CDD-GHANA Blog Post

Ghana's State-Owned Enterprises – Questions of Governance

State Interests and Governance Authority, 2022 State Ownership Report. August 2024

The State Interests and Governance Authority (SIGA) has recently published the State Ownership Report for 2022, the seventh in a series of annual reports. These reports provide basic information on entities covered by the State Interests and Governance Authority Act of 2019. The 2022 Report covers 146 of the 175 entities identified by SIGA. Of the 146 entities covered, 53 are classified as commercial enterprises wholly owned by the state, referred to as SOEs. These SOEs meant to be profit-making commercial entities are the focus of this review.[1]

The publication of the annual State Ownership Reports, a significant step towards transparency, is one of the outcomes of a reform project dating back to 2016. SIGA's achievement in corralling 146 state entities to submit 2022 financial statements and performance indicators for publication should be recognized. The Reports' coverage has steadily increased from 18 SOEs for 2016 to 47 for 2020 and 53 for 2022. The information on individual entities provides some basis for distinguishing between the performances of different entities. However, timeliness is yet to be achieved - a publication on 2022 performance which comes out in August 2024 is less than optimal.

The news on overall SOE performance is not good. Commercial enterprises owned by the state made an aggregate net loss of 14.4 billion Ghana Cedis in 2022. This continues a trend of net losses for every year covered by the Report since its inception and is significantly worse than the 2020 and 2021 losses of 2.6 billion Ghana Cedis and 1.74 billion Ghana Cedis respectively. While factors related to the adverse macro-economic situation are invoked to explain the 2022 figures, the continuing trend of losses points to deeper causes, and the need to take a closer look at SOE performance.

Total assets of the 53 SOEs covered are said to amount to 246.9 billion Ghana Cedis in FY2022. SOEs have recently been estimated by SIGA to account for nearly 50% of government assets. The size of SOE losses is significant when compared to the 2022 total government revenue of 166.7 billion Ghana Cedis and total expenditure of 242.9 billion cedis.[2] Continued government expenditure on loss-making enterprises must be a matter of public concern. More so given the commitments made by successive governments to improve SOE performance and the external financing procured ostensibly to this end.

In 2016 following a succession of SOE net losses, the government signed a $15 million Economic Management Strengthening Program loan agreement with the World Bank's

[1] Left out from the present discussion are commercial joint ventures involving the state and private parties (JVs), and public [or statutory] corporations referred to in the Report as Other State Entities (OSEs), for whom profit-making is not necessarily a primary objective. SIGA is itself an example of such a statutory corporation.
[2] See Controller and Accountant-General, Annual Report 2022 at pp 10-12.

International Development Association (IDA) with a $5.25 million component for SOE governance reform.[3] The new administration which came into office on January 7, 2017 expressed its commitment to the SOE governance reform project. The 2016 SOE Annual Aggregate Report, issued in 2017 under the signature of the new Minister of Finance identified poor corporate governance practices as one of the key factors in SOE underperformance. The report cited a review which highlighted deficient boards and the lack of management autonomy in commercial decision-making, weak disclosure practices to hold SOEs accountable for results, and the lack of commitment to good corporate governance. Other problems cited include multiple and often conflicting objectives and the lack of a clear framework for state oversight of the SOE sector.

The reform strategy announced in 2017 was one of improving the legal and regulatory framework, strengthening the state's ownership role, professionalizing SOE boards and enhancing transparency and disclosure. A "comprehensive Action Plan" is said to have been adopted to implement the strategy. Initial efforts were to be focused on i) establishing a single central entity with enhanced supervisory powers to manage the state's assets and liabilities in SOEs…, and ii) piloting key corporate governance practices in 5 key SOEs: Volta River Authority, Ghana National Petroleum Corporation, Electricity Company of Ghana, TDC Development Company Ltd. and Ghana Water Company Ltd.

According to the Report "*Government is fully committed to the implementation of the reforms … because they are expected to significantly improve the corporate governance practices of the SOEs and thereby forestall the poor … practices and operational inefficiencies which tend to threaten the technical and commercial performance, and long-term survival of SOEs*."

The foregoing diagnosis of the SOE problem and the accompanying prescriptions are hardly controversial. They sum up recurrent elements in the experience of Ghanaian state-owned enterprises.

