES IN THE PACIFIC

While legal frameworks in the Pacific increasingly support the commercial operation of state-owned enterprises (SOEs), the board nomination process in many countries remains subject to political influence. This paper challenges policymakers to consider a transparent and objective board nomination process—focused on attracting the specific skills, experience, diversity, and independent perspectives needed on each board—as critical to an SOE’s prospects of achieving its commercial and operational goals.

Pacific Private Sector Development Initiative (PSDI) Policy Briefs

This PSDI Policy Brief is one of a series published by PSDI covering topical issues in Pacific private sector development, with the combined aim of supporting inclusive, private-sector led economic growth.

About PSDI

PSDI is a technical assistance program undertaken in partnership with the Government of Australia, the Government of New Zealand, and the Asian Development Bank. PSDI supports ADB’s 14 Pacific developing member countries to improve the enabling environment for business. The support of the Australian and New Zealand governments and ADB has enabled PSDI to operate in the region for 15 years and assist with more than 300 reforms.