Ghana's history of state-owned enterprises (SOEs) from the 1950s has been one of mixed results. The rationale initially put forward for establishing state-owned enterprises was to compete in areas dominated by foreign business. By the early 1960s, state enterprises were part of an agenda of state-led industrialization for accelerated economic development. Some SOEs were successful for considerable periods of time while others persisted in losing money. In the worst cases, SOEs have been seen as vehicles for political patronage. The Cocoa Purchasing Company Ltd. was an early example.[4]

By the mid-1980s it was clear that the poor performance of SOEs was a drain on government finances. A program of SOE reform was adopted by the PNDC government with World Bank financial and technical support. Its stated goals were to improve

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[3] See IDA Project Appraisal Document ECONOMIC MANAGEMENT STRENGTHENING PROJECT August 9, 2016 Report No: PAD1619 (PAD).

[4] This subsidiary of the Cocoa Marketing Board was the subject of adverse findings by the Jibowu Commission of Enquiry (1956). The company was wound up in May 1957. For an interesting historical review of Ghanaian public corporations, see R.B. Turkson, The History of Public Corporations, in Woodman & Daniels, Essays in Ghanaian Law, University of Ghana Law Faculty (1976) at 137-157.

efficiency and productivity of SOEs and ensure that they operated in a commercial manner, to reduce the demands made on scarce government resources and to reduce the role of government in activities which could be done by the private sector.[5] The state's interests in nearly 80 SOEs were divested to the private sector and 40 other enterprises were closed down.[6] A number of those remaining were converted into limited liability companies. Some steps were taken to improve the performance of what were identified as core SOEs.

Despite some improvements following the reforms which continued into the 1990s, uneven SOE performance remained a source of concern. For instance, while SOEs made net aggregate profits between 2009 and 2011, in 2012 they made net losses. It was in the aftermath of these losses that the Mahama administration opted for an IDA loan to support further reform.

The annual publication of the State Ownership Report and the establishment of SIGA[7] are two components of the reform strategy announced in 2017 which have been implemented. However, the continuing trend of net losses necessarily raises the question how much reform has been implemented and with what impact? Progress on the 2017 Action Plan's pilot reforms in the five specified entities should be of particular interest given that the entity with the largest loss in 2022, Electricity Company of Ghana (8 billion Ghana Cedis) as well as an entity which has been rated the best performing, TDC Development Company Ltd. (with a profit of 37.5 million cedis) are both on that list of five.[8]

There has apparently been less than full compliance with the obligation under section 28 of the SIGA establishing Act that a report on SIGA's own activities and operations be submitted to parliament annually. Perhaps these SIGA annual activity reports will address more directly and fully the status of implementation of the SOE corporate governance reforms outlined in 2017. Nevertheless, with the available information from the State Ownership Reports and other sources, the issues which stand out include: the trend of establishing new SOEs; remuneration of high-level SOE officials; the role of various governmental actors in SOE management; and the appointment and tenure of SOE senior managers and directors.

More SOEs have been established since 44 were counted in 2016. What are the threshold criteria for determining whether or not a new SOE should be established? Who makes that determination?

[5] The world has largely moved on from the ideological debates about whether state enterprises should exist at all. It is now widely accepted that there is a place for them – that if run well they can be beneficial. They can perform important functions that the private sector is unable or unwilling to take up, generate revenue for the government and create employment opportunities.
[6] See PAD Annex 2 (Detailed Project Description) at p.50 para 78
[7] SIGA replaced the State Enterprises Commission established under PNDC Law 170 (1987).
[8] Volta River Authority, Ghana National Petroleum Corporation and Ghana Water Company Limited complete the list of five.

The performance of SOEs as reported raises the issue of the apparent lack of a link between remuneration of SOE board members and senior executives and the performance of their enterprises. While the State Ownership Reports do not include information on SOE remuneration, it is well known that salaries of some SOE senior management officials are substantially higher than that of Article 71 public officials, which are in turn way above the "single spine" salary scale applicable to public servants in general.[9] It would be an important further step towards transparency to fully disclose the remuneration structures of all SOEs. Clarity is needed as to the criteria as well as the decision-makers responsible for determining remuneration for SOE senior executives and board members. The development of policy linking remuneration to performance should be given priority.

There is room to further clarify the interactions between the central government, specifically the President and Ministers,[10] and SIGA. For SOEs set up as limited liability companies, all of these actors represent the shareholder. The issue of who exercises which shareholder functions has remained unclear. One possible solution is to limit Presidential and Ministerial involvement to high-level strategic direction communicated through SIGA, leaving SIGA to exercise all other shareholder functions on a continuing basis.

The Companies Act 2019 (Act 992) and typical company regulations make clear the functions and obligations of boards of directors as distinct from those of shareholders. However, in practice the boundaries have not always been observed for SOEs. The appointment and dismissal of chief executives is one area where all too often, decisions are made by the President rather than by the board of directors.

Should the tenures of chief executives and board members be aligned with that of the President of the Republic? No. Fixed renewable terms of office would be more compatible with the avowed turn towards professionalism and technical competence and away from political appointments. For those SOEs constituted as statutory corporations rather than limited liability companies, this may require an amendment of the Presidential (Transition) Act 2012 (Act 845) which has been interpreted by the Supreme Court to tie directors' tenures with that of the President who appointed them.[11]

To what extent do appointments made since 2017 reflect progress towards the announced goal of professionalizing boards of directors? This question is not directly answered in the State Ownership Reports. However, the trend of appointing Ministers, members of parliament and other politically exposed persons to SOE boards of directors,

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[9] See e.g. Chapter 5 of Report of the Presidential Committee on Emoluments of Article 71 Office Holders June 2020 https://asaaseradio.com/wp-content/uploads/2021/07/PROF._YAA_NTIAMOAH_BAIDU-EMOLUMENT_REPORT_-2017-2021-1.pdf; See also comments by Mr. Sam Jonah on state enterprises https://www.theghanareport.com/pay-civil-servants-as-politicians-sam-jonah/

[10] While there are sector Ministers with some responsibility for particular SOEs, the Minister of Finance has general oversight authority. A few years ago, the position of Minister for Public Enterprises was created. It is not quite clear what value is added by this ministerial function.

[11] Supreme Court decision in Theophilus Donkor v Attorney-General 12 June 2019

well documented in these reports, can only be seen as retrogressive, as are some recent admonitions by SIGA's leadership to SOE chief executives.[12]

As between boards of directors and senior management, it is a well-established corporate governance principle that boards give broad direction on strategy and exercise oversight of senior management while senior management led by the chief executive deals with day-to-day functions, sometimes referred to as operational matters.

The planned listing of some SOEs on the stock exchange mentioned in the 2016 Report remains on the drawing board. There has been no reported progress since the announcement in February 2023 that 10 entities were ready for listing on the Ghana Stock Exchange.[13] Listing on the stock exchange would certainly impose some compliance obligations on the listed entities. However, improved corporate governance remains a priority for SOEs, listed or unlisted. The performance of PBC Limited (formerly Produce Buying Limited) and Cocoa Processing Company plc as reported should dispel any notion that listing on the Stock Exchange is a panacea.

Just as clear criteria are needed to justify the establishment of new SOEs, it should be made clear that if a non-performing entity is found to be unviable, it will be closed down.

Treating SOEs as vehicles of political patronage has continued to be part of the Ghanaian story.[14] The destructiveness of such practices, and their cost, is well-documented. Such practice sharply contrasts with the repeated proclamations of improving corporate governance which have been made, which should be taken seriously, and to which governments, present and future must be held.

[12] The then Director-General of SIGA was reported in the following terms: "We all sometimes talk as if the problem is somebody's problem and not our problem but it is our problem because if the government goes out of power, most of us if not all will not retain our positions… So it is in our collective interest to reflect on how we can rebuild the economy so that hopefully we can break the eight and retain our jobs or get new ones..." He was speaking at the SIGA Annual Stakeholder Meeting in Kwahu in the eastern region under the theme 'time to reflect and rebuild.' Daily Graphic 9 February 2023 https://www.graphic.com.gh/business/business-news/support-economic-rebuilding-to-retain-your-jobs-siga-boss-urges-ceos-of-state-owned-enterprises.html

[13] https://www.african-markets.com/en/stock-markets/gse/ghana-10-state-owned-enterprises-ready-for-listing-abena-amoah

[14] The IMANI ACEP Procurement Irregularities Report captures some egregious expressions of this phenomenon at pp 45 and 46: https://imaniafrica.org/2022/05/02/public-procurement-reforms-an-analysis-of-the-drivers-of-procurement-irregularities-in-ghana/. Also available at https://www.gtipa.org/publications/2022/05/02/public-procurement-reforms-analysis-drivers-procurement-irregularities-ghana

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